

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 13-4290

GREGG FALLER,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (Division) conducted the formal hearing in this cause on June 3 and 4, 2014, in Bradenton, Florida.

APPEARANCES

For Petitioner: Terry Joseph Harmon, Esquire  
Jeffrey Slanker, Esquire  
Sniffen and Spellman, P.A.  
123 North Monroe Street  
Tallahassee, Florida 32301-1509

For Respondent: E. Jon Weiffenbach, Esquire  
Weiffenbach and Kaklis  
538 12th Street West  
Bradenton, Florida 34205-7411

STATEMENT OF THE ISSUE

Does Petitioner, Manatee County School Board (Board), have just cause to terminate the employment of Respondent, Gregg Faller, based upon the conduct involving Mr. Faller's alleged

failure to respond appropriately to information he had about the conduct of his subordinate, Rod Frazier, toward females, including students, as alleged in the Administrative Complaint dated October 14, 2013?

PRELIMINARY STATEMENT

On September 25, 2013, the superintendent of Manatee County Schools, Rick Mills, gave Mr. Faller written notice of intent to recommend termination of his employment to the Board. That same day, Mr. Mills issued an Administrative Complaint seeking Mr. Faller's termination. On October 14, 2013, the Board suspended Mr. Faller, without pay, pending the outcome of an administrative hearing.

Mr. Faller requested an administrative hearing on October 24, 2013. On November 6, 2013, the Board referred the matter to the Division to conduct the hearing. The undersigned set the matter for final hearing to be conducted on December 13, 2013. The parties filed an agreed motion to continue. The undersigned granted the motion and rescheduled the hearing to April 1, 2014. The parties initiated discovery on January 15, 2014. On March 5, 2014, Mr. Faller moved to continue the hearing. The motion was granted, and the hearing was re-scheduled to June 3 and 4, 2014. On May 9, 2014, Mr. Faller moved to continue the final hearing. The motion was denied. The undersigned conducted the hearing as scheduled.

The Board presented the testimony of Stephen Gulash, Debra Horne, Keltie O'Dell, Detective Leonel Marines, Scott Martin, Jacqueline Peebles, Troy J. Pumphrey, Stephen Rinder, Don Sauer, Adinah Torres, William Vogel, A.K., and D.K.<sup>1/</sup> Board Exhibits 1; 2; 5; 6D (3, 5, 6, 14, and 15); 18; 39; 44; 45; and 54 were admitted into evidence.

Mr. Faller testified and presented the testimony of Danny Bench.

At the hearing's conclusion, the parties requested and were granted additional time for filing proposed recommended orders. The parties timely filed proposed recommended orders which have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

##### Stipulated Facts

1. The Board is a duly-constituted school board charged with the duty to operate, control, and supervise all free public schools within the School District of Manatee County (District). § 1001.32, Fla. Stat (2013).

2. The District has employed Mr. Faller since December 8, 2009.

3. Mr. Faller was an administrative parent liaison at Lakewood Ranch High School from December 2009 to May 2009.<sup>2/</sup>

4. He served as assistant principal at Manatee High School from July 2010 through July 2013. Mr. Faller served temporarily

as an assistant principal at Palmetto High School from July 2013 until he was placed on paid administrative leave on August 1, 2013.

5. At all times, Mr. Faller was required to abide by all Florida Statutes that pertain to teachers and educators, the Code of Ethics and the Principles of Conduct of the Education Profession in Florida (Code of Ethics), and the Policies and Procedures Manual of the Manatee County School District.

6. On August 15, 2013, Respondent was charged with: (1) Failure to Report Child Abuse (sections 39.201(1) and 39.205(1), Florida Statutes (2011) (misdemeanor)); (2) Felony Failure to Report Child Abuse (section 39.201(1) and (2) and 39.205(1), Florida Statutes (2011) (third degree felony)); and (3) False Reports to Law Enforcement Authorities (section 837.05(1), Florida Statutes (2011) (misdemeanor)). The prosecutor dismissed the charge of providing false information to a law enforcement officer.

7. On September 25, 2013, the superintendent notified Mr. Faller in writing of the District's intent to recommend his termination from employment. The superintendent issued an Administrative Complaint against Mr. Faller that same day.

8. On October 14, 2013, during a Board meeting, Mr. Faller was suspended, without pay, pending the outcome of an administrative hearing that he requested.

