

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

OKALOOSA COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 18-1005

STEPHEN HALL,

Respondent.

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RECOMMENDED ORDER

A final hearing was conducted in this case on August 7 and 8, 2018, in Fort Walton Beach, Florida, before James H. Peterson, III, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert E. Larkin, III, Esquire  
Avery D. McKnight, Esquire  
Allen Norton & Blue, P.A.  
906 North Monroe Street  
Tallahassee, Florida 32303

For Respondent: Mark S. Levine, Esquire  
H. B. Stivers, Esquire  
Levine & Stivers, LLC  
245 East Virginia Street  
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether just cause exists to impose discipline on Respondent's employment; and, if so, what is the appropriate discipline.

PRELIMINARY STATEMENT

By letter dated November 29, 2017, the Superintendent of Schools for Okaloosa County notified Stephen Hall ("Respondent") of her recommendation to the Okaloosa County School Board that Respondent's employment with the Okaloosa County School District ("Petitioner," "School District," or "School Board") be terminated due to Respondent's gross insubordination, misconduct, and harassment. At the School Board meeting held December 11, 2017, the Board voted to terminate Respondent's employment. On December 18, 2017, Respondent timely filed a petition for administrative hearing ("Petition"), which was subsequently transmitted to the Division of Administrative Hearings ("DOAH") for the assignment of an administrative law judge.

The administrative hearing was initially set for May 15 and 16, 2018, but was continued and rescheduled for August 7 and 8, 2018, and thereafter convened as scheduled. At the hearing, the School Board presented the testimony of seven witnesses: Mrs. Alicia Williams; Respondent; Dr. Bill Smith; Mr. Andersyn Mims; Mrs. Elizabeth "Liz" Sanders; Mr. Andy Snaith; and Mr. Ronald Panucci. Respondent presented the testimony of

Mr. Alonzo Travis and testified on his own behalf. The parties offered Joint Exhibits 1 through 3, which were received into evidence. Petitioner offered Petitioner's Exhibits P-1 through P-17, each of which was received into evidence, except for Petitioner's P-15. Respondent offered Respondent's eight exhibits received into evidence as Respondent's Exhibits R-1 through R-8.

The proceedings were recorded and a transcript was ordered. The parties were given 30 days from the filing of the transcript within which to file their proposed recommended orders ("PROs"). The Transcript, consisting of three volumes, was filed on August 24, 2018. An unopposed request for an extension of time was filed and granted, allowing the parties to submit their PROs on September 28, 2018. The parties timely filed their respective PROs, both of which have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. At all times material to this case, Respondent was a School Board employee. Respondent was employed as a custodian at Choctawhatchee High School ("Choctaw") when he was terminated in 2017. As a custodial employee, Respondent was subject to the Collective Bargaining Agreement entered into between the School Board and the Okaloosa County Education Association.

2. When he was terminated, Respondent had been employed by the School Board for approximately 24 to 26 years. Respondent was employed as a custodian at Choctaw beginning in 2015. Prior to that, Respondent was employed by the School Board as lead custodian at Choice School ("Choice"). Before that, at least five years before his employment at Choctaw, Respondent was employed by the School Board as a pre-K liaison at Edwins Elementary ("Edwins"). In addition, Respondent had been employed by the School Board over the years as a bus driver and in other custodial positions.

3. The School Board's termination of Respondent's employment was based largely upon a formal equity complaint<sup>1/</sup> ("Formal Complaint") submitted on October 5, 2017, by Mrs. Williams, a volunteer at Choctaw, alleging harassment by Respondent with an attached email addressing her concerns regarding contacts by Respondent and a history of alleged harassment by Respondent.

4. The email attached to Mrs. Williams' Formal Complaint is dated October 3, 2017, and states:

Harassment has gone back to Edwins Elementary nearly 8 years ago. I was a parent as well as a PTO [parent teacher organization] Member/President for a few years at Edwins Elementary. There were constant unprofessional/vulgar comments made by Steve Hall in reference to my body and parts of my body, the way my clothing may fit certain areas of my body or his requesting to take

photos of me. I think on occasion he may have taken some photos because as I would turn around and his phone was lifted in my direction to do so. On countless occasions employees would stand with me to hinder him hanging around and commenting. This frequently occurred during his employment at Edwins Elementary School. On one occasion my young high school age daughter, at the time, was at Edwins Elementary School with me during school hours. I was introducing my daughter to some people and Steve walked up so not to be rude I introduced her to him as well. Steve Hall's comment was not "hi" or "how are you?" it was "move over mom . . .!" As her mother I was disgusted! I told Mr. Farley but my daughter did not want to get into it or write a statement. I respected her wishes and just limited her presence on that campus. This entire time I have also been volunteering at Choctawhatchee High School. I found out that he was moved from Edwins to another school. I am still a full-time volunteer at CHS [Choctaw] and one day Steve Hall showed up at Choctaw's front desk. Knowing what actions I have seen from him I was extremely concerned finding out Steve is now an employee at Choctawhatchee High School. Approaching me at the front desk at Choctaw began to be a habit for Steve Hall. I called and met with Mr. Farley to work out a solution hoping this could be resolved professionally. The rule was Steve was not to be anywhere within the front office area to include the mail room. I have had to call Mr. Farley on multiple occasions because he continued to approach me in the front office. Currently he continues to try to communicate inappropriately with me at the football games or on campus, school events. Steve sits in the stands eating concession food and watching the football games for the most of the game. Steve tries to initiate conversation through my son who is special needs and only understands he is suppose to be nice to everyone. Not wanting/needing to explain this situation to my son. [sic] My

