

**District School Board of Indian River County, Florida
6500 - 57th Street, Vero Beach, FL 32967**

It is hereby advised that if a person decides to appeal any decision made by the Board with respect to any matter considered at this meeting, he/she will need to ensure that a verbatim record is made that includes the testimony and evidence upon which the appeal is to be made.

Date: February 23, 2017

Time: 6:30 p.m.

Room: Teacher Education Center (TEC)

Special Business Meeting Agenda

I. CALL MEETING TO ORDER

II. PLEDGE OF ALLEGIANCE TO THE FLAG

III. ADOPTION OF ORDERS OF THE DAY

IV. CITIZEN INPUT

V. ACTION AGENDA

A. Review of Division of Administrative Hearings Recommended Order and Approval of Entry of Final Order in School Board vs. Joseph Nathaniel Employment Termination DOAH Case No. 16-0272TTS – Chairman Searcy

The School Board will discuss the Recommended Order and enter a Final Order in the case of Indian River County School Board vs. Joseph Nathaniel. A copy of the Recommended Order by Administrative Law Judge John G. Van Laningham is attached.

VI. ADJOURNMENT

Any invocation that may be offered before the official start of the School Board business meeting is and shall be the voluntary offering of a private citizen to and for the benefit of the School Board pursuant to Resolution #2015-08. The views and beliefs expressed by the Invocation Speaker have not been previously reviewed or approved by the School Board and do not necessarily represent their individual religious beliefs, nor are the views or beliefs expressed intended to express allegiance to or preference for any particular religion, denomination, faith, creed, or belief by the School Board. No person in attendance at this meeting is or shall be required to participate in any invocation and such decision whether or not to participate will have no impact on his or her right to actively participate in the public meeting.

Anyone who needs a special accommodation may contact the School District's American Disabilities Act Coordinator at 564-3175 (TTY 564-2792) at least 48-hours in advance of the meeting. NOTE: Changes and amendments to the agenda can occur prior to the meeting. All business meetings will be held in the Teacher Education Center (TEC) located in the J.A. Thompson Administrative Center at 6500 – 57th Street, Vero Beach, FL 32967, unless otherwise specified. Meetings may broadcast live on Comcast/Xfinity Ch. 28, AT&T Uverse Ch. 99, and the School District's website stream; and may be replayed on Tuesdays and Thursdays at the time of the original meeting. For a schedule, please visit the District's website at www.indianriverschools.org/iretv. The agenda can be accessed by Internet at <http://www.indianriverschools.org>.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

INDIAN RIVER COUNTY SCHOOL
BOARD,

Petitioner,

Case No. 16-0272TTS

vs.

JOSEPH NATHANIEL,

Respondent.

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RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing in Vero Beach, Florida, on October 17 through 19, 2016.

APPEARANCES

For Petitioner: Jason L. Odom, Esquire
Gould Cooksey Fennell, P.A.
979 Beachland Boulevard
Vero Beach, Florida 32963

For Respondent: Mark S. Wilensky, Esquire
Dubiner and Wilensky, LLC
1200 Corporate Center Way, Suite 200
Wellington, Florida 33414-8594

STATEMENT OF THE ISSUES

The issues in this case are whether, as the district school board alleges, Respondent got into an altercation with a student which allegedly involved taunting, pushing, and yelling; and, if so, whether such contact or conduct constitutes just cause for

Petitioner's dismissing Respondent from his position as a school teacher.

PRELIMINARY STATEMENT

At its regular meeting on January 12, 2016, Petitioner Indian River County School Board voted to approve the superintendent's recommendation that Respondent Joseph Nathaniel be terminated from his employment as a teacher. The reasons for this action had been spelled out in a Charging Letter dated December 18, 2015. In that charging document, Mr. Nathaniel is accused of having engaged in a verbal and physical altercation with a student on November 17, 2015.

Mr. Nathaniel timely requested a formal administrative hearing to contest Petitioner's intended action. Shortly thereafter, Petitioner forwarded the matter to the Division of Administrative Hearings, which opened a file on January 15, 2016.