9. On October 24, 2013, Respondent served a Request for Administrative Hearing and Respondent/Employee's Answer to Administrative Complaint.

Additional Facts

10. Florida law imposes a duty to report upon any person who has reasonable cause to suspect child abuse by a person responsible for a child's welfare.<sup>3/</sup>

11. The Board emphasized the importance of this obligation in Board Policy 5.2 of the Policies and Procedures Manual of the School District of Manatee County. That policy provides in part:

All school employees have a serious affirmative duty to report suspected child abuse and neglect and shall do so pursuant to the guidelines developed.

\* \* \*

(1) Mandatory Duty to Report Suspected Child Abuse

All employees or agents of the district school board who have reasonable cause to suspect abuse have an affirmative duty to report it . . . .

\* \* \*

(3) Complaints of Child Abuse Reported to an Employee

An employee receiving a complaint or report of child abuse shall inquire of the reporting party as to the details of his/her concern but shall not investigate further. If the employee has reasonable cause to suspect that child abuse has occurred based upon the description by the reporting party, the

employee must report . . . [to the Florida Child Abuse Registry].

\* \* \*

(4) Employee Responsible for Reporting

It is the responsibility of the first employee who has "reasonable cause" to suspect abuse to report it to the hotline and to do so immediately. It is unacceptable and violation of the law to simply report suspicions to any other individual (including law enforcement or your supervisor) and ask or expect them to make the report to the hotline. After making a report, the school board employee must inform the principal, supervisor, or other building administrator. If the suspected abuser is a district employee, the supervisor of the reporter will notify his/her director who will notify the Office of Professional Standards.

\* \* \*

(6) Penalties for Failure to Report

Any employee who is required to report and fails to do so may be found guilty of a misdemeanor . . . . Failure to report child abuse as required will also subject the employee to disciplinary action.

12. Mr. Rod Frazier, a subordinate of Mr. Faller, was a person responsible for the welfare of female student, D.K.

13. Mr. Faller was trained in the duty to report child abuse. He has been present with people who have called to report child abuse. He understood that if he learned of something that causes concern from another employee, he may be responsible for reporting the concern to his principal.

14. At Manatee High School, Mr. Faller served as assistant principal. His duties included supervising four parent liaisons: Mr. Gulash, Ms. Torres, Rod Frazier, and Randy Smith. Parent liaisons handle everyday suspensions and the discipline of students. They also handle communication between parents, staff, and students and assist in the classroom. Parent liaisons also mentor some students.

15. Mr. Faller summarized the parent liaison duties as:

Their main job is to deal with referrals written by staff members that had issues with student behavior, deal with parents, phone call parents and let them know what their child was doing, basically be a mentor to some of the students if they saw students were struggling and had a relationship with them and could make an impact and try and make them get back on the right track.

(Tr., pp. 319-320).

16. The parent liaison job description identifies responsibilities that include: handling routine discipline referrals; referring serious offenses to the assistant principal; supervising students, including bus duty, parking lot, and school events; meeting and dealing effectively with staff members, students, and parents; and modeling and maintaining high ethical standards.

17. During the 2011-2012 school year, Mr. Faller received several reports describing inappropriate conduct and improper

relations with female students by Mr. Frazier. He also received a report of sexual harassment of a female parent liaison.

Harassment of Adinah Torres

18. Adinah Torres worked at Manatee High School as a parent liaison from November 2010 to July 2012. Mr. Faller was Ms. Torres' sole supervisor during that period of time.

19. During that period, Mr. Frazier trained Ms. Torres on how to enter referrals into the District's data system.

20. During one training session, she sat at his desk using his computer. Mr. Frazier sat on the desk with his feet and crotch toward Ms. Torres. Mr. Frazier rubbed his foot up the side of Ms. Torres' leg during the training session.

21. She pulled away and looked at him. Mr. Frazier smirked at Ms. Torres. She left the room.

22. Mr. Frazier's acts were inappropriate, unwelcome, and unwarranted. They made Ms. Torres uncomfortable. The acts were harassment of Ms. Torres.