son responds when spoken to by Steve because Steve is an adult and my son knows I require respect from him no matter who speaks to him. This makes football games and school events difficult every season with this year being no different! At the CHS vs. Tate game I was thankful there was a fence between the sections we were sitting in, so that he could not get closer without going all the way down and back up. I just turned away with no response. It is frustrating feeling like I have to hide to avoid Steve! This school year Steve has come to the front office area 3 times within the first month and a half of school. Each time I reported it and Steve was told to stay away from the front office. On one of the occasions I was in the back, in the mail room. Someone came to let me know Steve was up front looking for me. I tried to go out the back of the mailroom door to Mr. Snaith's office to get assistance and Steve walked in to confront me. The confrontation was extremely uncomfortable to say the least. About that time Mr. Snaith walked in and witnessed most of the confrontation escorting me away from Steve and we called Mr. Farley. Again! Steve was talked to about not coming to the front office for any reason. He has Ms. Liz's phone number (his supervisor) if he needs her. He has since come back to the front office again! He was told again not to come to the front office at all for any reason and it was discussed by Mr. Farley he needed to be more aware of his actions and the way they may be perceived. I am also the parent in charge of "Parents for Prior." After this years current situations, Steve was spoken to by Mr. Bill Smith. Steve Hall approached me at the Pryor Middle School football game held at Choctaw stadium. I was trying to work a table at the game, soon after the most recent issue. Steve approached my son first then walked closer to me requesting to speak to me for a "hot minute" in the alley between the touchdown shack and stadium. I'm sure it would be on the stadium cameras as stated in

my statement to Bill Smith. I was unable to leave due to my possession of money and tickets. I glared at Steve and he stated I guess I should just keep walking. I nodded "yes"! This is only the most prominent on campus situations. I called Bill Smith and explained I should tell Steve to stay away. I feel we are past this due to this being years in the making. This has already been addressed and discussed with Steve on multiple occasions. Bill Smith stated I needed to send him an email statement and apologized he had not yet gotten with Mr. Chapman, from a week before, because of the hurricane. This was my second statement to Bill Smith this school year as well as one meeting with him. I enjoy volunteering my time at Choctawhatchee High School. Within a few years I'll be a Choctaw parent, unless I am required to move my son to another high school because of this. This is not what I want to do as a parent or volunteer. I do not feel it is fair I may need to remove myself and choose another high school for my son to attend because of an employee's unprofessional/vulgar behavior. Steve Hall repeatedly drives by my home. The latest time that I know of was within a week or so before school started this year 2017-2018. I was on the phone walking out of my home, I looked up and saw Steve sitting out in front of my home rolling down his window motioning me to come talk to him. I turned to return inside to get my husband, who is law enforcement, but Steve drove off in his green avalanche. I do not live on a main road nor have I given him my address. My street is not a road someone would just drive by on. If this continues I will file a restraining order. If there are any questions or concerns please do not hesitate to contact me.

5. Mrs. Williams' Formal Complaint was assigned to Gary M. Marsh, investigator, Escambia County School District, on

October 11, 2017, for investigation. Mr. Marsh conducted his investigation and submitted his investigative report dated October 31, 2017, to the School Board's superintendent. The investigative report was hand-delivered by Mr. Marsh and received by the superintendent on November 3, 2017.

6. In a letter dated November 14, 2017, the School Board's assistant superintendent of human and resources advised Respondent that she was recommending to the superintendent that Respondent be suspended with pay, effective immediately, and further that his employment with Petitioner be terminated at the December 11, 2017, School Board meeting. The letter states:

Mr. Hall,

An investigation has now been completed regarding the Formal Equity Complaint made against you on/or about October 5, 2017. A copy of the investigative report is attached for your information and review. This is the second formal investigation of an equity complaint against you since 2014. Based upon a culmination or multiple instances of harassment, misconduct in the workplace or gross insubordination, over the course of the last three years, I am recommending that the Superintendent suspend you with pay effective immediately and further that your employment with the School District be terminated at the December 11, 2017, School Board meeting.

The charges against you are based upon the finding of illicit material in your desk at Edwins Elementary School and repeated inappropriate comments leading to coworkers feeling harassed which led to your transfer in 2014 from Edwins Elementary School to Okaloosa Technical College (OTC); in late



2014, during your time at OTC, allegations of unwanted sexual behavior constituting sexual harassment on your part as confirmed in a formal investigation which led to your demotion and transfer from a lead custodian to a custodian at Choctaw High School (CHS). Additionally, while at CHS, new allegations of harassment have been made against you. Due to these allegations you were directed on multiple occasions by both your supervisor and a district administrator not to enter the CHS front office or mail room. As a result of a recent investigation it has been determined that you have continued to enter the school front office area in direct insubordination of your supervisor and a district administrator. Further, after review of the investigative report there is sufficient evidence to believe that harassment of a school volunteer did occur.

Your conduct is considered to be gross insubordination, misconduct in office and harassment in direct violation of the following School Board policies:

- School Board Policy 07-03 Employment Conditions for Education Support Personnel
- School Board Policy 06-27 Equity Policy: Harassment on the Basis of Race, Color, National or Ethnic Origin, Sex, Age, Religious Beliefs, Marital Status, Pregnancy or Disability

In accordance with both School Board policy 06-28 E(2) and Section K(a) of the OCESPA Master Contract you may file a written appeal to the Superintendent within ten (10) calendar days of receipt of the enclosed investigative report and this recommendation.

7. In a letter dated November 29, 2017, the assistant superintendent of human resources requested that the

superintendent recommend to the School Board that Respondent be terminated for gross insubordination, misconduct, and harassment.

8. The Superintendent notified Respondent in a letter dated November 29, 2017, that she would recommend his termination from employment at the December 11, 2017, School Board meeting for gross insubordination, misconduct, and harassment. At its December 11, 2017, meeting, the School Board approved the superintendent's recommendation, and Respondent was terminated from his custodian position.