At the final hearing, which, after several continuances, took place on October 17 through 19, 2016, Petitioner called the following witnesses: Cathy Bradshaw, J.S., Deputy Eric Sesack, S.H., Diana Moskowitz, Jessica Rojas, Isaiah Speights, Dr. Mark Rendell, and Respondent. Petitioner's Exhibits 7 through 15, 19, and 25 were admitted into evidence, and official recognition was taken of Petitioner's Exhibit 5.

Respondent testified on his own behalf and presented the following additional witnesses: James Lakendrick Willis, F.M., D.W., H.D., Christopher Jefferson, and Tyrone Perry. Respondent's Exhibits 1, 2, 6, 7, 9, 18, and 22 were received as well.

The final hearing transcript was filed on November 4, 2016. Each party timely filed a Proposed Recommended Order on December 5, 2016, the deadline established at the conclusion of the hearing.

Unless otherwise indicated, citations to the official statute law of the State of Florida refer to Florida Statutes 2016, except that all references to statutes or rules defining disciplinable offenses or prescribing penalties for committing such offenses are to the versions that were in effect at the time of the alleged wrongful acts.

FINDINGS OF FACT

1. The Indian River County School Board ("School Board" or "District"), Petitioner in this case, is the constitutional entity authorized to operate, control, and supervise the Indian River County Public School System.

2. At all relevant times and as of the final hearing, the District employed Respondent Joseph Nathaniel ("Nathaniel" or "Coach Joe") as a teacher. Nathaniel was assigned to work at Sebastian River High School in Sebastian, Florida, for the

2015-16 school year. In previous years, though not that one, Nathaniel had been an assistant football coach, which is why Nathaniel is commonly known as Coach Joe. As an employee of the District for about 13 years before the events giving rise to this proceeding, Nathaniel had never been found to have committed a disciplinable offense.

3. The events in dispute occurred on November 17, 2015. That morning, Nathaniel was on duty during the school's first lunch period (between, roughly, 11:00 a.m. and noon) as a hallway monitor, a task to which he and other suitable teachers were regularly assigned. Coach Joe was responsible for keeping those students not on their lunch break in class and the ones who were supposed to be at lunch out of trouble.

4. When this period began, a man named Isaiah Speights, 18, was in class, as scheduled. His teacher, Cathy Bradshaw, had started working at Sebastian River High School only a few weeks earlier. At around 11:15 a.m., Isaiah asked Ms. Bradshaw for a hall pass so that he could use the bathroom, and she gave him permission to leave the classroom, which he did.

5. Elsewhere, around the same time, Coach Joe was about to encounter a group of students loitering in the hallway. When he did a few minutes later, he posed to each student questions such as "Who are you?" and "Where are you supposed to be?" before sending them off to their respective classes. As this was

taking place, Isaiah happened to be returning to his class on the hall pass Ms. Bradshaw had given him. He saw Nathaniel and the students and paused momentarily to survey the scene.

6. Instead of walking on, Isaiah mimicked Nathaniel, who had not noticed Isaiah behind him, calling out: "Who the fuck are you, and where are you supposed to be?" thereby managing to be at once insolent, insubordinate, and foul-mouthed.

(Incredibly, if sadly, the evidence suggests that students at Sebastian River High School commonly address teachers using similarly vulgar language—evidently because such verbal defiance is either not punished, or is not punished severely enough to stop it from being commonplace.)

7. Coach Joe wheeled around to see who had mocked him, and he observed Isaiah—who had grabbed hold of an overhead door frame with one hand—dangling by an arm, swinging and twisting his body in a display that was the very picture of impertinence. Showing considerable self-restraint, Coach Joe asked Isaiah where he was supposed to be and, after seeing Isaiah's pass, told him to get back to class. Complying, Isaiah swung around and walked down the hall, away from Nathaniel, turning left to enter Ms. Bradshaw's classroom.

8. Coach Joe's transactions with Isaiah and the other students having been completed, he started walking to his own classroom, which was located further down the same hall as

Ms. Bradshaw's. This meant that, by coincidence, Coach Joe "followed" Isaiah—not in pursuit, but in the sense that he took the same route as the student had approximately ten seconds earlier. Coach Joe noticed that Isaiah had entered Ms. Bradshaw's room.