23. The following day, Ms. Torres told Mr. Faller about the incident. Mr. Faller agreed that the described conduct was inappropriate. He told Ms. Torres that he could not have these sorts of problems in the office because she might one day need someone to help her with a student disciplinary issue. "You got this?" he asked. Ms. Torres interpreted Mr. Faller's statements to mean that she should deal with the problem.<sup>4/</sup>



24. Mr. Faller's version of their conversation is that he told Ms. Torres he would take action if she wished to file a written complaint. Nothing in the policies and procedures of the Board requires an employee to make a written complaint of harassment.

25. In fact, Board Policy 2.19, which establishes procedures for complaints about discrimination and harassment, requires a diametrically opposite approach. Board Policy 2.19(4) sets out an investigation, review, reporting, and appeal process that begins with a written complaint.

26. However, the policy begins with a clear statement that imposes a specific duty upon an administrator, such as Mr. Faller, who learns of an alleged incident of discrimination or harassment. The policy states:

The following complaint/grievance procedures are established to receive complaints. However, when any administrator learns of an alleged incident of discrimination/harassment, they are required to report complaints immediately to the Equity Coordinator and will not conduct an investigation.

27. Nothing required a written complaint like Mr. Faller required of Ms. Torres. An immediate report by him is what was required.

28. Ms. Torres spoke to Mr. Frazier and told him the behavior was unacceptable. He denied that it occurred and stormed away from her.

29. Mr. Faller did not note the complaint in Mr. Frazier's file. He did not speak to Mr. Frazier about it or take any disciplinary action. Mr. Faller also did not report the incident that Ms. Torres alleged to anyone, including the school's equity coordinator.

Ms. Peebles' Reports of Conduct of  
Mr. Frazier With Female Students, A.P. and D.K.

30. In the 2011-2012 school year, Manatee High School teacher, Jacqueline Peebles, developed concerns about Mr. Frazier's conduct with two female students. One was A.P., who told Ms. Peebles about Mr. Frazier approaching her at a tiki bar one night and later texting her about the encounter. Another was D.K. and Mr. Frazier's frequent calls to the classroom asking Ms. Peebles to have D.K. report to his office. Ms. Peebles was also concerned about a text message to D.K. that appeared to be from Mr. Frazier telling D.K. to come to his office, that he had heard she was wearing short-shorts.

31. Ms. Peebles told Mr. Faller about all these incidents in one conversation after A.P. told her about the tiki bar encounter. Ms. Peebles told Mr. Faller that she knew A.P. was a troubled student with some discipline issues, but she felt A.P. was being truthful.

32. Ms. Peebles provided the following information to Mr. Faller. She told him that A.P. had reported that Mr. Frazier

approached her at night at a tiki bar, where she was drinking illegally. Ms. Peebles told Mr. Faller that A.P. told her that a man approached her from behind and rubbed his erection against her buttocks. A.P. said she turned and saw that it was Mr. Frazier. A.P. questioned him and told him he knew she was a student. Mr. Frazier replied, according to A.P., that she had a "nice ass" and was fair game because she was in the bar and must, therefore, be legal. The record establishes that A.P. was a student. It does not, however, establish her age. No party has asserted she was 18 or older. It is reasonable to infer from A.P.'s student status, the fact that she returned to school the following year, and the absence of dispute that she was under 18.

33. Ms. Peebles said that she told A.P. "that sounds odd." A.P. insisted it was true. Ms. Peebles also told Mr. Faller that A.P. said that she was leaving regular school for an alternative program because Mr. Frazier would not leave her alone. A.P.'s comments and her change of schools indicate that Mr. Frazier's conduct was harmful to A.P.'s mental and emotional health.

34. Ms. Peebles went on to tell Mr. Faller that A.P. then showed Ms. Peebles text messages on her telephone that were marked as coming from Mr. Frazier. The messages referred to the bar encounter saying, "'Oh, you have a hot ass, I really wanted you.'"

35. After reporting the above information to Mr. Faller, Ms. Peebles told him that she believed A.P.

36. In order to help Mr. Faller understand why she thought A.P.'s reports were credible and significant, Ms. Peebles then told Mr. Faller about an incident with Mr. Frazier that occurred before Mr. Faller assumed the position supervising Mr. Frazier.

37. Ms. Peebles had walked into Mr. Frazier's office looking for him. She found Mr. Frazier sitting at his desk with a female student, D.K., sitting in his lap feeding him cake. She told Mr. Faller that she had reported the incident to the acting principal, Mr. Kane, and thought it had been dealt with.

