

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 13-4291

ROBERT GAGNON,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on April 21 through 23, 2014, in Bradenton, Florida. The parties appeared before Administrative Law Judge Lynne Quimby-Pennock of the Division of Administrative Hearings (Division).

APPEARANCES

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

For Respondent: Richard C. Reinhart, Esquire  
310 13th Street West  
Bradenton, Florida 34205

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner has just cause to terminate Respondent from his employment contract.

PRELIMINARY STATEMENT

By letter dated October 4, 2013, Rick W. Mills, the superintendent of the School District of Manatee County (School District) notified Respondent, Robert Gagnon (Mr. Gagnon or Respondent), that he was recommending the termination of Mr. Gagnon's employment with Petitioner, Manatee County School Board (School Board or Petitioner). This October 2013 letter asserted that the School Board had just cause to discipline Mr. Gagnon based on the alleged violations contained in the Administrative Complaint.<sup>1/</sup>

Mr. Gagnon timely requested an administrative hearing to contest the allegations. On November 6, 2013, the case was forwarded to the Division for the assignment of an Administrative Law Judge to conduct the hearing.

Pursuant to section 1012.33(6)(a)2., Florida Statutes (2013),<sup>2/</sup> the parties were entitled to proceed to final hearing within 60 days after Mr. Gagnon's request for an administrative hearing was received. The hearing was originally scheduled to be heard on January 13, 2014, however, on December 6, 2013, an unopposed motion for continuance was filed. The hearing was rescheduled and heard on April 21 through 23, 2014.

At the final hearing, the School Board presented the testimony of Mr. Gagnon, the former principal of Manatee High School (MHS); D.K., a former MHS student; A.K., D.K.'s mother;

Steven Rinder, the coordinator of the student assistance program for the School District; Donna Coates, a math teacher at MHS; Patricia Lynn Aragon, an English teacher at MHS; Keltie O'Dell, a reading and learning strategies teacher at MHS; Steven Gulash, a parent liaison and coach of several sports at MHS; Jaqueline Peebles, an algebra and remedial algebra teacher at MHS; Donald Sauer, the current principal at MHS; Debra Horne, the former specialist in the School District's Office of Professional Standards (OPS); Lionel Marines, a detective with the Bradenton Police Department (BPD); Scott Martin, the former assistant superintendent for the School District and its former attorney; Christine Ruggiero, a School District employee; William Vogel, a former interim superintendent of the School District; and Troy J. Pumphrey, the current School District OPS specialist.

Petitioner's Exhibits 1 (excluding pages 168 through 181); 3; 7(d) (3, 4, 5, 6, 14); 24; 31; 32; 35; and 43 were admitted into evidence. Petitioner's Exhibits 47, 48, 61, and 62 were officially recognized. Mr. Gagnon testified on his own behalf and presented the testimony of Danny Bench, a BPD school resource officer (SRO); Michelle McCarthy, the English department chair at MHS; Sheryl Lowe, a former orchestra director at MHS; Fredy Ordonez, a BPD detective; and Linda Boone, the foreign language department chair at MHS. Respondent did not offer any exhibits.

At the conclusion of the hearing, Petitioner requested to file its proposed recommended order (PRO) within 14 days of the filing of the transcript. The request was granted. The three-volume Transcript of the hearing was filed on May 12, 2014. Both parties timely filed their PROs, and each PRO has been duly considered in the preparation of this Recommended Order.

On June 25, 2014, Respondent filed a Notice of Submission of Supplemental Evidence and a Request for the Recommended Order to be issued based on a judgment of not guilty. The standard of proof in an administrative hearing is different from that of a criminal case. The recommendation set forth below is based on the testimony and evidence presented during the hearing that was conducted on April 21 through 23, 2014.

#### FINDINGS OF FACT

1. The School Board is duly constituted and charged with the responsibility and authority to operate, control and supervise the public schools within Manatee County, Florida. Art. IX, Fla. Const.; ch. 1012, Fla. Stat. The School Board has the authority to discipline employees. § 1012.22 (1)(f), Fla. Stat.