9. Nathaniel knew Ms. Bradshaw was new to the school, and he decided to inform her that students should not routinely be allowed out of class on passes during lunch periods, when other students are on break. Nathaniel stuck his head in Ms. Bradshaw's room, or perhaps stood just inside the doorway (accounts differ), as he intended to make only a brief stop, and gave her a friendly reminder not to let students out of class.^{1/} Nathaniel's comment was directed to Ms. Bradshaw—he was not addressing (much less reprimanding) Isaiah.

10. When Coach Joe arrived, Isaiah had been standing at the front of the class, joking around with Ms. Bradshaw. As soon as Nathaniel spoke to Ms. Bradshaw, Isaiah, with a smirk on his face, interjected, "Why the fuck are you behind me, nigger?"—and laughed. This astonishingly disrespectful and provocative challenge to Coach Joe's authority took place in front of the entire classroom of approximately two dozen students.^{2/}

11. Isaiah's taunting predictably drew Coach Joe all the way into the classroom as he reasonably felt the need

immediately to assert his control over the situation and the student. (Had Coach Joe simply walked away at this point, the incident probably would not have "escalated"—"escalation" being, in the School Board's view, something to be avoided at practically all costs—but then, such a submissive retreat in the face of the student's overt dominance display would have sent a clear message to everyone in the classroom that Isaiah possessed the power to make Coach Joe surrender.) Approaching Isaiah, Nathaniel instructed the student, firmly but not angrily, to give Ms. Bradshaw the hall pass and take his seat. Isaiah refused to give back the pass and sit down—this is undisputed. Had Isaiah simply given back the pass and sat down, the situation would have ended. Instead, Isaiah gave Nathaniel back talk and stood his ground, causing the situation to escalate.

12. What happened next is hotly disputed, and there is conflicting evidence in the record relating to the ensuing few, crucial minutes. It is worth noting, however, that, to this point, Isaiah had been the only aggressor, while Nathaniel, the target of Isaiah's unprovoked verbal attacks, had done nothing to or affecting Isaiah that could reasonably be viewed as a provocation; if anything, Nathaniel's responses, so far, had been measured and lenient.

13. Around this time, Isaiah began to clench his fists and posture in the manner of the cartoon character, the Hulk. Nathaniel interpreted Isaiah's pose as a form of agonistic behavior and felt that Isaiah was attempting to build momentum for a physical attack of some sort. In light of the events leading up to this moment, Nathaniel's interpretation was reasonable. Nathaniel asked Isaiah if he (Isaiah) was going to do something with his hands.

14. By now, the confrontation between Isaiah and Coach Joe had attracted the attention of the students. One of them, S.H., began recording the incident using her cell phone's movie camera. She filmed about 39 seconds and stopped. After an indeterminate period, she resumed filming for about 12 seconds, and then stopped again. The District relies heavily upon the two video clips that this student made, especially the longer, first clip.

The Cell Phone Movies

15. Given the prominence of filmic evidence in this case, the undersigned will interrupt the narrative to discuss, briefly, his view of the role of a fact-finder in evaluating proof of this nature.

16. It is tempting to assume that filmic evidence is, as the District believes, "objective and not biased" (Petitioner's Proposed Recommended Order at 4); that it conveys the same,

obvious meaning to every viewer and, being thus unambiguous, requires no interpretation; and that, rather than comprising a series of images that resemble reality, the moving pictures are reality, making every viewer an eyewitness to the scene. The undersigned rejects all of these premises.

17. Aside from the intentional bias that might be introduced through editing or doctoring a film, of which there is no evidence here, video has inherent limitations that undermine its supposed objectivity. The most obvious is that all films have a point of view. The camera records from one angle to the exclusion of all others, tricking the viewer into thinking that the visual perspective of the movie is the only one that matters and constitutes the indisputable truth.

18. In the instant case, the film was shot from the back of the classroom, giving the viewer the point of view of a student somewhat removed from the action. For the most part, Coach Joe is facing the camera, which means that the viewer gets a relatively good look at his face and movements, and can hear most of what he says. Isaiah, in contrast, has his back to the camera; the viewer cannot clearly see everything he does, and most of what he says is inaudible. The effect is to amplify Coach Joe's actions while minimizing Isaiah's.

