

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LEON COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 21-2339

JOSEPH BURGESS,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted on October 7 and 8, 2021, and November 5, 2021, in Tallahassee, Florida, before Garnett W. Chisenhall, a duly designated Administrative Law Judge of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner:           Scott J. Seagle, Esquire  
                                  Coppins Monroe, P.A.  
                                  1319 Thomaswood Drive  
                                  Tallahassee, Florida 32308

For Respondent:         Stephen G. Webster, Esquire  
                                  Louis Jean-Baptiste Jr., Esquire  
                                  WEBSTER + BAPTISTE, PLLC  
                                  1785 Thomasville Road  
                                  Tallahassee, Florida 32303

STATEMENT OF THE ISSUES

Whether Respondent committed acts amounting to “misconduct in office” and/or “willful neglect of duty” as alleged in the Administrative Complaint; and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

The Leon County School Board (the “School Board” or “Petitioner”), through Rocky Hanna, its Superintendent (“the Superintendent” or “Superintendent Hanna”), issued an Administrative Complaint on July 28, 2021, making the following allegations against Joseph Burgess, the principal of Chiles High School (“Principal Burgess”):

22. For the 2020-2021 school year, [Principal] Burgess executed personnel action forms authorizing approximately twenty-two (22) teachers to receive extra pay for hourly-as-needed positions. Unusually, the positions were not funded by the school’s staffing plan, but rather from Advanced Placement (“AP”) project funds. However, because [Principal] Burgess did not submit a “Non-staffing Allocation Notice for School-Level Budgets” form designed to trigger a review of such expenditures, Burgess’s use of the funds for the positions was not noticed by the District at the time.

23. In late June 2021, the Superintendent learned that [Principal] Burgess was using AP funds to pay for the hourly-as-needed teaching positions and, more importantly, that the hourly payroll records [Principal] Burgess was submitting to the District were false.

24. [Principal] Burgess used the pretext of “hourly” positions and unregulated AP funds to create a number of additional/non-bargained teacher supplements. Although appearing as “hourly” positions in the District’s records, and although [Principal] Burgess routinely signed payroll records authorizing payments to the employees for specific allegedly worked hours, the submitted hours were entirely fictional and unrelated to the actual hours worked by the employees during the submitted pay period.

25. The specific hours [Principal] Burgess submitted to the District for payment were fabricated in that they were the result of a mathematical calculation, and not based upon the actual time worked by the employees during the pay period. Indeed, most of the teachers benefiting from the payments did not track or record their hours in any way. Rather, the teachers uniformly believed that the payments were “supplements” (i.e., a flat amount for a specific duty) and did not know or understand that they were “hourly” employees at all.

26. [Principal] Burgess’s Executive Secretary, Melanie Richardson, confirms that payment of the employees based upon a mathematical calculation was Burgess’s express direction and intention. Richardson created an Excel Spreadsheet for the purpose of meeting this direction. A copy of the Spreadsheet is in the District’s possession.

27. Richardson’s Spreadsheet took an arbitrary amount set by Burgess for each position, divided it by the employee’s established hourly-rate, and then divided the result over roughly eight to ten pay-periods.

\* \* \*

30. [Principal] Burgess knew about Richardson’s Spreadsheet and knew that the employees were not tracking their hourly time or submitting timesheets. [Principal] Burgess knew that the hours he was submitting for payment were false in that they were the result of a mathematical calculation and not based upon hours actually worked in the pay period. Even if he did not, by signing and authorizing the hours for payment, [Principal] Burgess falsely represented that he had reviewed employee timesheets for accuracy prior to submission to the District when, in truth, no timesheets even existed. [Principal] Burgess’s approval of the payroll submissions was otherwise a willful or reckless failure of his duty to approve

employee pay as [Principal] Burgess approved such pay without undertaking any action to confirm their accuracy.

\* \* \*

34. [Principal] Burgess knew that the District would not – and could not under the [Leon Classroom Teachers Association] Contract – approve the payment of additional/non-bargained supplements. [Principal] Burgess knew or suspected that any attempt to pay teachers an additional supplement with AP monies<sup>[1]</sup> would have been rejected by the District. [Principal] Burgess’s scheme to pay non-bargained supplements through “hourly” positions was designed to avoid detection by the District. District records confirm that the scheme – including falsified hourly pay applications – had occurred for years and started as early as 2014.

Accordingly, Petitioner alleged that Principal Burgess committed “misconduct in office” and a “willful neglect of duty.” The Administrative Complaint further alleged that “[j]ust cause exists to discipline [Principal Burgess] with a two-week suspension without pay.”

Principal Burgess disputed the aforementioned allegations, and the School Board referred this matter to DOAH on July 28, 2021. The undersigned issued a Notice on August 13, 2021, scheduling the final hearing for October 7 and 8, 2021.