9. Neither Superintendent Mary Beth Jackson nor Assistant Superintendent Stacie Smith testified at the hearing.

10. According to the November 14, 2017, letter from the assistant superintendent, quoted above, the recommendation for Respondent's termination is "[b]ased upon a culmination of multiple instances of harassment, misconduct in the workplace or gross insubordination, over the course of the last three years." [emphasis added]. The three allegations that form the basis of the recommended discipline against Respondent are analyzed below under headings derived from the November 14, 2017, letter as follows: 1) "finding of illicit material in your desk at Edwins Elementary School and repeated inappropriate comments leading to coworkers feeling harassed which led to your transfer in 2014 from Edwins Elementary School to Okaloosa Technical College (OTC)"; 2) "in late 2014, during your time at OTC, allegations of

unwanted sexual behavior constituting sexual harassment on your part as confirmed in a formal investigation which led to your demotion and transfer from a lead custodian to a custodian at Choctaw High School"; and 3) "it has been determined that you have continued to enter the school front office area in direct insubordination of your supervisor and a district administrator. Further, after review of the investigative report there is sufficient evidence to believe that harassment of a school volunteer did occur."

I. ILLICIT MATERIAL IN RESPONDENT'S DESK AT EDWINS AND REPEATED INAPPROPRIATE COMMENTS TO COWORKERS LEADING TO A TRANSFER

11. At the hearing, it was revealed that Respondent's employment at Edwins predated his employment at Choice. Respondent was employed at Choice during the 2013-2014 school year.<sup>2/</sup> Therefore, the alleged illicit material and inappropriate comments that allegedly occurred at Edwins could not have taken place "over the course of the last three years," as alleged in the November 14, 2017, letter.

12. Notwithstanding the fact that none of the alleged "Edwins events" could have taken place over the past three years as alleged, the School Board presented no testimony or documentary evidence to prove the underlying fact that

Respondent had "illicit material" in his desk while employed at Edwins. In fact, there was no testimony at all concerning this alleged prior discipline.

13. Mrs. Williams' email attached to her Formal Complaint states that the alleged harassment "has gone back to Edwins Elementary nearly 8 years ago." In fact, Mrs. Williams first met Respondent at least seven years before she filed her Formal Complaint against Respondent referenced in this case. When they first met, Respondent worked with the in-school suspension and student training programs at Edwins and her son attended Edwins. Mrs. Williams was a volunteer with the parent-teacher organization. Her duties as a volunteer included fundraising.

14. Mrs. Williams described her initial relationship with Respondent as a casual friendship. Mrs. Williams kept her parent-teacher organization materials in his office and would often call him to gain access to those materials. A self-described "hugger," while at Edwins, Mrs. Williams used to initiate hugs with Respondent and others.

15. Although not a part of the allegations against Respondent, the evidence shows that, on one occasion, while at Edwins, Respondent asked Ms. Williams "was [she] ever into blacks." Mrs. Williams responded, "No" and that she was married. Respondent asked if she knew anybody who was into blacks because he had a friend who was into "white chicks."

Mrs. Williams told him that she knew a secretary at Choctaw who dated "black guys." There is no indication that Mrs. Williams considered this conversation with Respondent as offensive or harassment.

16. Mrs. Williams' email attached to her Formal Complaint alleges that, while at Edwins, Respondent made inappropriate comments to her about her body, parts of her body, the way her clothes fit and asked to photograph parts of her body.

Mrs. Williams testified that she was dismayed by his comments but never told Respondent to stop or leave her alone.

17. Regarding Respondent's alleged request to photograph her, Mrs. Williams testified that he made the request only once; she shook her head "No," but did not verbalize any protests and walked away.

18. Mrs. Williams also alleges that while working at Edwins, Respondent made her aware that he was interested in her by his eye gestures and other nonverbal cues, as well as sometimes saying "whoa" when he walked by her. Respondent denies making gestures or statements indicating that he was sexually interested in Mrs. Williams. There is no indication that Mrs. Williams ever told Respondent to stop his alleged behavior or that she reported the incidents at the time.

19. Mrs. Williams does not recall whether she reported Respondent's alleged comments or request to photograph her to

anyone at the time. Respondent denies the allegations. No witnesses were called to corroborate Mrs. Williams' allegations, and Mrs. Williams testified that she could not "attest" to anyone who could corroborate her allegations.

20. In her testimony, Mrs. Williams explained the reference in her email attached to her Formal Complaint about the occasion at Edwins when Respondent allegedly told her to "move over mom" after she had introduced her daughter. She testified that Respondent's statement was very offensive and sexual in nature because she believed that Respondent was saying that he liked her but now that he saw her daughter "[he was] going to go after [her] daughter." Mrs. Williams further testified that she believed that the incident was a reportable offense because her daughter was a minor at the time, but that her daughter did not want to report and she did not file a formal complaint.

21. Mrs. Williams testified that that Respondent had referred to her by nicknames such as "baby," "baby girl" and "sweetie," which she found unprofessional and made her feel uncomfortable. While there is evidence that Respondent has used the term "baby girl" in his vernacular, he explained that he used the term as just another way for saying "how you doing."

Respondent explained in his testimony that it was just "[a]nother saying for saying hey, shortie, like they say. So you say, hey, baby girl, how are you doing today?"

22. The context of Mrs. Williams' testimony on this point suggests that Respondent used the nicknames for Mrs. Williams while they were both at Edwins. There is no evidence, however, that Mrs. Williams reported these instances at the time. There is also no evidence that Mrs. Williams ever told Respondent not to call her nicknames, or that she reported Respondent's use of nicknames. Remarkably, Mrs. Williams' Formal Complaint does not even mention that Respondent called her by nicknames.

23. Despite the allegations against him, there is no evidence that while at Edwins, or at any other time, Respondent asked Mrs. Williams for a date, out for drinks, suggested that they have sex, touched her inappropriately, talked to her on the phone outside of school, or interfered with Mrs. Williams' ability to perform her volunteer duties or responsibilities.