19. Imagine that, instead of providing a back-row seat perspective, the film had been shot from the front of the

classroom, behind Coach Joe, so that Isaiah would be facing the camera, giving the viewer a point of view more closely resembling that of Nathaniel. This perspective would bring Isaiah's actions clearly into view and his words into the viewer's ears. The viewer would also be able to see—as Nathaniel himself could have—the other students, sitting in the background like an audience, watching to see who would prevail. Isaiah, not Coach Joe, would be the "star" of this hypothetical film, which, no doubt, would tell a different story from the one we have.

20. Another limitation of the filmic evidence in this case is that it is not complete. The video begins *in medias res*, with Coach Joe reacting to Isaiah's agonistic behavior, which has taken place beforehand, off camera. Of course, the video tempts the viewer into believing that anything not shown in the film must not have happened—and that is a form of bias. Further, when the movie starts, Coach Joe already seems a little upset, his voice slightly raised as he says to the student (whose back is to the viewer): "You gonna do something with your hands? Are you about to do something with your hands?" The viewer really cannot see Isaiah's hands, and to the extent glimpses of them come into sight, no clearly threatening gestures are visible. The effect, right off the bat, is to represent Coach Joe as a man who, being unaccountably agitated,

is berating a student for no apparent reason. This, too, is bias.

21. Films tell stories. In this sense, video evidence is assertive in nature; it "speaks" to the viewer and—at least metaphorically—"testifies" to the fact-finder. The easy mistake is to assume that the narrative of the video is unambiguous. It is not. Viewers project onto the images their own interpretations of the meaning and significance of the conduct depicted.

22. Some ambiguity in the film might arise from mechanical, technical, or production flaws. Here, S.H. shot her movies from a distance, on a cell phone, so that the orientation of the screen is a narrow, vertical window; consequently, while straining to see what is going on in the film, one gets the feeling of spying through a rectangular keyhole. The images are small, moreover, and magnification only reduces the resolution, degrading the quality of the picture. Because S.H. was so far back, students periodically move in front of the camera, blocking our view of Coach Joe and Isaiah at important moments. The sound quality is so-so; we can hear Coach Joe fairly well, but not Isaiah. All of these shortcomings add up to a general lack of clarity, creating uncertainty about what is being shown.

23. Aside from the foregoing deficiencies, the narrative of the film is not clear and unambiguous; it is subject to

different interpretations. Some viewers of the main video in this case, for example, perceive in Isaiah's actions an attempt on his part to retreat and deescalate the situation. The undersigned, in contrast, having watched the tape dozens of times, sees nothing of the sort. As the undersigned construes the film, Isaiah appears never to retreat, except tactically and then only as necessary; indeed, he seems always to be on the offensive, constantly looking for advantage in the scuffle that follows. The narrative of Isaiah the practically innocent bystander trying his best to defuse Coach Joe's inexplicable rage strikes the undersigned as laughable—but is one, he supposes, that a reasonable viewer might see in the video if that is what he wants to believe took place.

24. Finally, there is the temptation to believe that the video is the event, rather than a representation of the event. This temptation tricks the viewer into thinking that, by watching the video, he has enjoyed unmediated access to the disputed event, becoming an eyewitness to the truth. But this is clearly not the case. The video is merely a medium of delivering content; it mediates some, but not nearly all, of the relevant data from the historical event at issue, in a manner that informs (and arguably entertains) rather than *re-creates*, and hence is neither infallible, unimpeachable, nor inerrant.

25. In sum, video evidence has strengths and weaknesses that are different from those of, say, an eyewitness. Filmic evidence is potentially very strong evidence, to be sure, but moving pictures should not be considered inherently superior to other types of evidences, and video proof should not be accorded great deference or automatic credibility on the ground that film is special. Video evidence is especially useful in accurately conveying what someone said (where the audio is clear) and for establishing precise time frames. It might assist us in visualizing what occurred. But filmic proof is not helpful, or is at best of limited value, when it comes to making assertions about the significance, meaning, and story of the images captured therein; these require the application of human intelligence based upon a careful consideration of all the available evidence. Ultimately, the fact-finder must critically review video evidence, keeping in mind the limitations of this medium, and determine its relative persuasive value in the context of the entire record. That is what the undersigned has done in this case.