On August 18, 2021, Petitioner filed “Petitioner’s First Motion for Protective Order and Motion in Limine” seeking to preclude Principal Burgess from: (a) conducting discovery or offering testimony concerning the quality, adequacy, thoroughness, or progress of the preliminary investigation;

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<sup>1</sup> Due to a lack of clarity regarding permissible uses for AP funds, Superintendent Hanna did not argue in his Proposed Recommended Order that Principal Burgess misused AP funds.

(b) deposing, questioning, or calling the Superintendent's chosen counsel as a witness; (c) conducting discovery or offering testimony about the motives of the Superintendent; and (d) conducting discovery or offering testimony about Principal Burgess's various virtues and achievements as a citizen and school administrator.

The undersigned issued an Order on September 3, 2021, stating that

[w]ith regard to the requests designated in the above paragraphs as (a) and (c), [Principal Burgess] has failed to demonstrate how that information is relevant to the allegations in [Superintendent Hanna]'s Administrative Complaint. For instance, [Principal Burgess] has not cited any case law from a Florida jurisdiction standing for the proposition that [Superintendent Hanna]'s Administrative Complaint would be invalidated if the preceding investigation had been inadequate or if the Superintendent's motivation for issuing the Administrative Complaint was improper. *See* § 90.402, Fla. Stat. (2021)(providing that "[a]ll relevant evidence is admissible, except as provided by law."). [Principal Burgess] has also failed to demonstrate how discovery related to those subject matters is "reasonably calculated to lead to the discovery of admissible evidence." *See* Fla. R. Civ. P. 1.280(b)(1).

As for deposing, questioning, or calling the Superintendent's chosen counsel as a witness, [Principal Burgess] has failed to demonstrate why those actions are necessary. *See Iacono v. Santa Elena Holdings, LLC*, 271 So. 3d 28 (Fla. 3d DCA 2018)(explaining that deposing opposing counsel should be limited to circumstances "where the party seeking to take the deposition has shown that[:] (1) no other means exist to obtain the information [other] than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case.").

To the extent that [Principal Burgess] plans to offer testimony about [Principal Burgess]’s various virtues and achievements as a citizen and school administrator, [Principal Burgess] may testify for no more than 20 minutes during the final hearing scheduled for October 7 and 8, 2021, about his background, employment history, and professional achievements. However, evidence regarding [Principal Burgess]’s purported good character or reputation shall be excluded unless [Superintendent Hanna] presents evidence attacking [Principal Burgess]’s character. *See generally General Telephone Co. v. Wallace*, 417 So. 2d 1022, 1024 (Fla. 2d DCA 1982)(holding that “[t]he opinion elicited from Dr. Wasylik concerning the plaintiff’s truth and veracity, and the argument based on that opinion, violate two rules of law. The first rule is that evidence of good character or reputation is not relevant and is inadmissible in a civil action where the reputation of the party has not first been attacked by evidence of bad character.”).

The final hearing was convened as scheduled but not completed on October 8, 2021. Accordingly, the final hearing was continued to November 5, 2021, and completed that day.

In addition to presenting the testimony of Superintendent Hanna, the School Board called the following witnesses: Mike Eto, Sherri Kawagoye, Kate Strickland, Katherine Quick, Melanie Richardson, Kaydi Blackstock, Deana McAllister, Deena Howell, and Lori Nevin. Petitioner’s Exhibits 1 through 32 were accepted into evidence.

Principal Burgess testified on his own behalf and called the following witnesses: Randy Pridgeon, David Pettis, Grace Bigelow, Aaron Clark, Naomi Coughlin, Principal Scotty Crowe, Principal Demetria Clemons, Amy Sherry-

Marsh, Margaret Crutchfield, and Michele Prescott. Respondent's Exhibits 1 through 88 were accepted into evidence.

The six-volume final hearing Transcript was filed on December 2, 2021, and both parties filed timely proposed recommended orders that have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing, the entire record of this proceeding, and matters subject to official recognition, the following Findings of Fact are made:

#### **Facts Regarding Teacher Compensation in Leon County**

1. The School Board is the constitutional entity authorized to operate, control, and supervise the free public schools within the Leon County School District ("the District"). *See* Art. IX, § 4(b), Fla. Const., and §§ 1001.30 and 1001.32, Fla. Stat.<sup>2</sup> The School Board is specifically empowered to discipline District employees, including suspension of employment. § 1012.22(1)(a), (f), Fla. Stat.

2. Superintendent Hanna is the Superintendent of Leon County Schools and is responsible for directing the day-to-day work of the District's employees. He has express authority to recommend employee discipline to the School Board. §§ 1012.27(5) and 1012.33(6)(b), Fla. Stat.

3. Teachers in the Leon County School System can be paid via three different methods: the salary associated with their instructional duties, one or more supplements, or hourly work unrelated to their instructional duties.