24. The allegations against Respondent, while he was at Edwins, do not fall within the "course of the last three years" as alleged in the charging document (the November 14, 2017, letter) and are, therefore, inconsistent with the reasons espoused by the School Board for the discipline sought in this case.

25. Moreover, considering the fact that Mrs. Williams' allegations against Respondent while he was at Edwins were not timely reported, that her allegations were uncorroborated, drew no protest from Mrs. Williams at the time, and were denied by Respondent, it is found that the evidence is insufficient to show that Respondent harassed Mrs. Williams, sexually or otherwise, while at Edwins.

26. In sum, the evidence presented at the final hearing was insufficient to prove that Respondent made "repeated inappropriate comments," which led to "coworkers feeling harassed" while he was at Edwins. The evidence also failed to show that Respondent was transferred because of those comments or because illicit material was found in his desk.

II. LATE 2014 ALLEGATIONS OF UNWANTED SEXUAL BEHAVIOR  
CONSTITUTING SEXUAL HARASSMENT LEADING TO RESPONDENT'S  
DEMOTION AND TRANSFER FROM LEAD CUSTODIAN TO A CUSTODIAN AT  
CHOCTAW

27. This allegation, as set forth in the November 1, 2017, letter from the assistant superintendent, refers to allegations of sexual harassment that occurred in 2014 when Respondent was a lead custodian at OTC, which is in the same facility as Choice.

28. In 2014, Respondent began working at Choice as a lead custodian. The allegations arising from Respondent's time at Choice are not included within Mrs. Williams' Formal Complaint.



29. The School Board presented no testimony or competent substantial evidence to prove the underlying facts that Respondent committed "unwanted sexual behavior constituting sexual harassment" while at Choice.

30. Respondent testified concerning this alleged prior discipline, acknowledging that he allowed a teacher at Choice to listen to some rap music, that he used the term "baby girl," and that the School Board considered the use of the term "baby girl" a form of sexual harassment. Respondent denied, however, that he engaged in inappropriate conduct or sexual harassment.

31. Respondent testified that he accepted a transfer as a lead custodian at Choice to a Custodian II position at Choctaw. He further testified that he was advised by the School Board that he would be transferred back to a lead custodian when a position became available.

32. The School Board presented its Exhibit P-8a as evidence of this alleged prior discipline, which was ultimately proffered and "admitted" as a proffered exhibit (Proffer P-8a). Upon reconsideration, while it lacks evidentiary value, Proffer P-8a is received into evidence.

33. Proffer P-8a, entitled "Confidential Inquiry Summary," is an investigative report purportedly authored by Arden E. Farley, as a contract investigator for the School Board.

34. Proffer P-8a does not prove the underlying facts and does not constitute competent evidence in support of the discipline sought against Respondent in this case.

35. No witnesses were called to prove the underlying discipline related to Respondent's alleged demotion.

36. Furthermore, Proffer P-8a is hearsay and does not corroborate direct testimony or any other competent evidence.

37. Because Proffer P-8a references Respondent's alleged use of the term "baby-girl," the School Board, through counsel, argued that Proffer P-8a is evidence that Respondent was aware that the use of the term "baby-girl," or similar terms, was improper and could subject him to discipline. This conclusion is contrary to the evidence presented at the hearing. Although Mrs. Williams testified that Mr. Hall used the term during their time at Edwins, Respondent and Mrs. Williams were at Edwins prior to Respondent's time at Choice. Thus, Proffer P-8a could not have put Respondent on notice that it was inappropriate for him to refer to Mrs. Williams as "baby-girl" while at Edwins. There is otherwise no competent evidence that Respondent referred to Mrs. Williams, or any other complainant, as "baby-girl" or any other nickname while at Choctaw.

III. ALLEGED HARASSMENT OF A SCHOOL VOLUNTEER AND FAILURE TO FOLLOW DIRECTIVES NOT TO ENTER THE SCHOOL FRONT OFFICE AT CHOCTAW

38. Harassment is governed by the School Board's equity policy. Respondent acknowledged that he received a copy of the then existing Equity Policy in 2009. No evidence was presented as to what the Equity Policy consisted of in 2009. The Equity Policies presented at the final hearing reveal that two of the policies were adopted in 2015 and a third Equity Policy was adopted at the December 11, 2017, School Board meeting; the same School Board meeting where the superintendent's recommendation to terminate Respondent was considered and approved.

39. The alleged harassment of a school volunteer while at Choctaw appears to include encounters at football games, in the front office, and one time at Mrs. Williams' home.

Football Games

40. The testimony at hearing revealed that Mrs. Williams was complaining about two encounters with Respondent at football games.

41. Respondent's duties at Choctaw required him to be present at football games.

42. During the first encounter, Mrs. Williams and her son were in the stands watching a Choctaw football game. There is a fence that divides the stands. Respondent was on one side of the fence and he attempted to initiate a conversation with

Mrs. Williams and her son. Respondent was saying "hello."  
Mrs. Williams ignored Respondent and no conversation was undertaken.

43. The second encounter occurred prior to a Pryor Middle School football game, which was taking place at Choctaw. Mrs. Williams, accompanied by her son, was setting up a parent-teacher organization table, and Respondent approached her and her son and initiated a conversation with her son. Mr. Hall knows Mrs. Williams' son from his time at Edwins.

44. Towards the end of the brief conversation, Respondent asked Mrs. Williams if he could speak with her for a "hot minute." Mrs. Williams glared at him and then said "no," and Respondent went about his way.

45. Respondent presented credible testimony that a "hot minute" is slang for "a second" or "just for a minute." There was no other evidence concerning the term "hot minute."

#### Front Office

46. The email attached to Mrs. Williams' Formal Complaint states that Respondent's "approaching me at the front desk at Choctaw began to be a habit for Steve Hall." The email further states that Mr. Hall was in the front office three times during the first month and a half of the 2017-2018 school year.