Back to the Narrative

26. "You gonna do something with your hands? . . . Are you about to do something with your hands? . . . I suggest you give the lady her pass, and go sit your behind down." These are first three sentences that Coach Joe utters in the video. It

takes him about nine seconds to make these statements—nearly one-quarter of the main video. During this period, Isaiah is talking, but his words cannot clearly be heard. One thing is obvious and undisputed, however: Isaiah does not comply.

27. The importance of this point must be emphasized. Up to now, the *only* directives that Coach Joe has given Isaiah are to return the pass and take his seat. Despite everything that has already happened, beginning in the hallway, Coach Joe has not reprimanded, scolded, or punished Isaiah. He has not ordered him to do anything unreasonable or unjustifiable, unlawful or demeaning. He has directed Isaiah to sit down. Isaiah has no reasonable grounds for disobeying this most basic of directives from a teacher to a student—none whatsoever.

28. And yet Isaiah disobeyed. Instead of complying with the unambiguous command to sit down—a reasonable directive that Coach Joe clearly had the authority to give—instead of backing gracefully out of an increasingly tense situation that *he himself had initiated without any reasonable cause*; instead of simply taking his seat and submitting to the teacher's reasonable exercise of legitimate authority, Isaiah upped the ante: he mouthed off. "I'm telling you this right now . . . ," Isaiah started to say, as if he had the right to tell Nathaniel what would or should be done.

29. Naturally, Nathaniel could not permit a student to tell him what to do, particularly in front of a roomful of students. He promptly set Isaiah straight: "You don't tell me nothing." Isaiah then jabbed Coach Joe in the stomach, which startled the teacher. "What?!" said Coach Joe, as his arms raised slightly in surprise before swiftly shooting forward to shove Isaiah back and out of striking range.

30. Again, it is necessary to pause for elaboration. The School Board attempts to downplay the crucial fact that Isaiah escalated the situation, rapidly and dramatically, when he poked Coach Joe in the stomach, committing the first act of physical aggression, which constituted a battery. To be very clear, this was *not* an act of self-defense on Isaiah's part; no one, not even Isaiah, makes that claim. Before Isaiah struck him, Nathaniel had not touched Isaiah, or even threatened to touch the student; he had merely told him to sit down, which Isaiah unreasonably refused to do. The School Board refers to Isaiah's battery upon Coach Joe as incidental, *de minimis* contact, a "slight touch," but the undersigned rejects this characterization. Isaiah deliberately poked his fist into Coach Joe, leaning in to make the blow and pushing off from the teacher's stomach. The force of this blow—whether it was powerful enough to inflict pain or just annoyed Coach Joe—is

irrelevant. The student crossed a bright, red line when he intentionally struck the teacher for no reason.

31. Upon being pushed, Isaiah stumbled momentarily, involuntarily taking two or three steps backwards before regaining his balance and purposefully setting his feet. As this happened, Coach Joe said, "Don't use your hands on me, little boy!" Contrary to the notion that Isaiah retreated (which is false), Isaiah in fact squared off and then moved slightly toward Coach Joe. When Isaiah came forward, Nathaniel yelled at him: "Don't you ever put your hands on me!" As if to punctuate the point, Coach Joe pushed Isaiah's forehead with his right forefinger while articulating the word "ever," causing the student's head and shoulders to rock back, either from the force of the blow or because Isaiah simultaneously bent backwards in an evasive maneuver or from flinching—probably a combination of these.

32. Still, Isaiah failed to heed Coach Joe's warning not to use his hands. He lunged at Nathaniel, striking the teacher around the shoulders and knocking him back. Coach Joe straightened up and pointed at Isaiah with his left index finger, shouting, "Do you understand that?" Obviously Isaiah did not understand that he was not to use his hands on the teacher, for he began slapping at Coach Joe's finger, pushing his arm down.

33. Coach Joe, clearly angry now, yelled at Isaiah: "Don't you ever put your hands on me. Don't you ever—EVER—put your hands on me!" Isaiah screamed back, "Get the fuck off me man!" Ms. Bradshaw interjected at this point: "Sit down, Isaiah. Sit down." That, of course, would have been the sensible thing for Isaiah to do. Instead, removing an obstacle between himself and Coach Joe, Isaiah picked up a desk and hurled it, end-over-end, behind his body, towards his classmates, in reckless disregard of the harm this heavy object might cause if it struck someone, which fortunately did not happen, but easily could have.