4. When performing the instructional duties for which they receive a salary, teachers do not track their time via timesheets or by punching a time

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<sup>2</sup> All statutory references shall be to the 2021 version of the Florida Statutes unless indicated otherwise.

clock. Teachers do not receive overtime pay for the instructional duties associated with their salaries.

5. A supplement is an opportunity for teachers to receive a flat rate or a flat amount of money for providing an additional service. Negotiations between the School Board and the Leon County Teachers Association (“the LCTA”) determine what supplements are available. From 2017 through 2020, the contract between the School Board and the LCTA (“the Contract”) provided for supplements such as the following: band director, assistant band director, academic coaches, newspaper sponsor, yearbook sponsor, athletic director, cheerleading coach, and football coach.

6. The amount of pay associated with a supplement is derived from the base teacher salary of \$30,500. For example, the band director supplement is 15 percent. As a result, that supplement pays \$4,575.00, i.e., 15 percent of \$30,500. If the band director work is divided between two or more teachers, then that \$4,575.00 would be divided among them. In general, a teacher can receive no more than three supplements.

7. A teacher cannot receive a supplement that did not result from negotiations between the School Board and the LCTA. In other words, a principal cannot create a supplement that does not appear in the Contract. However, principals do have some discretion in allocating supplement funds. For example, the academic coach supplement could be used to compensate a teacher for providing support to gifted students.

8. When performing work associated with a supplement, teachers do not track their time via timesheets or by punching a time clock.

9. Section 21.02(A)2. of the Contract provides that teachers can be paid on an hourly basis for “additional non-instructional responsibilities.”

The Contract states that

[e]mployees may agree to be assigned non-instructional responsibilities that extend beyond the standard workday. The time assigned for such responsibilities shall be determined by the site



administrator or the District and the employee shall be paid for the additional assigned time at their regular hourly rate.

10. School Board Procedure # 6510A is entitled “Timesheets/Clocking-In and Clocking-Out” and applies to “substitute teachers, extra-duty,<sup>[3]</sup> and non-instructional employees.” With regard to extra-duty pay, Procedure # 6510A mandates that “[e]ach employee must record all additional hours on a separate timesheet including name, time-in and time-out, hours worked, etc.” Under a section entitled “Clocking-In and Clocking-Out,”<sup>4</sup> Procedure # 6510A provides that “[e]mployees exempt from overtime pay under the [Fair Labor Standards Act] are not required to clock-in/clock-out at their work site, unless employed in an additional position where clocking-in and clocking-out is necessary to record hours/time for payment.” Procedure # 6510A also provides that “[i]t is the timekeeping system approver’s responsibility to review records for accuracy, approve information entered by the employee, and electronically submit the time and leave records by the published payroll and leave accounting deadlines.”

11. This extra-duty, hourly pay comes into play if a principal has work to be done and the budget for supplemental duties has been exhausted. In those instances, a principal has the discretion to create an hourly position and task a particular individual to perform work that will be compensated by general funding.

12. As explained by Deana McAllister, the District’s Assistant Superintendent for Human Resources, Labor, and Employee Relations, extra duty, hourly work is

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<sup>3</sup> The District’s payroll director interprets the term “extra duty” to include instructional employees doing hourly work.

<sup>4</sup> The School Board’s payroll director testified that time sheets are utilized for tracking hours worked even though Procedure # 6510A refers to “clocking-in and clocking-out.” She also testified that the School Board’s payroll department uses the terms “clocking-in and out,” “signing-in and out,” “time cards,” and “time sheets” interchangeably.

in addition to what your current job description is. So, if you're teaching English, you're not going to have an extra-duty hourly position as an English teacher. So, you cannot be paid for work that you are already being paid for. You cannot be paid extra-duty monies for work that you're doing during the school day, nor – or during your hours of – of employment with the District, nor can you be paid extra duty for work that you are being paid via supplement.

13. As a result, if a band director holds an after-school band rehearsal, then he or she will not be paid on an hourly basis for that work because it is covered by a supplement.

14. Principals in Leon County can create extra-duty, hourly positions and fund them through appropriate means. However, a principal must obtain the District's approval for the position, and the District must also approve of the funding source used to pay for the position.

15. Teachers doing extra-duty, hourly work are paid at their hourly rate, and they must keep track of their time. According to Ms. McAllister, “[t]hey have to do the work they are assigned and they have to report their hours. There's no way for us to pay them if we don't know the number of hours they've worked, if it's in addition to their current salaried position.”

16. The time records maintained by teachers doing extra-duty, hourly work are submitted to their school's bookkeeper or whoever is tasked with submitting payroll to the District. However, the school's principal is ultimately responsible for approving and/or verifying the time submitted by teachers doing extra-duty, hourly work.

17. Scotty Crowe is currently the Principal of Gilchrist Elementary School, and he has worked for the District for 30 years in various other capacities, such as dean, assistant principal, and assistant superintendent. Principal Crowe described the process of paying teachers doing extra-duty, hourly work as follows:

Q: But the teacher still has to track their time in some way and tell the bookkeeper how many hours they worked and what days they worked, correct?