47. In a separate email, Mrs. Williams documented an "encounter" that occurred on September 1, 2017. She does not

indicate that Respondent had any contact with her, just that he was in the front office. In fact, on that occasion, Mrs. Williams turned her back to Respondent and Ms. Gloria Scaife, who was working in the front office, spoke with him.

48. In an email, dated September 7, 2017, Ms. Scaife states that Respondent was in the office and asked her if she had seen Ms. Liz (who is the lead custodian). Respondent credibly explained that, on that occasion, he went to the front office to find his supervisor to obtain access to supplies.

49. A second encounter in the 2017-2018 school year occurred in the mailroom. Mrs. Williams was in the mailroom when Respondent entered the room. Mrs. Williams testified that Respondent "cornered her in mailroom . . . that she couldn't get around him . . . and that he was upset and very loud." She further testified that she "could not move without touching [Respondent]."

50. Mrs. Williams' testimony conflicts with the other accounts of this encounter, which are more credible. Andy Snaith, dean of students for Choctaw, testified that there were other people in the mailroom and that he observed "what appeared to be a conversation with [Respondent] and Mrs. Williams. [Respondent's] back was to me. I believe he was doing the talking . . . ." When asked for more detail, Mr. Snaith stated:

Q: And with other people in the mailroom, was there enough room, based on what you saw from Mrs. Williams, to back away from Mr. Hall?

A: Yeah. It wasn't that crowded.

Q: So there was plenty of room for her to move around?

A: Yes.

Q: Any idea what they were talking about?

A: No.

Q: How would Mrs. Williams get out of the mailroom, if she wanted to leave?

A: There's two ways, I believe where she was standing, she could have gone to the left or to the right. The left is where the door that leads into the hallway, and then the other one leads to the main office.

51. Consistent with the recollection of Mr. Snaith, Respondent testified that upon being told by Mrs. Sanders that Mrs. Williams was telling others that he was saying things to Mrs. Williams, he went to the office to ask Mrs. Williams if this was true. Respondent further testified:

I asked [Mrs. Williams], calm and simple, [Mrs. Williams], have I talked to you, have I seen you? She said, no, I haven't seen you in three, four months. I said, that's all I wanted to know, because Liz is making a comment that I have said something to you and that was not true, and I walked away.

52. It is unclear from the testimony as to exactly when this conversation took place, other than sometime early in the

2017-2018 school year. It is clear, however, that that occasion was the last time that Respondent was in the front office area at Choctaw.

53. In her testimony, Mrs. Williams stated that she was not alleging or asserting that Mr. Hall had committed racial discrimination, nor that he made adverse remarks about her color, age, religious beliefs, ethnic origin, or marital status. And Mrs. Williams does not allege that Respondent made any comments about her body parts, the way her clothing fit, or asked to take photos of her while he was at Choctaw. Rather, those allegations allegedly occurred while Respondent was at Edwins, were unreported for years and could not be corroborated.

54. There is no evidence that Respondent ever told Mrs. Williams to perform any improper act and then threatened her with consequences if she failed to comply. There is also no evidence that Respondent ever had authority to make employment decisions affecting Mrs. Williams.

Mrs. Williams' House

55. Respondent first met Mrs. Williams prior to the time related in any of the allegations, when he went by her house to inquire about some tire rims that her husband had for sale.

56. Mrs. Williams testified that in the summer of 2017, two weeks prior to the start of school, Respondent came by her house and parked at the curb. Her son alerted her that Respondent

wanted to talk to her. She testified that she was upset because Respondent was there and she spoke with Respondent while he sat in his car. She could not recall what was discussed, but knows the conversation lasted only a couple of minutes, and that she then turned around and walked away.<sup>3/</sup>

57. Mrs. Williams stated that Respondent had been by her home on several different occasions but could not elaborate on any other incidents.

58. Respondent acknowledged that he had gone by Mrs. Williams' house because he does lawn service and was riding by her house. As he recalled, he noticed her son in the yard and asked him to get Mrs. Williams. Respondent and Mrs. Williams had a brief conversation.

59. At no time during that conversation, or any other conversation, did Mrs. Williams tell Respondent to "stay away," "leave me alone," or make any other gesture or comment indicating that Respondent was to avoid her. Further, there is insufficient evidence to show that anyone from the School Board told Respondent to avoid contact with Mrs. Williams.

#### Alleged Failure to Follow Directives

60. Respondent acknowledged that shortly after starting at Choctaw, he had been verbally advised to avoid the front office. Mr. Mims, the School Board's zone manager for custodial services, was the first person to advise Respondent to stay away from the



front office. The Dean of Students Andy Snaith never told Respondent to avoid the front office.

61. Even though told not to go to the front office, Respondent had to go by the front office every day. In that regard, Mr. Mims told Respondent that they could not keep him out of the school. Although Respondent understood that the request that he refrain from going to the front office may have been designed to minimize his contact with Mrs. Williams, there was no evidence or testimony presented by the School Board showing that Respondent was ever specifically told to avoid Mrs. Williams or why he was supposed to avoid the front office.

62. Mr. Mims testified that he told Respondent to avoid the front office twice. He further testified that he was aware of Respondent being in the front office only three times over the course of three school years. When finding out about these situations, instead of having a face-to-face meeting, Mr. Mims would merely call Respondent on the phone.

63. Respondent acknowledged going to the front office only twice in 2017, the first being while looking for Mrs. Sanders and the second being the conversation with Mrs. Williams when she was in the mailroom.

64. There is no evidence of a written directive or other documentation advising Respondent to avoid the front office until a September 18, 2017, meeting between Respondent, Bill Smith, and

Andy Mims. At that meeting, which was the first meeting between Mr. Smith and Respondent, Respondent was specifically advised to not go into the front office. Respondent has not been in the front office, nor has Bill Smith received a report that Respondent has been in the front office since their meeting in September 2017.