2. At all times relevant to this proceeding, Respondent was employed by the School District. Mr. Gagnon has been in the education field for approximately 23 years, and has been with the School District since 2002. Mr. Gagnon served as an assistant

principal at Lakewood Ranch High School and as principal at Palmetto High School, both of which are in Manatee County. Mr. Gagnon was the principal at MHS beginning with the 2007-2008 school year. Mr. Gagnon served as the MHS principal until he transitioned to the position of assistant superintendent for Curriculum and Instruction for the School District in January 2012. Mr. Gagnon served as the interim superintendent for approximately one month in September/October 2012 and then returned to the assistant superintendent position when another person was appointed interim superintendent.

3. In 2005 the School District posted a position for a specialist in the OPS to investigate alleged School District employee misconduct. The then superintendent wanted to establish a standardized method of investigating employee misconduct. Ms. Horne interviewed for the position, and was appointed as the first OPS specialist. As there were no School District policies or rules in place when she started, Ms. Horne assisted in writing the School District's OPS policies. Sections 39.201 and 39.202, Florida Statutes, are incorporated into the School District's policies and procedures as Policy 5.2(1), Policies and Procedures Manual, School Board of Manatee County (2013), which provides:

(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. Employees or agents so reporting have immunity from liability if they report such cases in good faith. This includes suspected child abuse of a student by an employee.

Ms. Horne provided the training on this policy and other policies to School District employees.

4. As the OPS investigator, Ms. Horne was to "investigate alleged employee misconduct and other matters as assigned" to her by her supervisor. Ms. Horne never had the authority to determine whether or not someone had engaged in misconduct or to make any recommendations as to what may or may not have happened. Her role was to simply gather the information, prepare a report of her findings, and provide that report to her supervisor. In November 2012, Mr. Martin was the School District's assistant superintendent for District Support, and Ms. Horne's direct supervisor. During her eight-year tenure as the OPS specialist, Ms. Horne investigated over 800 cases of employee misconduct.

5. The School District uses a progressive discipline model for its employees. Should an employee exhibit behaviors that could be considered inappropriate or misconduct, the School District has a step-by-step method of taking disciplinary action, from simply talking with the employee up to termination of employment. If it is an egregious action, such as sexual conduct with a student, immediate termination is an option. The

discipline begins on-site by the site-based managers where the incident occurs. Those site-based managers could have that simple conversation, and if need be, it could progress to a verbal directive, a memorandum of conference, and/or a written reprimand. Site-based managers include principals, assistant principals, directors, and assistant directors.<sup>3/</sup> In those instances where the disciplinary action could lead to days without pay or termination, actions that could only be taken by the School Board, OPS would open an investigation.

6. During the first two weeks of November 2012, Mr. Rinder was approached by several MHS teachers regarding concerns for their students. When Mr. Rinder spoke with Mr. Sauer, MHS's principal, about those concerns, Mr. Sauer asked Mr. Rinder to type up the list (Rinder's List) and give it to Mr. Sauer. Mr. Sauer, in turn, forwarded Rinder's List to the OPS.

Rinder's List:

[1.] One staff member reported a phone call to a female student during class. The student was upset by the call and told the staff member that Mr. Frazier had asked her if "she had gotten her period and did she need him to go to the drug store for her."

[2.] One staff member reported that Mr. Frazier repeatedly called for a female student during class. When asked if it was important, Mr. Frazier said "yes". [sic] When the staff member asked the student what the problem was, the answer was "My mom wanted to take me to lunch and he helped me do it". [sic]

[3.] Male student was failing a core class. He told the teacher that "Frazier told me that he will change the grade". [sic]

[4.] A female student was observed getting into Mr. Frazier's vehicle after school hours and was transported.

[5.] Female student told a staff member that she overheard students talking about several meetings in the park late at night with Mr. Frazier. She stated that Mr. Frazier placed and [sic] empty water bottle between her legs as she was walking down the sidewalk.

[6.] Female student was observed sitting on Mr. Frazier's lap eating cake off his fork.

[7.] Female student reported to a staff member that Mr. Frazier made a comment to a student in the hall that he had put her on skype [sic] and she took a picture and has it saved on her cell phone. She is scared that he will retaliate if she tells.

[8.] Female student told a staff member that Mr. Frazier had made comments to her at the Tiki Bar that she was old enough to be there and they could talk. When she refused to talk with him, she started having issues with Mr. Frazier at school. She transferred to LIFE program to get out.

[9.] Female student was reported to a staff member by several students who stated that she was having a relationship with Mr. Frazier. She transferred schools. This conversation was overheard by two teachers in the hall.