A: It does – it does have a – the date and it does have the hours on that – that sheet.

Q: Okay. They have to – that's the only way to pay a teacher in an hourly as-needed position is for the teacher to track their time and tell someone how – when and how long they worked, correct?

A: That's how it is – that's how it is treated, recorded, and submitted.

\* \* \*

Q: Teachers in hourly positions don't punch a time card into a clock-in-and-clock-out system.

A: That's correct.

Q: But, they do and must record their time on a time sheet.

A: There's a time sheet.

Q: Okay. And the recording of the hours on the time sheet is the only way to know how many hours to pay them for that pay period, correct?

A: That's – that provides the information and data that the bookkeeper would, the, put into the – to the – work for the process.

\* \* \*

Q: Let's say that you had \$10,000 that you had budgeted or were given a budget for, an hourly as-needed position, correct?

\* \* \*

Q: And let's say that teacher turns in hours each month, up until the \$10,000 is exhausted, correct?

\* \* \*

A: I'm with you.

Q: They've earned the \$10,000 that you've budgeted by turning in the time sheets to get paid, correct?

A: Correct.

Q: If they did not turn in enough hours, let's say your COVID czar – COVID cases have started to decrease and not as much time is required – let's say they only turned in half the number of hours that they expected, would they still get the full \$10,000 or would they only get half -- would they only get paid for the hours they turned in?

A: From – from my experience, I may have budgeted “X” amount of dollars – it's almost like a draw – you can draw down up to a certain amount and that – that particular person for that engagement – it's almost like billable hours, I guess, is the analogy, where they can – there's gonna be [a] certain amount – it's gonna – certain number of hours they can submit but not go over.

\* \* \*

Q: So, they have to submit the hours.

A: Correct.

Q: And they'll get paid for the hours they submitted.

A: Correct.

Q: And if they don't submit enough hours to claim the full budget, they don't get paid the full budget.

A: Then they wouldn't – they wouldn't get paid . . .

\* \* \*

Q: So, you would agree with me that, for a teacher to be paid – when the system you’re describing for me, the teachers filling out the time sheets and turning them in – that’s the same, as far as you know, District-wide, correct?

A: Yeah.

Q: Every school does that.

A: Yes.

18. Michelle Prescott has spent the last 28 years working for the District in various capacities such as teacher, assistant principal, principal, and District administrator. She described the process of paying teachers doing extra-duty, hourly work as follows:

Q: But if you’re going to pay them for hourly as-needed work, then you need to know how many hours they worked, correct?

A: Yes.

Q: Okay. And that’s the only way you can pay them accurately for the hours they worked.

A: Right.

\* \* \*

A: Now, if they’re sick, then they don’t take that time.

Q: And that was going to be my question. You can give them – you know, it’s going to be an hour a day for the next week or so, but they actually have to show up and work that hour to get paid.

A: Correct.

Q: If they get sick and don't work three days, they don't get paid those three days?

A: Correct.

Q: So, it's not a guarantee that they're going to get the full amount just because you planned them a schedule out at the start?

A: Correct.

\* \* \*

Q: And if we're – if we're paying teachers hourly and they're not tracking their time and aren't telling anybody how long they worked, that would not be an appropriate way to pay them, correct?

A: Correct.

Q: Okay. Let – let me just understand, real quick, the – the role of the secretary or bookkeeper and the principal. You are the final step in that process. You approve the payroll and submit it to the District for payment, correct?

A: Yes, I approve the payroll - -

\* \* \*

Q: The – the bookkeeper or the secretary will do the clerical work of gathering up all the time sheets or time cards or whatever needs to be done and get that entered into the system, correct?

A: Yes.

Q: And then you will approve that, what she has entered – your job is to sign off --- whether it's a physical sheet to sign or electronic – you approve it for payment. You're -- you do the approval, correct?

A: Yeah, I do the final approval.

Q: Okay. And the bookkeeper or the secretary doesn't have the authority to approve time sheets for payment. They enter the information, but they can't approve it for payment.

A: No.

Q: Okay. So, let's go back to that term. The timekeeping system approver – you would agree that the principal, you, would be the approver, and they would be the collector or enterer of the information.

\* \* \*

A: Yes, I am approve – I am approving it in Skyward, but she's entering it.

Q: Okay. And, I guess, I understand that you don't always go back and do a little bit of research on these things, but your signature, when you approve those, has some meaning, right; that you have – that you are – you are approving these and taking responsibility for these being accurate.

A: Yes. Yes, we're responsible – made it very clear, we're responsible for everything, especially with our signature.

Q: The buck stops with you.

A: (Nodding head affirmatively.)