65. Even though there were two instances where Respondent went to the the front office after speaking with Mr. Mims, Mr. Mims testified that while Respondent worked for him, he "met expectations as an employee." Mr. Mims further testified that Respondent "did everything I asked him to do."

66. Mr. Mims statements are consistent with his written evaluations of Mr. Hall's work performed in May 2017, May 2016, May 2015, and May 2014. The stated purpose of the evaluations is to "support decisions concerning employee discipline, promotion and improvement."

67. Respondent's evaluations during the pertinent time period do not support the discipline sought in this case. To the contrary, they conclude that he is a hard worker and that he meets the expectations of his supervisors. Even when he allegedly received prior discipline while at Choice during the 2014-2015 school year, Respondent was not placed on a "success plan" for improvement and, in fact, received a "meets expectations" evaluation.

68. The evaluations written by Respondent's supervisors conclude that Respondent "Demonstrates a willingness to accept authority and direction; Demonstrates appropriate interactions with staff, clients, students and/or parents; Demonstrates appropriate oral skills when communicating with others; [and] Demonstrates appropriate relations with supervisor and peers."

69. Recognizing that there were issues at Choctaw unrelated to Mrs. Williams, Respondent requested transfers to another school. These transfer requests began during the 2016-2017 school year and continued during the beginning of the 2017-2018 school year. Even though there were positions available in the schools where Respondent desired to transfer, his supervisor, Mr. Mims, denied Respondent's requests for transfers.

#### CONCLUSIONS OF LAW

70. The Division of Administrative Hearings has jurisdiction over the parties and subject matter pursuant to sections 1012.40(2)(c), 120.569 and 120.57, Florida Statutes (2018),<sup>4/</sup> and the collective bargaining agreement between the School Board and the Okaloosa County Educational Support Professional Association (Union Contract).

71. Respondent is an "educational support employee" as defined in section 1012.40(1)(a), Florida Statutes, and Article 2, Section B. of the Union Contract.

72. Sections 1012.22(1)(f) and 1012.40(2)(c) give the School Board authority to terminate or suspend educational support employees without pay and benefits. However, the School Board may terminate such non-instructional employees only for "reasons stated in the [Union Contract] or in district school board rules in cases where a collective bargaining agreement does not exist." § 1012.40(2)(b), Fla. Stat.

73. Article 4, section A.4 of the Union Contract provides that "[d]iscipline, . . . shall be fair and for just cause." The Union Contract, however, does not define "just cause" nor was any evidence or testimony presented as to how the School Board defines "just cause."

74. Section 1012.33(1)(a) defines "just cause," but that statute only applies to instructional staff, staff supervisors, and school principals. As Respondent is an educational support employee, section 1012.33(1)(a) does not apply to him. See, e.g., Lee Cnty. Sch. Bd. v. Torres, Case No. 16-3301 (Fla. DOAH Oct. 31, 2016; Lee Cnty. Sch. Bd., Dec. 6, 2016).

75. As noted in the Recommended Order entered by Administrative Law Judge R. Bruce McKibben in Duval Cnty. Sch. Bd. v. Quiller, Case No. 14-1341TTS (Fla. DOAH July 16, 2014):

In the absence of a rule or written policy defining just cause, the School Board has discretion to set standards which subject an employee to discipline. See Dietz v. Lee Cnty.Sch. Bd., 647 So. 2d 217 (Fla. 2d DCA

1994). Nonetheless, just cause for discipline must rationally and logically relate to an employee's conduct in the performance of the employee's job duties and be in connection with inefficiency, delinquency, poor leadership, and lack of role modeling or misconduct. State ex. rel. Hathaway v. Smith, 35 So. 2d 650 (Fla. 1948); In Re: Grievance of Towle, 665 A.2d 55 (Vt. 1995).

76. The School Board bears the burden of proving each element of each charged offense by a preponderance of the evidence. See Dileo v. Sch. Bd. of Lake Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990). A preponderance of the evidence is evidence that more likely than not tends to prove the proposition set forth by a proponent. Gross v. Lyons, 763 So. 2d 276, 289 (Fla. 2000).

77. The notice letter from the superintendent to Respondent asserts that she was recommending his termination for "gross insubordination, misconduct and harassment," but does not reference a School Board policy or other law or rule. However, the November 14, 2017, letter from the assistant superintendent to Respondent asserts that his conduct was considered "gross insubordination, misconduct in office and harassment" and references School Board Policy 07-03 and School Board Policy 06-27.

78. A copy of School Board Policy No. 06-27 introduced at the final hearing, last revised October 26, 2015, states in pertinent part:

(A) Harassment concerning an individual's race, color, sex, age, religious beliefs, national or ethnic origin, marital status, pregnancy or disability is a form of misconduct which undermines the integrity of the employment relationship. The Board shall make an effort to assure employees and volunteers are protected from such harassment. Employees, volunteers and persons with whom the Board contracts for services shall not engage in any conduct which unreasonably interferes with the following:

- (1) an individual's responsibilities, performance, or orderly process of work;
- (2) an individual's freedom from intimidating, coercive, abrasive, hostile, or offensive working environment.

Violation of this policy will not be tolerated.

(B) Adverse remarks or epithets and other forms of harassment concerning an individual's race, color, national or ethnic background, sex, age, religion, marital status, pregnancy or disability are strictly prohibited. A disability exists when an individual has any of the following:

- (1) a physical or mental impairment which substantially limits one or more of the individual's major life activities;
- (2) a record of such an impairment;
- (3) is regarded as having such an impairment.

(C) Sexual harassment by an employee or volunteer or person with whom the district contracts for services toward another

individual while under the jurisdiction of the district is strictly prohibited. Sexual harassment includes unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when the following occurs:

- (1) submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment;
- (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals;
- (3) such conduct has the purpose or effect of unreasonable interference with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(D) Any conduct of a sexual nature directed at a student by an employee or volunteer is strictly prohibited. Sexually harassing conduct may include, but is not limited to, commentary about an individual's body, sexually degrading words to describe an individual, offensive comments, off-color language or jokes, innuendos, and sexually suggestive objects, books, magazines, photographs, cartoons or pictures.