[10.] The Math Department this week was discussing Mr. Frazier's [sic] questionable activities.



7. Upon receipt of Rinder's List, Ms. Horne was directed to open an investigation into the allegations contained therein. The subject of the investigation was an MHS parent liaison<sup>4/</sup> and assistant football coach named Roderick Frazier. In a very general sense, the allegations involved misconduct by a teacher.

8. Rinder's List initiated the Frazier investigation. However, Rinder's List contains blatant hearsay which cannot form the basis for a finding of fact without corroboration. There was no testimony provided by any students mentioned in items 2, 3, 5 (first sentence), 7, 8, or 9 above; hence, it is impossible to verify what occurred. Item 10 merely indicates that an entire department at MHS discussed "questionable activities" by an individual, but it provides no specific activities. There was no credible, non-hearsay evidence in this record to substantiate any of these allegations (items 2, 3, 5 (first sentence), 7, 8, 9 or 10).

9. On November 14, 2012, an email with an attached letter from then-Superintendent David Gayler, was sent to Mr. Sauer around 8:40 p.m., advising him that Mr. Frazier was to be placed on paid administrative leave (PAL) on Thursday, November 15. Mr. Sauer notified Mr. Frazier appropriately. The School Board's policy regarding placing an employee on PAL is dependent upon whether there is a potential for harm to any student and/or the employee could incur a suspension or termination from employment.

10. Due to an on-going investigation at a different school, Ms. Horne did not arrive at MHS to begin the investigation until the afternoon of Thursday, November 15. Ms. Horne first interviewed Mr. Rinder, as Rinder's List did not contain any names of teachers or students who were allegedly involved. Upon obtaining the names of the teachers who had expressed concerns, Ms. Horne interviewed most of the teachers on November 15. By the time Ms. Horne completed her teacher interviews, the students had been dismissed from school and were no longer available.

11. At some time, Mr. Rinder observed a female student getting into Mr. Frazier's car after school (Rinder's List, Item 4). Mr. Rinder was not alarmed by this sight, but merely thought it was Mr. Frazier's son's girlfriend getting a ride. There was no testimony that Mr. Rinder ever brought this information to Mr. Gagnon's attention.

12. Ms. Aragon brought two concerns about Mr. Frazier to Respondent's attention: 1) she thought that girls were sitting too close to Mr. Frazier in golf carts at MHS; and 2) Mr. Frazier had called her classroom telephone to talk with a female student. Neither Ms. Aragon nor Mr. Gagnon were absolutely certain as to when these concerns were brought to Mr. Gagnon's attention: Ms. Aragon thought they were brought to his attention during one conversation, and Mr. Gagnon thought there were two separate conversations approximately a year apart, based on the actions

that he took to address them. Mr. Gagnon's testimony is more credible.

13. Upon being told of the golf cart issue, Respondent immediately went to the MHS courtyard and observed Mr. Frazier with a female student sitting in his golf cart. At the same time, Respondent observed two other assistant principals with students of the opposite sex sitting in their golf carts. Respondent addressed Mr. Frazier first, and then issued a directive to his discipline staff that no one was to allow a student to just sit in a golf cart. Respondent directed that if there was a legitimate reason to transport a student, that was fine, but students were no longer to just sit in the golf cart.

14. With respect to the telephone incident (Rinder's List Item 1), Mr. Frazier called Ms. Aragon's classroom and bullied his way to speak with the female student. After the student hung up the phone with Mr. Frazier, she appeared to be upset. Ms. Aragon immediately questioned the student, and Ms. Aragon understood that Mr. Frazier had inquired about the student's menstrual cycle. Ms. Aragon thought it was "inappropriate" for Mr. Frazier to be speaking with a female student about her menstrual cycle, but Ms. Aragon testified that she did not know if the conversation impacted the student's day. Ms. Aragon was not privy to the actual conversation between the student and

Mr. Frazier, and the student with whom the conversation was held did not testify. The actual telephone conversation is hearsay.