38. Finally, Ms. Peebles told Mr. Faller about her experiences with Mr. Frazier frequently calling the same female student, D.K., from class. The frequency became so great that it was disruptive to D.K.'s education. Ms. Peebles began not answering the telephone or refusing to send D.K. to Mr. Frazier's office. Later, Ms. Peebles saw D.K. texting and took D.K.'s telephone from her and placed it on her desk.

39. D.K.'s phone buzzed with an incoming text message. Ms. Peebles told Mr. Faller that the message said something "along the lines of 'come up to my office. I hear you're wearing short-shorts again.'" D.K. was wearing short-shorts. Ms. Peebles told Mr. Faller that the telephone indicated that the

message was from Rod Frazier. This event preceded the conversation with A.P. that Ms. Peebles reported to Mr. Faller.

40. Ms. Peebles told Mr. Faller that Mr. Frazier's texting students frequently was a problem. With D.K., it was especially troublesome because she was missing so much class time. Mr. Faller acknowledges texting is not the proper way for the parent liaisons to contact students during school hours.

41. Mr. Faller said he would talk to Mr. Frazier about the texting. Mr. Faller denies that Ms. Peebles told him about the tiki bar incident. The undersigned finds the testimony of Ms. Peebles credible and persuasive on this issue.

42. A day, or a day and a half, later, Mr. Faller passed Ms. Peebles in the hall. He said, "Hey, I took care of that." After that, Mr. Frazier was unfriendly to Ms. Peebles and rarely spoke to her or handled her referrals. But Mr. Frazier's personnel records contain no indications that Mr. Faller spoke to Mr. Frazier about these incidents or took any action.

43. The credible persuasive evidence proves that Mr. Faller did not report these assertions to the child abuse registry to the administrators or law enforcement, investigate them, or act upon them.

Ms. O'Dell's Reports of Mr. Frazier's  
Conduct With Female Students, D.K. and D.W.

44. Another teacher, Keltie O'Dell, told Mr. Faller of similar problems with Mr. Frazier texting two female students, D.K. and D.W., asking them to leave her classroom. When she would not release them, he called to have the students sent to his office. Ms. O'Dell told Mr. Faller that D.K. and D.W. confirmed to her that they had texted Mr. Frazier asking him to get them out of class.

45. Ms. O'Dell told Mr. Faller of a time when Mr. Frazier brought lunch to D.K. in her classroom so that Mr. Faller would not see her out of compliance with the dress code in the cafeteria.

46. The conduct of Mr. Frazier that Ms. O'Dell reported to Mr. Faller was unprofessional, inappropriate, and improper. Mr. Faller did not report these concerns to any other administrators or to law enforcement authorities. He also did not speak directly to Mr. Frazier about the issues.

47. Mr. Faller only spoke to all of the parent liaisons as a group, generally, about the inappropriateness of texting students to come from class. The file contains no information or notes indicating that Mr. Faller spoke to Mr. Frazier about the incidents, disciplined, or counseled Mr. Frazier.

Concerns Reported by Steve Gulash

48. Steve Gulash, an administrative parent liaison in Manatee High School's discipline office, brought similar, but much more general concerns about Mr. Frazier to Mr. Faller. He once told Mr. Faller that he should take note of the fact that Mr. Frazier only signed up as an administrator on duty for female games. He also told Mr. Faller that "this damn guy's probably done some stuff that could put him in jail." Mr. Gulash did not identify specific incidents. Mr. Faller did nothing to inquire into Mr. Gulash's concerns.

Mr. Faller's Approach to the Multiple  
Reports of Mr. Frazier's Improper Behavior

49. The following excerpt, with emphasis added, from the transcript of Detective Marines' interview of Mr. Faller, articulates Mr. Faller's view of responsibility and his method for avoiding responsibility for the supervision of Mr. Frazier and caring for the female students of Manatee High School.

Q: Okay. Now is it, is it, uh, you said you were over discipline.

A: Uh hum.

Q: Is it common for the parent liaison's to text students to get them out of class when they have an issue, they, they

A: Is it common?

Q: Yeah.

A: No.

Q: No?

A: No.

Q: Okay. So what, what is the common uh, like if, if Mr. Frazier wants to see you soon, and talk to him about a referral, I'm assuming that's what you guys do, right?

A: We call the classroom.

Q: Call the classroom?

A: Yeah.

Q: Talk to the teacher?