### **Facts Specific to the Instant Case**

19. Principal Burgess has worked for the District since 1999. He began his employment with the District as a teacher at Swift Creek Middle School. During the 2003-04 school year, he was named Swift Creek Middle School's teacher of the year. In 2005, Principal Burgess became the assistant principal at Chiles High School and held that position for two years. He then became the transitional principal at Springwood Elementary and the permanent principal the next year. Over the next three years, Principal Burgess served

as the principal at Swift Creek Middle School. During the summer of 2012, Principal Burgess became the principal of Chiles High School.<sup>5</sup>

20. Melanie Richardson was an executive secretary at Chiles High School from February of 1998 through April 19, 2021, and was responsible for collecting payroll information, such as hours worked, and entering that information into the school's payroll system. Unless he is absent, Principal Burgess is the only Chiles High School employee authorized to approve that payroll information. Therefore, Principal Burgess is the site administrator and timekeeping system approver for Chiles High School.

21. Beginning with the 2014-15 school year, Principal Burgess and Ms. Richardson implemented a system in which teachers performed extra-duty, hourly work without tracking their time.<sup>6</sup> For example, Principal Burgess would tell Ms. Richardson that a particular teacher would be earning a fixed amount of money for doing work unrelated to any supplement negotiated between the LCTA and the Board. Ms. Richardson would then divide that fixed amount by that teacher's hourly rate and thus determine how many hours it would take for that teacher to earn the fixed amount identified by Principal Burgess. Ms. Richardson would then take that gross number of hours and divide it as evenly as possible over the months of the school year. The resulting monthly hourly totals would be entered into Chiles High School's payroll system and reported to the District as the amount of time that teacher spent performing the extra-duty, hourly work. As a result, a teacher performing extra-duty, hourly work would earn a predetermined amount each month regardless of how much time they

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<sup>5</sup> Superintendent Hanna described Principal Burgess's work performance as being "wonderful." He testified that Chiles High School is a challenging school with a challenging group of parents. With the exception of the allegations at issue in the instant case, Superintendent Hanna testified that Principal Burgess has done a "good job." Superintendent Hanna also testified that he has known Principal Burgess to be an honest and ethical man.

<sup>6</sup> This process did not apply to all of the teachers at Chiles High School who performed extra-duty, hourly work.



actually spent performing that extra-duty, hourly work, and Ms. Richardson was unaware of whether the hours she reported to the District were an accurate reflection of how much time that teacher actually spent performing that extra-duty, hourly work. Many of the teachers performing the extra-duty, hourly work thought they were being paid via a supplement.

22. At the beginning of each school year, Ms. Richardson would prepare a spreadsheet detailing the information described above, and she offered the following testimony pertaining to whether Mr. Burgess was aware of what she was doing:

Q: The spreadsheet we've been looking at is for the 2020-21 school year, correct?

A: Yes.

Q: But that is not the first time you used a mathematical calculation to derive the number of hours to report for employees.

A: No, I always used a mathematical calculation.

Q: Can you tell me when you first started to report hours based upon the mathematical calculation?

A: The first time I was told that I was gonna put this person in an hourly position for so much time, for so much money.

Q: And who was that who told you that the first time?

A: Mr. Burgess.

Q: You had not used this method, this way of calculating hours for employees, for any other principal in the past?

A: No.

\* \* \*

Q: The mathematical calculation we're talking about – did you enter the hours into the payroll system based on this mathematical calculation?

A: Yes.

Q: Did you do that because that is the way you decided to do it or because that's what you were directed to do?

A: It was de – we—administration and I – we discussed the best way to do it because teachers had different hourly rates. And, to make it even, I was – I told Mr. Burgess, after he gave me the amounts, I would divide it by their hourly rate and then divide it evenly through the year.

Q: And what was his response to you doing that?

A: Good. Fine.

Q: So, he - -

A: Make it happen. Do it.

\* \* \*

Q: Was Mr. Burgess aware of the Exhibit 3 spreadsheet?

A: I – I had showed them to him; so, yes.

Q: Okay. So, not only was he aware, he had seen it?

A: Yes.

Q: Did he know what it was?

A: I explained what it was and he, to my knowledge, knew what I was doing, knew what it was.

\* \* \*

Q: Did you discuss with him how this spreadsheet worked?

A: Yes.

Q: Did you discuss with Mr. Burgess how the hours that you were calculating were being derived?

A: Corr – yes.

Q: Did he express to you that he had any confusion about what you were doing or how you were calculating these hours?

A: No.

Q: And based on your discussions with him, you told him – did you tell him that this is what you would enter into the system for the employees?

A: Yes.

Q: Would you have employed the mathematical system for determining hours for employees without Mr. Burgess' direction and approval to do that?

A: No.