15. Ms. Aragon sought guidance from the teacher's union president as to what to do. When Ms. Aragon spoke with Mr. Gagnon about Mr. Frazier's telephone call, Mr. Gagnon immediately turned the issue over to an assistant principal for investigation. Based on the report from the assistant principal, Mr. Gagnon was not concerned that anything inappropriate or sexual was happening.<sup>5/</sup>

16. At some point in time, Ms. Coates overheard two female students comment about Mr. Frazier. Although Ms. Coates asked the students to tell her directly the basis for their comment, the students declined. (Neither student testified at hearing.) Shortly thereafter, Ms. Coates told Respondent the students' comment. Ms. Coates heard Mr. Gagnon respond that something was going around on Facebook. Mr. Gagnon did not remember Ms. Coates telling him of the students' comment. However, Mr. Gagnon routinely reviewed the disciplinary records for the three parent liaisons and was satisfied that Mr. Frazier was not showing favoritism in his discipline to one group of students over another. It is not uncommon for students to perceive that a teacher is showing favoritism towards a student or group of students.

17. At the conclusion of the teacher interviews on November 15, Ms. Horne understood that the allegations had occurred a year or two before they were reported in Rinder's List. This thought process was reinforced when Ms. Horne met with some of the MHS administrators in Mr. Sauer's office where they had a telephone conference with Mr. Martin. Following the telephone conference, Ms. Horne returned to the School District's main office and again conferred with Mr. Martin for directions.

18. On November 15 or 16, 2012, Ms. Horne had a brief conversation with Mr. Gagnon at the School Board building. Mr. Gagnon asked about the Frazier investigation. Ms. Horne responded that the only issues she was hearing had previously been addressed, and that Ms. Horne would be returning for other interviews. Additionally, Mr. Martin had a brief conversation with Mr. Gagnon about the Rinder List allegations. Mr. Gagnon maintained that the allegations were old and had been dealt with appropriately.

19. Ms. Horne shared with Mr. Martin that the Rinder List allegations were old and had been dealt with previously. Based on this information, Mr. Martin, in his sole discretion, determined to remove Mr. Frazier from PAL on November 16, 2012, and return him to work. Ms. Horne was surprised by this, as her investigation was incomplete. Ms. Horne interviewed Mr. Frazier as well as one other teacher, on November 16, 2012. Although

Ms. Horne had the name of an alleged victim, Mr. Martin directed her not to interview that student at that time.

20. In January 2013, a former MHS female student, D.K., wrote a letter to MHS alleging that Mr. Frazier did various inappropriate acts towards her while she was a student at MHS during the 2010-2011 and 2011-2012 school years. In her letter, D.K. stated that she became close to Mr. Frazier during her two years at MHS. D.K. met Mr. Frazier at a park near her home, but during her second year at MHS (2011-2012), Mr. Frazier "started being weird with [her] and saying inappropriate things to" her. D.K. admitted that she frequently rode in Mr. Frazier's golf cart around the school, and that Mr. Frazier put a water bottle (Rinder's List Item 5, second sentence) in between her legs (between her knees and crotch) as they were sitting in the bleachers at the softball field and while sitting in a golf cart. D.K. came forward with the letter because she had heard of the Frazier investigation and that it was being closed.

21. Several days after D.K.'s letter was received in OPS, Ms. Horne interviewed D.K., who was accompanied by her mother. Ms. Horne was unable to confirm D.K.'s credibility completely because Ms. Horne left OPS prior to the conclusion of the Frazier investigation.

22. The most disturbing part of D.K.'s testimony came when D.K. admitted, and Ms. Peebles confirmed, that during the 2010-

2011 school year, Ms. Peebles walked into Mr. Frazier's office unannounced and observed D.K. sitting on Mr. Frazier's lap holding a piece of cake (Rinder's List Item 6). Ms. Peebles immediately instructed D.K. to get off Mr. Frazier's lap and to sit in a chair on the other side of his desk. Mr. Frazier appeared to be unfazed by Ms. Peebles entering his office unannounced and witnessing this scene. Mr. Frazier proceeded to handle the disciplinary matter that Ms. Peebles had brought to him. Ms. Peebles reported the observation to an assistant principal, Matthew Kane, but not to Respondent. Ms. Peebles did not believe there was abuse on-going, but thought it was "not appropriate" for Mr. Frazier to have a student sitting on his lap.

23. D.K. testified that "after he [Mr. Frazier] got in trouble he started getting me [D.K.] in trouble for things that I had been getting away with the whole time I was there [at MHS]." D.K. did not provide a time-frame or what "trouble" Mr. Frazier had gotten her into while D.K. was at MHS, and no evidence was provided otherwise. Further, D.K. never told Mr. Gagnon of any issues involving Mr. Frazier. D.K. was enrolled at a different local high school when Mr. Frazier was placed on PAL.