A: That would be the norm. Um,

Q: How long would he have been?

A: You know?

Q: How long had he been doing that for? Like texting students out of class?

A: I don't know.

Q: You don't know? Okay. Uh, did you ever talk to him about it?

A: Didn't know about it, except for through a teacher.

Q: Through Ms. O'Dell?

A: Never witnessed it myself, never had a kid come to me. Yeah, other than that one incident, um, that supposedly took place in her class, you know, she saw the kid using the phone, and then all of the sudden, you get up and say I have to go to Frazier. So she's putting two and two together, so I can't, I mean I can't say, you know, that it definitely happened.



Q: Uh hum.

A: Um, that's a, that's a teacher, um, believing that it may have occurred. Um, and I'm not in the business of, of, figuring those things out. You know?

Q: No, I

A: I mean the bottom line is

Q: know. I completely. [sic]

A: Um,

Q: Did you ever talk to him about it or no? He just didn't bother.

A: There's nothing to address. If I don't know for sure that he's doing it, then I'm not gonna address it. I mean, uh,

Q: Okay.

A: You know? But, I mean if it was happening, um, I had no direct knowledge. Nobody's ever told me directly that they know for a fact that this is going on. . . . (emphasis added).

(P. Ex. 18, 2/11/13, pp. 7 & 8). Mr. Faller chose to ignore the information.

50. Eventually, through the efforts of people other than Mr. Faller, the reports of Mr. Frazier's activities with female students reached responsible authorities triggering an administrative and criminal investigation of Mr. Frazier. Those investigations subsequently expanded to examine the actions and inactions of Mr. Faller, Principal Gagnon, former Assistant

Principal Matt Kane, and assistant superintendent for District Support, Scott Martin, when they received complaints about Mr. Frazier.

51. Ultimately, Mr. Frazier resigned from Manatee High School.

#### CONCLUSIONS OF LAW

##### Jurisdiction, Burden, and Standard of Proof

52. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties pursuant to sections 1012.33, 120.569 and 120.57(1), Florida Statutes (2013). As permitted by section 120.65, the Board has contracted with the Division to conduct these hearings.

53. The parties agree that the Board bears the burden of proving the allegations against Mr. Faller by a preponderance of the evidence. See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1979); Sublett v. Sumter Cnty. Sch. Bd., 664 So. 2d 1178 (Fla. 5th DCA 1995).

54. "Preponderance of evidence is defined as evidence 'which as a whole shows that the fact sought to be proved is more probable than not.' State v. Edwards, 536 So. 2d 288, 292 n.3 (Fla. 1st DCA 1988)." Dufour v. State, 69 So. 3d 235, 252 (Fla. 2011); see also Gross v. Lyons, 763 So. 2d 276, 280 (Fla. 200?); Escambia Cnty. Elec. Light & Power Co. v. Sutherland, 61 Fla. 167, 193; 55 So. 83, 92 (1911).

55. The result in this matter does not turn on whether the Board proved that Mr. Frazier did or did not commit the acts reported. The critical facts are what information Mr. Faller was provided and his actions or inactions in reaction to receiving that information.

#### Overview of Charges

56. Board Policy 6.11 provides:

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, 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.

57. Exercising that authority, the Board charged Mr. Faller with violation of the following Florida Statutes, Department of Education rules, and Board policies: Section 1012.795(1)(b)<sup>5/</sup>; Florida Administrative Code Rules 6A-10.080(2), 6A-10.080(3), 6A-10.081(3)(a), 6A-10.081(5)(a) and 6A-10.081(5)(n); and Board Policy 6.9.

58. The Findings of Fact establish the proven facts that may be relied upon to determine if the Board proved the violations charged by a preponderance of the evidence.

Section 1012.795--Failure to Report  
Actual or Suspected Child Abuse

59. The Board maintains that Mr. Faller violated section 1012.795(1) (b) by failing to report actual or suspected child abuse and for failing to report misconduct. That section allows the Education Practices Commission to act against the educator certificate of an assistant principal for knowingly failing "to report actual or suspected child abuse as required in s. 1006.061 or report alleged misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of a student as required in s. 1012.796."

60. Section 1006.061 imposes upon district school boards an obligation to post notices of the affirmative duty to report actual or suspected cases of child abuse and the policies and procedures for reporting misconduct. It does not impose any duties upon individual employees.