23. For the 2020-21 school year, Principal Burgess executed forms authorizing 22 teachers to work in hourly-as-needed positions at Chiles High School.<sup>7</sup> The teachers filling those positions did not know that they

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<sup>7</sup> Superintendent Hanna testified that the payments to teachers performing extra-duty, hourly work during the 2020-21 school year, without keeping time records, totaled between \$100,000 and \$150,000.

were hourly employees. Instead, they believed that they were receiving supplements.<sup>8</sup>

24. In addition to making it impossible to know if teachers performing extra-duty, hourly work were being compensated for the actual number of hours they worked, the system implemented by Principal Burgess and Ms. Richardson had other shortcomings. For example, Mike Eto is the athletic director at Chiles High School. In addition to his teaching salary and supplements, Mr. Eto has performed extra-duty, hourly work, such as being on-call to respond to after-hour emergencies at the school. However, he was erroneously paid for his extra-duty, hourly work while he was on extended medical leave from January 25, 2021, through April 1, 2021. Another example occurred in 2019 when Principal Burgess had approved Edra Taylor receiving \$5,000 for extra-duty, hourly work. After the school year started, Ms. Taylor asked that the remainder of that \$5,000 be paid to her by November 15, 2019, in one lump sum rather than in monthly amounts over

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<sup>8</sup> Principal Burgess was using AP money to fund these extra-duty, hourly positions that he treated as supplements. The Administrative Complaint alleged that practice was improper, but that allegation was ultimately dropped due to a lack of clarity as to how AP funds could be used. Superintendent Hanna offered the following testimony regarding Principal Burgess's use of AP funds:

So, we have – and – and we have, as a practice, as a School District, used those AP – Advanced Placement dollars to hire additional instructional personnel in addition to training for Advanced Placement teachers, for workshops for Advanced Placement teachers, for those types of things to advance the – to help support and enhance the Advanced Placement program. Mr. Burgess was using those Advanced Placement dollars to support these supplements, including – the football coach[s] \$10,000 supplement was coming out of Advanced Placement funds. Now, is there a specific policy that speaks to what's allowable – allowed and not allowed with Advanced Placement dollars? Maybe; maybe not. Did Mr. Burgess or should Mr. Burgess, as a high school principal, have known that it was not appropriate to use those funds to pay his football coach and the Chiles Cares lady and all those other people with the funds? He absolutely should have known.

the rest of the school year. By approving that request, Mr. Burgess authorized an advance for hourly work that had yet to be performed.

25. Principal Burgess gave the following testimony when questioned about the shortcomings discussed above:

Q: The teachers – if they didn't know they were hourly employees, they thought they were getting supplements because they're not hourly employees, they don't know they are, they're not tracking their time, how are you ever supposed to pay them accurately? Now, what this does, of course, is just pays them the full amount, no matter what they do or don't do. How did you hope or expect it would work so that they could [be] paid accurately? What did you expect to happen for these teachers to be paid accurately for their work?

A: What do you mean "accurately"? Can you please explain?

Q: Sure. That means they get paid for the actual number of hours that they work, up to the maximum that you set.

A: Well, first of all, the teachers did get paid for the hours that they worked. And they had a maximum budget, which they knew because, if you go past that, you break the budget. I, as the site administrator, have to keep a budget.

Q: They didn't track their time, sir. How do you know how many hours they worked?

A: I don't.

Q: And that's exactly the point: You don't know – nobody knows, right?

A: No, sir.

Q: All right. So, how can you pay them accurately? Let me go back to my question: How did you expect – when you gave this – these maximum numbers

for these employees, how did you expect that they would be paid accurately? What was the process that was supposed to happen, in your mind, to make sure that these employees were paid accurately; meaning, pay for the actual number of hours they worked?

A: In my mind, they were paid for the work that they did. That was how it worked.

Q: Ah. So, they get paid for the job getting complete, regardless of how many hours they actually spent doing it.

A: That's how teachers have been doing it for years. They work more hours than what we pay them.

Q: So, that sounds very much like a supplement, right; that you're going to get paid a flat amount. You don't have [to] track your hours. You get this amount, \$10,000 or whatever else it is. You don't have to turn in your time, but just get the job done. That was your expectation.

A: My expectation was that they got the work done.

26. Employees in the District's payroll department had questions about Chiles High School's extra-duty pay for May of 2021. In response to their request for backup documentation, they received the spreadsheet that Ms. Richardson had created to keep track of the extra-duty, hourly pay for the 2020-21 school year.<sup>9</sup> The payroll department brought this situation to Superintendent Hanna's attention during the first week of June 2021, and he met with Ms. Richardson to gain an understanding of how teachers at Chiles

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<sup>9</sup> Ms. Richardson has been working in the School Board's Human Resource Office since April 19, 2021.

High School were being compensated for extra-duty, hourly pay.<sup>10</sup>

Ms. Richardson described how teachers were being paid for doing extra-duty hourly work as if they were being paid for a supplement.<sup>11</sup>

### **Ultimate Findings**

27. Principal Burgess had no ill intent when he and Ms. Richardson established a system in which certain teachers were paid for extra-duty, hourly work without recording their time. There is no evidence that he used that system for an improper purpose, such as to favor certain teachers over others.