24. Ms. Peebles relayed another issue regarding Mr. Frazier; however, it involved hearsay and was not corroborated by the student who initially reported the issue to

Ms. Peebles. The absence of direct, non-hearsay testimony precludes a finding of fact as to that issue.

25. In late January 2013, Ms. Horne transferred to an assistant principal position at a school district elementary school. Both Ms. Horne and Mr. Martin confirmed that the Frazier investigation had not been completed when Ms. Horne left OPS. Ms. Horne had not submitted a written report to her supervisor which would have signaled the completion of the Frazier investigation.

26. The specialist position in OPS remained vacant until July 2013 when Mr. Pumphrey assumed the position. Mr. Pumphrey confirmed that there "had been an ongoing investigation both at the School District level and law enforcement surrounding Rod Frazier." In an effort to gain speed in his investigation, Mr. Pumphrey reviewed the Frazier investigation file and became aware that the School District "had stalled their investigation pending the outcome of the criminal investigation." Mr. Pumphrey reviewed Mr. Frazier's personnel file and determined there was "no documentation of any discipline to Mr. Frazier." Additionally, Mr. Pumphrey pulled all the published information including media accounts and police reports, and reviewed them. As Mr. Martin had been instrumental in hiring Mr. Pumphrey, the two spoke several times "because this thing [the Frazier investigation] was all over the place."



27. Several days after re-starting the Frazier investigation, Mr. Pumphrey expressed to the superintendent his concern about the close proximity of Mr. Pumphrey's office to that of Mr. Gagnon and requested that Mr. Gagnon<sup>6/</sup> be placed on PAL. The superintendent did so.

28. During the course of the Frazier investigation, Mr. Pumphrey considered that Mr. Gagnon's actions or inactions during the course of the Frazier investigation constituted "administrative negligence and/or intentional misconduct." Mr. Pumphrey broadened the Frazier investigation to determine whether district administrators "had prior knowledge of complaints by female students and faculty regarding inappropriate conduct involving Frazier and, if so, why the complaints were not timely addressed."

29. There is no credible, non-hearsay evidence in the record to substantiate that Mr. Gagnon failed to investigate or report inappropriate conduct by a faculty member. When apprised of questionable or suspect conduct, Mr. Gagnon took the steps necessary to inquire. The absence of direct, non-hearsay testimony precludes a finding that Mr. Gagnon acted in the fashion alleged in the administrative complaint.

#### CONCLUSIONS OF LAW

30. The Division has jurisdiction over the parties to and the subject matter of this proceeding, pursuant to a contract

with the Board. The proceedings are governed by sections 120.57 and 120.569, Florida Statutes.

31. The School Board is charged with the duty to operate, control and supervise all free public schools within the School District of Manatee County. § 1012.22, Fla. Stat.

32. The Superintendent of the School Board has the authority to recommend to the School Board that an employee be suspended or dismissed from employment. § 1012.27, Fla. Stat.

33. The School Board has the burden of proving the allegations in its Administrative Complaint by a preponderance of the evidence. Cropsey v. Sch. Bd. of Manatee Cnty., 19 So. 3d 351, 355, (Fla. 2d DCA 2009), rev. denied, 20 So. 3d 1118 (Fla. 2010); Cisneros v. Sch. Bd. of Miami-Dade Cnty., 990 So. 2d 1179 (Fla. 3d DCA 2008).

34. The preponderance of the evidence standard "is defined as 'the greater weight of the evidence,' Black's Law Dictionary 1201 (7th ed. 1999), or evidence that 'more likely than not' tends to prove a certain proposition." Gross v. Lyons, 763 So. 2d 276, 289 n.1 (Fla. 2000). See also Haines v. Dep't of Child. & Fams., 983 So. 2d 602, 606 (Fla. 5th DCA 2008).

35. The allegations set forth in the Administrative Complaint dated October 4, 2013, are the facts upon which this proceeding is predicated. Trevisani v. Dep't of Health, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005).

36. Section 1012.795(1) provides in pertinent part:

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend the educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

\* \* \*

(b) Knowingly failed 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.