61. Section 1012.796 creates a procedure for investigation by the Department of Education of complaints against teachers and administrators and establishes penalties. The Board argues that it requires Mr. Faller to report "misconduct." It does not.

62. However, section 39.201(1) requires any person who knows or has reasonable cause to suspect that a child is abused by a person responsible for the child's welfare to report the knowledge or suspicion to the Department of Children and

Families.<sup>6/</sup> Section 39.01(12) defines child as an unmarried person under the age of 18 years. Section 39.01(2) defines abuse, among other things, as "any willful act or threatened act that results in . . . sexual abuse, injury, or harm, that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired." Mr. Frazier rubbing his erection against a female student amounts to "abuse" that Mr. Faller was bound to report and did not.

Rule 6A-10.080(2)--Lack of Concern for  
Students and Professional Judgment and Integrity

63. Florida's Code of Ethics and Principles of Professional Conduct for the Education Profession in Florida, rule 6A-10.080(2), provides:

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.

64. Mr. Faller's inaction after receiving the reports from Mss. Peebles and O'Dell demonstrate a failure of professional judgment and lack of professional concern for the female students who had contact with Mr. Frazier. Mr. Faller's avowed approach of ignoring, instead of investigating, reporting, or acting upon reports of Mr. Frazier's misconduct with female students, is not accepted as an excuse for fulfilling employment or legal responsibilities. See Smith v. Dixie Packers, 384 So. 2d 709

(Fla. 1st DCA 1980), rev. den., Dixie Packers, Inc. v. Smith, 392 So. 2d 1373 (Fla. 1980) (employer cannot ignore employee's complaints of a worsening condition and then claim it did not know the employee needed additional medical attention).

65. The First District Court of Appeal concluded that the employer in Smith had erected a "wall of willful ignorance" for months. This was because the employer had ignored the claimant's request for increased benefits for months before accepting the claim, ignored complaints of a worsening condition, failed to provide medical attention and would never have had the claimant re-examined, or increased the disability rating without the assistance of the claimant's counsel. The court's opinion did not allow the employer to escape liability for attorney's fees after ignoring and refusing to investigate or address the information that would have informed it about the claimant's disability.

66. The analysis applies here. Mr. Faller chose to ignore information about Mr. Frazier's misconduct. The reports of Mss. Torres, O'Dell, and Peebles provided more than enough information for a reasonable supervisor or educational employee to investigate or report Mr. Frazier's activities with female students to management or law enforcement authorities. See also James W. Windham Builders, Inc. v. Van Overloop, 951 So. 2d 40, 43 (Fla. 1st DCA 2007) (carrier could not avoid responsibility to pay for attendant care because of "willful ignorance" due to its

failure to investigate the claimant's needs after severe ankle injury); Gonzalez v. Sec'y of Dep't of Homeland Sec., 678 F.3d 254, 264 (3rd Cir. 2012) (upholding summary judgment finding that Gonzalez gave false testimony relying upon a theory of "willful ignorance." Evidence of relationship with child's mother and child "indicates that if Gonzalez was ignorant of his paternal relationship it was a willful ignorance.").

67. Mr. Faller chose to turn a blind eye to reports of Mr. Frazier's misconduct by taking the positions that they had not been irrefutably proven, that he had not personally witnessed the incidents, or, most oddly, that they were only reports from teachers. This was a lack of integrity and unacceptable professional judgment. Mr. Faller also repeatedly demonstrated a lack of concern for the well-being of Manatee High School's female students. The Board proved a violation of rule 6A-10.080(2) by the preponderance of the evidence.

Rule 6A-10.080(3)--Failure to Make  
Reasonable Efforts to Protect Students

68. Rule 6A-10.080(3) states:

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.

69. Mr. Faller's deliberate disregard for the reports of Mss. Torres, Peebles, and O'Dell, who relied upon him in his

position of authority to protect female students from Mr. Frazier, was a failure of ethics that undermined the respect and confidence of his colleagues. The Board proved a violation of rule 6A-10.080(3) by the preponderance of the credible evidence.