28. With the exception of when Mr. Eto was paid for performing extra-duty, hourly work while he was on medical leave, there was no evidence that the work at issue was not being done. The problem was that the teachers performing extra-duty, hourly work were not keeping track of their time. Ms. McAllister testified that if the teachers at issue had been “true hourly employees and this had been set up as hourly positions and they were not flat amounts and time had been tracked and we paid them appropriately, it would have been fine.”

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<sup>10</sup> Superintendent Hanna acknowledged that there was a lack oversight by the District. He testified that new safeguards have been put in place: “Now the principals have to go to their immediate supervisor to get permission to put someone hourly as-needed, to explain exactly what that person is going to do, explain exactly how many hours they’re going to be working, ex—explain exactly what you need from that position so it will stop all of this nonsense.”

<sup>11</sup> With regard to consequences resulting from the discovery of how teachers were paid for extra-duty, hourly work at Chiles High School, Superintendent Hanna testified that auditors “are gonna chew us up on this.” He also described fairness among the schools under his purview: “basically, [Principal Burgess] has the \$250,000 supplement budget that’s approved that has been bargained-for and signed off by the union. And he was using an additional hundred thousand dollars plus to create other – other supplements that he felt like he needed to create that were not bargained-for and that are – and that other schools in our District may not be able to – to support. So, it comes down to equity and a lot of other things – issues because I – there are no other high schools that are going to pay their football coach an additional \$10,000. They don’t have – they don’t have that money. And then I – then I have a problem. Well, why does this coach get an additional \$10,000; why didn’t that coach get \$10,000. Then – and then I can go to Lincoln – Lincoln has even more AP money that – than Chiles. Well, [if] he’s gonna do it; then, I’ll pay my coach an additional \$40,000 a year. And that’s not the way our system is set up.

29. The totality of the evidence indicates that Principal Burgess thought that nothing improper was happening so long as the work at issue was being done. However, the instant case is an example of how the ends do not always justify the means.

30. Principal Burgess had a system enabling him to dole out unauthorized supplements without any oversight from the District. As explained by Superintendent Hanna, that took “all of the collective bargaining we’ve done with the union and how we compensate people completely out and it’s at the sole discretion of the principal.” While there was no evidence that the system established by Principal Burgess and Ms. Richardson resulted in any widespread abuses, Principal Burgess created an environment in which widespread abuses could have occurred. Teachers could have been paid for work they did not perform, and an unscrupulous principal could have used these unauthorized supplements to play favorites among his or her subordinates.

31. If the consequences discussed above were not readily apparent to Principal Burgess, then the simple fact that he was knowingly approving the submission of fabricated time records to the District should have given him pause.

32. While Principal Burgess had no ill intent, his approval of fabricated time records amounts to: (a) a failure on his part to maintain honesty in all professional dealings; (b) the falsification of District financial documents; (c) a failure on his part to deal truthfully and sincerely with people; and (d) a reckless failure to fulfill his duty as Chile High School’s timekeeping system approver.

#### CONCLUSIONS OF LAW

33. DOAH has jurisdiction over the subject matter and parties in this case, pursuant to sections 1012.33(6), 120.569, and 120.57(1), Florida Statutes.



34. The School Board seeks to suspend Principal Burgess for two weeks without pay. As a result, the School Board has the burden of proving the allegations set forth in the Administrative Complaint by a preponderance of the evidence, as opposed to the more stringent standard of clear and convincing evidence applicable to the loss of a license or certification. *Cropsey v. Sch. Bd. of Manatee Cnty.*, 19 So. 3d 351 (Fla. 2d DCA 2009), *rev. denied*, 29 So. 3d 1118 (Fla. 2010); *Cisneros v. Sch. Bd. of Miami-Dade Cnty.*, 990 So. 2d 1179 (Fla. 3d DCA 2008).

35. The preponderance of the evidence standard requires proof by “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. *See Gross v. Lyons*, 763 So. 2d 276, 289 n.1 (Fla. 2000).

36. The Administrative Complaint seeks to discipline Principal Burgess based on “misconduct in office” and “willful neglect of duty.” § 1012.33(6)(b), Fla. Stat. (2020)(providing that “[a]ny member of the district administrative or supervisory staff, including any principal . . . , may be suspended or dismissed at any time during the term of the contract; however, the charges against him or her must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or being convicted or found guilty of, or entering a plea of guilty, regardless of adjudication of guilt, [to] any crime involving moral turpitude, as these terms are defined by rule of the State Board of Education.”).

37. With regard to the School Board’s misconduct allegation, Florida Administrative Code Rule 6A-5.056(2) defines “misconduct in office,” in pertinent part, as: (a) “[a] violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6A-10.081, F.A.C.,” (b) a violation of rules adopted by the School Board; and (c) “[b]ehavior that reduces the teacher’s ability or his or her colleagues’ ability to effectively perform duties.”