34. Once the desk was out of the way, Isaiah charged Coach Joe, and the two began to tussle. Coach Joe, who stands roughly six feet, four inches tall, has a height advantage of about four inches on Isaiah. At approximately 350 pounds, Nathaniel outweighed the younger man, too, by nearly 200 pounds, more or less. But Isaiah, trim and athletically built, had the advantages of speed and agility. Coach Joe could use his size advantage to subdue Isaiah *if* he could get his arms around the student. Nathaniel's concern—a reasonable one—was that Isaiah would scramble under him and knock him over; if Isaiah managed to get Nathaniel on his back, Nathaniel would lose most of the advantages his size gave him.

35. At first, Isaiah kept free of Nathaniel's grasp. When the teacher grabbed Isaiah's shirt, Isaiah slipped out of the garment. Eventually, however, the two wound up in a boxers' clinch. The testimony is in conflict as to what transpired while the two men grappled, and the video evidence is inconclusive, the camera being too often either turned away from the action or prevented from taking a good shot by students getting in the way. Nathaniel testified that Isaiah had gotten a piece of his shirt in one hand and was choking him with it, while using his other hand to throw short punches at Nathaniel's jaw. Isaiah denied doing these things. Near the end of the main video, however, Coach Joe can clearly be heard saying several times: "Swing! Swing! Swing!"

36. The School Board argues that Coach Joe was taunting Isaiah by urging him to take a swinging punch. Nathaniel testified that he wanted Isaiah to swing so that Isaiah would release the teacher's shirt, which was tugging against his throat and choking him—an explanation the School Board calls "absurd." But the undersigned finds Coach Joe's testimony to be credible. What makes little sense is the idea that Coach Joe was taunting Isaiah, for at that moment, Coach Joe did not yet have the upper hand, and he certainly had no need to encourage Isaiah to react violently, as Isaiah had already done so without provocation or reasonable cause.

37. The motivation behind Coach Joe's egging Isaiah on to take a swing most likely was, as Nathaniel testified, to goad Isaiah into releasing his grip on Nathaniel's shirt. Whether this tactic worked is unclear, but Coach Joe eventually got his arms around Isaiah and wrapped him up in a bear hug so that the student could not break free. This enabled Nathaniel to wrestle Isaiah to the ground and pin him on his back.

38. While the struggle was under way, another teacher, Chris Jefferson, had entered the room for reasons unrelated to Isaiah or Coach Joe. Mr. Jefferson saw that Isaiah needed to calm down before Nathaniel could release him because the student was twisting, squirming, and shouting uncontrollably, imploring Mr. Jefferson (or somebody) to "get this big motherfucker off of me!" Mr. Jefferson urged Isaiah to relax. When Isaiah finally stopped resisting, Mr. Jefferson said, "Coach Joe, let him up." Nathaniel let go of Isaiah and stood up.

39. Isaiah remained in a rage. He flipped over another desk and tried to use the classroom telephone, but Nathaniel prevented him from making a call. Isaiah screamed at Ms. Bradshaw to call both his mom and an assistant principal named Dr. Keaton. As he did so, the school resource officer, Deputy Eric Sesack, and the school security officer, David Lunsford, entered the room.

40. Deputy Sesack directed Isaiah to leave the classroom and go to the office. Isaiah stormed out, unaccompanied; that is, he was allowed to take off on his own. Deputy Sesack, Mr. Lunsford, Coach Joe, and Mr. Jefferson followed Isaiah—but at some distance.

41. That Isaiah was permitted to stalk the hallways without escort is troubling, given that he had lost control of himself and was a danger to others. In the words of teacher Kendrick Willis, who was in the hallway and saw Isaiah, the student was "yelling and screaming" and "going crazy." The fact of Isaiah's meltdown cannot seriously be disputed, considering what he did next, which was, first, punch a metal locker and, second, kick a water fountain with enough force to knock it off the wall. Although this criminal act was committed in plain view of a law enforcement officer, Deputy Sesack did not arrest Isaiah because he felt that attempting to subdue the student at that point would be too risky.