79. As set forth in School Board Policy Nos. 06-26(F) and 06-27(H), "[a] substantiated violation of policy prohibiting harassment by an employee shall subject such employee to appropriate disciplinary action, and may be cause for termination, subject to applicable procedural requirements."

80. School Board Policy No. 06-28(A) provides that "[v]iolations must be reported within forty-five (45) days of the

date the Complainant knew or should have known of the event(s) giving rise to the alleged violation.”

81. Article 4, section A.11. of the Union Contract states:

Employees, volunteers and persons with whom the Board contracts for services shall not engage in any conduct which unreasonably interferes with the following:

- a. an individual's responsibilities, performance, or orderly process of work;
- b. an individual's freedom from an intimidating, coercive, abrasive, hostile or offensive working environment.

Violation of this policy will not be tolerated. (Reference School Board Policy 6-28 for more information).

82. As outlined in the Findings of Fact, above, the evidence was insufficient to show that Respondent harassed Mrs. Williams “concerning [her] race, color, national or ethnic background, sex, age, religion, marital status, pregnancy or disability.” While some of Respondent's alleged comments were perceived as inappropriate by Mrs. Williams, there was no evidence that his comments or actions were sufficient to constitute “harassment,” as that term has been analyzed in the legal context. Cf. Maldonado v. Publix Supermarkets, 939 So. 2d 290, 293-94 (Fla. 4th DCA 2006) (“Where harassment is [allegedly] perpetrated by a co-worker (as opposed to a supervisor or manager), to establish a hostile work environment sexual harassment claim, an employee must show [among other things] . .



. [that] the employee was subjected to unwelcome sexual harassment, such as sexual advances, requests for sexual favors, and other conduct of a sexual nature . . . [and that] the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment . . . ."); see also Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998) ("a sexually objectionable environment must be both objectively and subjectively offensive . . . 'simple teasing,' [citation omitted] offhand comments, and isolated incidents (unless extremely serious) will not amount" to a hostile work environment).

83. The evidence did not show that Respondent's alleged conduct towards Mrs. Williams created an intimidating, coercive, abrasive, hostile, or offensive working environment, which would constitute harassment or that it otherwise interfered with Mrs. Williams' ability to perform the responsibilities or orderly process of her work.

84. Mrs. Williams did not report any of Respondent's alleged conduct at Edwins within 45 days of the date that she knew or should have known of such events giving rise to Respondent's alleged violations as required by School Board Policy 06-27(A).

85. Regarding Respondent's alleged conduct while at Choctaw, rather than indicating that Respondent engaged in

repetitive, persistent behavior, the evidence showed that Respondent came by the office approximately three times over the course of two years. Further, there was no testimony that Respondent referred to Mrs. Williams as "baby girl" during his employment at Choctaw.

86. The School Board also asserts that Respondent's use of the term "hot minute" in asking Mrs. Williams if they could talk on one occasion, somehow created a hostile work environment, or was some other form of harassment. Mrs. Williams was unable to elaborate on what "hot minute" meant. On the other hand, Respondent provided credible testimony that "hot minute" refers to a short time period.

87. In addition, Mrs. Williams testified that she was not alleging or asserting that Respondent had committed racial discrimination, or that he had made adverse remarks about her color, age, religious beliefs, ethnic origin, or marital status. There is no evidence that Respondent ever threatened Mrs. Williams with adverse consequences if she did not perform a requested act. In fact, Respondent had no authority to make decisions affecting her employment.

88. Lastly, Mrs. Williams testified that no one from the School Board has ever told her that she was not performing her tasks, nor did she allege that she has been unable to perform her tasks because of Respondent's actions or behavior.

89. In sum, the evidence was insufficient to show that Respondent violated School Board Policy 06-27(A), (B) or (C).

90. With regard to School Board Policy 06-27(D), recited above, that policy, by its terms, is not applicable in this case because a violation of that policy requires conduct of a sexual nature directed at a student by an employee or volunteer. There was no such allegation made against Respondent, nor did the evidence indicate a violation of that policy.

Misconduct and Gross Insubordination

91. In addition to alleging harassment, the November 14, 2017, letter from the assistant superintendent to Respondent also asserts that Respondent's conduct was considered "misconduct in office or gross insubordination." A copy of School Board Policy 07-03, the alleged basis for this charge, was not introduced into evidence nor did the School Board provide any testimony as to how the policy was being applied to Mr. Hall.

92. As noted in Respondent's Proposed Recommended Order, by "[s]earching the School Board's website, one is able to find the policy." As appearing on that website, School Board Policy 07-03, entitled "Employment Conditions for Educational Support Personnel," last revised July 13, 2015, states:

(A) Educational support personnel shall be appointed following the "Personnel Procedures".

(B) Any educational support employee initially employed by the Board shall serve a six-month probationary period before being considered a regular employee.

(C) A regular employee shall be entitled to due process in respect to his/her employment status. The Board may dismiss a regular employee only for proper cause. Proper cause shall mean any of the following: immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness or conviction of any crime involving moral turpitude, or lack of performance.

(D) Educational support personnel shall be entitled to due process with respect to their employment status following completion of the probationary period and are recommended for reappointment on an annual basis. Written contracts are not issued for educational support personnel.

93. School Board Policy 07-03 fails to further define "immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness or conviction of any crime involving moral turpitude, or lack of performance."