38. Florida Administrative Code Rule 6A-10.081 sets forth the “Principles of Professional Conduct for the Education Profession in Florida.” Subsection (2)(c) identifies the obligations a Florida educator owes to the education profession and mandates, in pertinent part, that an educator “[s]hall maintain honesty in all professional dealings” and “[s]hall not submit fraudulent information on any document in connection with professional activities.”

39. The School Board has an “Anti-Fraud” policy stating that “[f]raud and fraudulent activity are strictly prohibited.” The policy defines “fraud,” in pertinent party, as falsifying “claims for payment” or “any other District financial document.”

40. The School Board also has a Code of Ethics which lists “honesty” as a fundamental principle upon which the Code of Ethics is predicated. The Code of Ethics defines “honesty” as “[d]ealing truthfully with people, being sincere, not deceiving them nor stealing from them, not cheating or lying. Another provision within the Code of Ethics requires each School Board employee “[t]o be efficient and effective in the performance of job duties.”

41. The School Board has proven by a preponderance of the evidence that Principal Burgess committed “misconduct in office” as defined above. The preponderance of the evidence demonstrates that Principal Burgess was aware of the system that Ms. Richardson devised to accomplish his goal of paying particular employees a predetermined amount for extra-duty, hourly work. As a result, Principal Burgess knew that the hours that were being reported to the District for the extra-duty, hourly work in question did not reflect the actual amount of time spent doing that work.

42. Furthermore, as the timekeeping system approver for Chiles High School, it was Principal Burgess’s responsibility under Procedure # 6510A “to review records for accuracy, approve information entered by the employee, and electronically submit the time and leave records by the published payroll

and leave accounting deadlines.” However, Principal Burgess approved payroll information that he knew was inaccurate.

43. Accordingly, Principal Burgess: (a) failed to “maintain honesty in all professional dealings” as required by rule 6A-10.081; (b) falsified a District financial document contrary to the School Board’s Anti-Fraud Policy; and (c) did not deal truthfully with people as required by the School Board’s Code of Ethics.

44. As for the School Board’s willful neglect of duty allegation, rule 6A-5.056(5) defines “willful neglect of duty” as an “intentional or reckless failure to carry out required duties.” As discussed above, Principal Burgess is the timekeeping system approver for Chiles High School, and he was responsible for reviewing records for accuracy. Because the preponderance of the evidence demonstrates that Principal Burgess knew that the time records in question did not reflect the hours actually worked, the School Board proved that Principal Burgess violated rule 6A-5.056(5).

45. Principal Burgess raises three arguments in his proposed recommended order: (a) he did not violate a clear policy; (b) the School Board did not prove that Principal Burgess received training on any relevant policy; and that (c) Principal Burgess was not on notice of any relevant policy.

46. Those arguments are unavailing. Procedure # 6510A is not a model of clarity given its references to clocking-in and clocking-out. However, it is clear enough to put a reader on notice that an employee performing extra-duty, hourly work should be keeping track of his or her time. Moreover, in light of the fact that timesheets were being submitted for the extra-duty, hourly work at issue in this proceeding, it is nonsensical for one to argue that he or she was unaware that those timesheets needed to reflect the hours that were actually worked.

47. As for Principal Burgess’s argument that he was unaware of Procedure # 6510A or any other relevant authorities governing District employees, it is well-established that such defenses are meritless.

*See generally American Home Assur. Co. v. Plaza Materials Corp.*, 908 So. 2d 360, 375 (Fla. 2005) (Cantero, concurring in part and dissenting in part) (“Many cases have recognized the maxim as old as the law, itself, that ignorance of the law is no excuse.”) (citations omitted). Moreover, arguing that the District failed to put one on notice of a governing procedure or policy is in the nature of an affirmative defense. However, Principal Burgess has not satisfied his burden of proof on that point. *See Ellingham v. Dep’t of Child. & Fam. Servs.*, 896 So. 2d 926, 927 (Fla. 1st DCA 2005) (stating that “[t]he party seeking to assert the affirmative defense has the burden of proof as to that defense.”). He has not argued that Procedure # 6510A and any other relevant authorities were unknown to District employees or kept from them in some manner.

48. As for the appropriate penalty, section 1012.33(6)(a) provides that a principal can be suspended or dismissed due to “misconduct in office” and/or “willful neglect of duty.” The School Board has proposed suspending Principal Burgess for two weeks without pay. As noted above, Principal Burgess otherwise has an outstanding record as a District employee. Also, Principal Burgess had no ill will when he and Ms. Richardson created the system at issue in the instant case. Nonetheless, a two-week suspension without pay is reasonable under the circumstances.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Leon County School Board enter a final order suspending Joseph Burgess for two weeks without pay.

DONE AND ENTERED this 18th day of January, 2022, in Tallahassee, Leon County, Florida.

*Garnett Chisenhall*

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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.