Rule 6A-10.081(3) (a)--Protect Students  
From Harmful Conditions

70. Rule 6A-10.081(3) (a) states that an educator's obligations to students require that the educator "[s]hall 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." Despite the consistent and corroborating information provided to Mr. Faller about Mr. Frazier's conduct toward female staff and students at Manatee High School, Mr. Faller made no effort to protect the students from conditions which were plainly harmful to the student's mental health, to learning, and to safety. He, instead, chose to turn a blind eye to Mr. Frazier's conduct. Cf. Lawson v. State, 941 So. 2d 485, 490 (Fla. 5th DCA 2006), aff'd, Lawson v. State, 969 So. 2d 222 (Fla. 2007) (probationer cannot turn a "blind eye" to condition of his probation requiring a drug treatment plan and then escape responsibility by claiming the requirements were not specific enough because they did not say when and where he was to begin the program).



Rule 6A-10.081(5) (a)--Honesty in  
All Professional Dealings

71. Rule 6A-10.081(5) (a) requires that an educator "[s]hall maintain honesty in all professional dealings." The Board did not prove violation of this requirement by a preponderance of the evidence.

Rule 6A-10.081(5) (n)--Report Known  
Allegations of Violations

72. Rule 6A-10.081(5) (n) states that an educator "[s]hall report to appropriate authorities any known allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 1012.795(1), F.S." The Board proved violation of this rule by a preponderance of the persuasive, credible evidence. This is a clear example of "willful ignorance" at work. The rule requires reporting "any known allegation." Mr. Fallor chose to take the approach that he had a responsibility only if he had conclusive proof of a violation. This approach deprived female students, and for that matter Mr. Frazier, of the benefit of a timely examination of the allegations to establish if they were true or not.

Board Policy 6.9--Ethics

73. Board Policy 6.9, the Code of Ethics policy, holds all employees "to a high moral and ethical standard of conduct, both in their everyday employment and in their roles within the community." It binds all employees to comply with the Code of

Ethics, rule 6A-10.080. The policy emphasizes the importance of reporting obligations to maintaining ethical standards. It states:

The School Board of Manatee County supports strong internal control in its procedures and practices. All incidents of suspected improprieties should be reported to the Superintendent or filed with the designated official using the Board adopted employee grievance procedures.

74. The violation of this requirement is the essence of the charges against Mr. Faller. There is no evidence that he had direct knowledge of inappropriate or unlawful activity by Mr. Frazier. But the reports of Mss. Peebles, Torres, and O'Dell, along with Mr. Gulash's admittedly vague expressions of concerns, undeniably gave Mr. Faller knowledge of suspected improprieties that he should have reported. Instead, he chose to remain willfully ignorant. His inactions violated Board Policy 6.9.

#### Conclusion

75. Board Policy 6.11 allows the termination of any employee for "just cause including, but not limited to . . . , misconduct in office . . . , willful neglect of duty . . . , 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." The violations of statutes,

rules, and District policies, described above, provide "just cause" to terminate Mr. Faller.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Manatee County School Board, enter a final order terminating the employment of Respondent, Gregg Faller.

DONE AND ENTERED this 29th day of August, 2014, in Tallahassee, Leon County, Florida.



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JOHN D. C. NEWTON, II  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 29th day of August, 2014.

ENDNOTES

<sup>1/</sup> Many of the witnesses were listed as witnesses for both parties. Demonstrating the professionalism urged by the Florida Supreme Court, counsel cooperated to conduct direct and cross-examination of each witness in one appearance, thus, minimizing the disruption of testifying for the witnesses and expediting conduct of the hearing. See In re Code for Resolving Professionalism Complaints, 116 So. 3d 280 (Fla. 2013).

2/ This time period is reflected as stipulated.

3/ § 39.201, Fla. Stat.

4/ The Findings of Fact about the Torres incident and most others in this Recommended Order required determinations of credibility when Mr. Faller's version of events differed materially from those of other witnesses. In those cases, after consideration of corroborating hearsay, consistency with documents, fundamental consistency of the witnesses' testimony, prior interviews, demeanor, and the absence of any evidence indicating any motive for the witnesses to be dishonest, the undersigned found those witnesses more credible and persuasive than Mr. Faller.

5/ All references to the Florida Statutes are to the 2012 compilation, unless otherwise noted.

6/ Although the Board did not cite all of the applicable statutes, it has been clear throughout this proceeding that Mr. Faller is charged with failing to report actual or suspected child abuse. This is the specific charge in Administrative Complaint, paragraph 20(a). And Petitioner's Statement of Position in the Pre-Hearing Stipulation repeats the charge.

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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.