94. Despite lack of evidence as to how the School Board defines the charges brought against Respondent, as suggested in Respondent's Proposed Recommended Order, the undersigned has considered the State Board of Education's definitions for guidance. The State Board of Education has created rules governing the criteria for suspension and dismissal based on the "just cause" standard. See Fla. Admin. Code R. 6A-5.056. That

rule states that "just cause" means cause that is legally sufficient and that "each of the charges upon which just cause for a dismissal action against specified school personnel may be pursued are set forth in Sections 1012.33 and 1012.335, [Florida Statutes]." Although the rule is used as a guide in this analysis, it should be noted that sections 1012.33 and 1012.335 each deal solely with instructional personnel. As previously noted, Respondent is not an instructional personnel.

Misconduct in Office

95. Although not identified by the School Board as a basis for its action against Respondent, Florida Administrative Code Rule 6A-5.056(2) defines "misconduct in office" as

- a. A violation of the Code of Ethics of the Education Profession in Florida as adopted in Rule 6A-10.080, F.A.C.;
- b. A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6A-10.081, F.A.C.;
- c. A violation of the adopted school board rules;
- d. Behavior that disrupts the student's learning environment; or
- e. Behavior that reduces the teacher's ability or his or her colleagues' ability to effectively perform duties.

96. Subsections a., b., d.<sup>5/</sup> and e., do not pertain to this case because Respondent is not employed as a teacher or instructional professional.

97. However, the definition of misconduct in office set forth in rule 6A-5.056(2)(c), quoted above, includes "violation of the adopted school board rules." Therefore, arguably, applying rule 6A-5.056(2)(c) as guidance, proof that Respondent violated either School Board Policy 06-027 or the provisions of School Board Policy 07-03, quoted above, would be a basis for finding that Respondent is guilty of misconduct in office. The evidence, however, does not support such a finding.

#### Gross Insubordination

98. It would appear from the testimony solicited at hearing by the School Board that the "gross insubordination" charge is based solely on the recommendation and later request for Respondent to avoid going into the "front office."

99. School Board Policy 07-03 does not define "gross insubordination." However, once again, drawing on rule 6A-5.056 for guidance, rule 6A-5.056(4) defines "gross insubordination" as "the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure in the performance of the required duties."

100. The evidence submitted in this case was insufficient to show that Respondent intentionally refused to obey a direct order or otherwise failed in the performance of his required duties. Rather, the evidence adduced at hearing indicated that Respondent had initially been told verbally to avoid the front office. The evidence did not show how many times these discussions took place. According to Mr. Mims, over the course of three school years, he told Respondent only twice to avoid the front office. And, Respondent had plausible excuses for the times that Respondent went to the front office area.

101. No written directive, no lesser discipline, no discussion about consequences, or any warnings from Respondent's supervisors were given to Respondent prior to September 2017. Cf. Dolega v. Sch. Bd. of Miami-Dade Cnty., 840 So. 2d 445 (Fla. 3d DCA 2003) (gross insubordination found after failing to comply with written directives); Rosario v. Burke, 605 So. 2d 523 (Fla. 2d DCA 1992) (finding no insubordination where there was no letter warning directly and instructing the employee to cease).

102. There was no evidence that a written directive was given to Respondent prior to his discussion with his ultimate supervisor on September 18, 2017. The evidence is undisputed that, after that meeting, Respondent did not go back to the front office.

103. There was also lack of sufficient evidence to demonstrate that Respondent failed to perform his required duties and it is found that Respondent did not intentionally disobey a directive and is not guilty of gross insubordination.

104. In sum, it is concluded that the School Board failed to establish just cause to terminate Respondent as that term is used in the applicable Collective Bargaining Agreement, Florida Statutes, School Board Policy, and other applicable law.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by Petitioner, Okaloosa County School Board:

1. Dismissing the allegations against Respondent in this case and rescinding any discipline imposed thereby;

2. Reinstating Respondent's employment with the Okaloosa County School Board as though there was no break in service of his employment;

3. Restoring all salary, benefits, and rights from the date of his last paid workday to the date of his reinstatement, plus interest from the date that any such pay or benefit was withheld, as appropriate under applicable law; less any earnings or benefits that Respondent received during the time between his termination and the time of his reinstatement.



DONE AND ENTERED this 9th day of November, 2018, in  
Tallahassee, Leon County, Florida.



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JAMES H. PETERSON, III  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 9th day of November, 2018.

ENDNOTES

<sup>1/</sup> School Board Policy No. 06-28(E) states that a formal equity complaint is:

A written allegation officially made by an applicant, volunteer or district employee stating that there has been action or inaction on the basis of race, color, sex, age, religion, national or ethnic origin, marital status, pregnancy or disability which constitutes discrimination or harassment and which was committed at the work location or under work conditions, circumstances, situations or otherwise within the school system's scope of responsibility . . . .

<sup>2/</sup> The evidence indicates that Choice and OTC are in the same facility.

<sup>3/</sup> Mrs. Williams' testimony that she had a conversation with Respondent for a couple of minutes is inconsistent with her email attached to her Formal Complaint, which does not mention a conversation, but rather alleges:

I was on the phone walking out of my home, I looked up and saw Steve sitting out in front of my home rolling down his window motioning me to come talk to him. I turned to return inside to get my husband, who is law enforcement, but Steve drove off in his green avalanche.

<sup>4/</sup> All references to Florida Statutes are to the current version, unless otherwise indicated.

<sup>5/</sup> Subsection d., which references rule 6A-10.081, by its terms, applies to professional educators. Rule 6A-10.81(2)(a) sets forth an educator's obligations to students. The School Board did not allege any conduct involving a student as a basis for Mr. Hall's termination. However, Mrs. Williams made allegations involving her daughter that occurred years before her Formal Complaint that occurred at Edwins. Mrs. Williams did not report this incident to the School Board or otherwise file a complaint so as to cause it to be investigated by the School Board. Aside from the fact that Respondent is not a professional educator and was not interacting with Mrs. Williams' daughter as a teacher, and based on a lack of a specific charge and a lack of sufficient evidence, it is found that Respondent was not subject to and otherwise did not violate rule 6A-10.081.

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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.