37. Administrative Code Rule 6A-10.080 provides in pertinent part:

6A-10.080 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.

38. Florida Administrative Code Rule 6A-10.081 provides in pertinent part:

(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.

\* \* \*

(5) Obligation to the profession of education requires that the individual:

(a) Shall maintain honesty in all professional dealings.

\* \* \*

(n) Shall 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.

39. Manatee County School Board Policy 6.9 (Ethics)

provides in pertinent part the following:

POLICY

All school board employees, because of their responsibility as role models to the children of the Manatee County community, shall be held to a high moral and ethical standard of conduct, both in their everyday employment and in their roles within the community.

All employees, including administrative and instructional staff members, shall receive and familiarize themselves with the "Code of Ethics of the Education Profession in Florida," located in the State Board of Education Rules. All employees shall abide by the code at all times, and shall be held to the standards of the code in all matters related to their employment with the Manatee County School Board.

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.

If the provisions of this policy are found to be inconsistent with the clear language of an employee collective bargaining agreement, the terms of the collective bargaining agreement shall prevail.

PROCEDURES

(1) Employees found to be in violation of the School Board Policy on Ethics may be subject to disciplinary procedures up to and including a recommendation for dismissal.

(a) All employees are expected to notify their supervisor or other appropriate

administrator, subject to established procedures, of any violations of law, School Board rule, instances of discrimination, suspected child abuse, or inappropriate use of district facilities, properties or funds.

(b) Anyone know to be violating a local, state, and /or federal law on School Board property or at a school function will be subject to referral for prosecution to the appropriate law enforcement agency. Such violations when known should be referred to the Superintendent's office.

(2) All employees shall self-report to their immediate supervisor and to the Superintendent's office within forty-eight (48) hours if they are directly involved in any of the following:

(a) Any arrest/charges against themselves involving the abuse of a child . . . .

40. Manatee County School Board Policy 6.11 (Procedures Governing Employment: District Rules of Work) provides in pertinent part:

POLICY

The Superintendent shall recommend to the School Board procedures governing the conduct of employees including conflict of interest, nepotism, alcohol and drug abuse, transfers, resignation, retirement and involuntary terminations. This shall include the establishment of procedures to address employee grievances. To the extent that these procedures conflict with the clear language of a collective bargaining agreement, that agreement shall prevail.

PROCEDURES

(1) Suspension or Termination of Employees:  
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 [sic], violation of the Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida.

\* \* \*

(12) Termination:

Termination from employment may occur as follows:

\* \* \*

(c) Involuntary Termination:

Any employee of the School Board may be 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 [sic], violation of the Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida.

41. As set forth in the findings of fact, Petitioner failed to prove by a preponderance of the evidence that Respondent

violated any of the specified statutes, rules, or School Board policies. There was no direct, non-hearsay evidence that Respondent knowingly failed to perform his duties as principal or assistant superintendent in the appropriate manner. To the extent there is a statute, rule, School Board policy, or employment contract that authorizes such relief, Mr. Gagnon should be reinstated and awarded full back pay and benefits. See Sch. Bd. of Seminole Cnty. v. Morgan 582 So. 2d 787, 788 (Fla. 5th DCA 1991); Brooks v. Sch. Bd. Of Broward Cnty., 419 So. 2d 639, 661 (Fla. 5th DCA 1982).

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 dismissing the Administrative Complaint in its entirety.

DONE AND ENTERED this 30th day of June, 2014, in Tallahassee, Leon County, Florida.



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LYNNE A. QUIMBY-PENNOCK  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of June, 2014.

ENDNOTES

<sup>1/</sup> The Administrative Complaint contains a reference that an "Exhibit A" was attached to it; it was not.

<sup>2/</sup> All statutory references are to Florida Statutes (2013), unless otherwise indicated.

<sup>3/</sup> Directors and assistant directors include managers and assistant managers of non-instructional services personnel such as transportation personnel, custodians, electricians, etc.

<sup>4/</sup> A parent liaison is a school disciplinarian. In this case, during the applicable time, MHS had three parent liaisons.

<sup>5/</sup> The simple fact that a female teenage student chooses to speak with a male teacher about her menstrual issue may be unsettling to some, but that, in and of itself, does not constitute abuse.

<sup>6/</sup> The request also included that Mr. Martin be placed on PAL and that a legal assistant be relocated away from the School Board offices.

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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.