42. Moments later, Isaiah, agitated and shirtless, barged into the front office, where he demanded that he be allowed to use the telephone at the counter. The secretary on duty gave Isaiah "permission" to make a call, but it would probably be more accurate to say that she acceded to his demand. In any event, the secretary obviously had no idea that Isaiah had just recently committed a battery upon a teacher and vandalized

school property, so her permission—if it can be called that—was not predicated on knowledge of all the material facts.

43. Coach Joe arrived in the office about 24 seconds behind Isaiah. Seeing Isaiah about to use the phone, Nathaniel abruptly revoked the privilege by grabbing the handset from Isaiah. The School Board contends that this action amounted to an unprovoked "escalation." The undersigned does not see it that way. The evidence shows, for one, that Coach Joe and others (Messrs. Jefferson and Willis) worried that Isaiah might use the phone to summon someone to the school to cause trouble. Whether or not this concern was well-founded the undersigned cannot determine, but it is noteworthy that, in fact, they all shared it.

44. More important, Isaiah should not have been allowed to freely use the telephone at that moment, as though he were in the middle of an ordinary day, just minding his own business, innocent of any misconduct. Rather, Isaiah should have been treated as a suspect in at least two crimes (battery and criminal mischief) for which there was probable cause to believe he had recently committed during school hours, on school property. Based on the evidence of record, the undersigned determines that Coach Joe was one of the only adults present who seemed to understand that Isaiah should be detained, questioned, and perhaps arrested—not allowed to go on his merry way.

Taking the telephone away from Isaiah was reasonable under the circumstances.

45. As Coach Joe sensibly forbade Isaiah from using the telephone, Deputy Sesack arrived on the scene. The police officer removed Isaiah from the office and, once outside, gave the student a cell phone to use. Isaiah placed a call to a family member and soon thereafter left campus in a friend's car, since no one present saw fit to take him into custody. Later, Isaiah would be suspended for kicking the water fountain, but because he withdrew from Sebastian River High School, this suspension was never served.

46. The District based its preliminary decision to terminate Nathaniel's employment on the grounds, at bottom, that he had unreasonably made physical contact with, taunted, and threatened Isaiah, all of which, together or individually, constituted a failure to protect the student from personal injury or conditions harmful to learning; an intentional infliction of unnecessary embarrassment or disparagement; and a disruption of the learning environment. The undersigned rejects these premises and determines as a matter of ultimate fact, based on the evidence adduced at hearing, that it was Isaiah who disrupted the learning environment; Isaiah who intentionally disparaged (and attacked) Coach Joe; and Isaiah who created

conditions harmful to learning. Coach Joe's duty was to make reasonable efforts to protect students and himself *from Isaiah*.

47. Coach Joe discharged his duty. Isaiah was way out of line, and somebody in authority needed to put the student in his place. It fell to Nathaniel to do so. Had Coach Joe been "nice" to Isaiah and let him have his way, as the District seems to believe would have been preferable, Isaiah's appalling behavior would have received positive reinforcement, making it more likely that Isaiah would act that way again. Other students would have been encouraged to emulate Isaiah's conduct. The learning environment would have suffered. Fortunately for Sebastian River High School, Coach Joe had the fortitude to stand tall, roll up his sleeves, and do the tough job of keeping a foul-mouthed, defiant, and violently aggressive student from causing further damage. For this he should be given a pat on the back, not a pink slip.

CONCLUSIONS OF LAW

48. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to sections 1012.33(6)(a)2., 120.569, and 120.57(1), Florida Statutes.

49. A district school board employee against whom a disciplinary proceeding has been initiated must be given written notice of the specific charges prior to the hearing. Although

the allegations "need not be set forth with the technical nicety or formal exactness required of pleadings in court," Jacker v. School Board of Dade County, 426 So. 2d 1149, 1150 (Fla. 3d DCA 1983), the charging document should "specify the rule the agency alleges has been violated and the *conduct* which occasioned the violation of the rule," id. at 1151 (Jorgenson, J. concurring).

50. Once the school board, in its notice of specific charges, has delineated the offenses alleged to justify suspension or termination, those are the only grounds upon which such action may be taken. See Luskin v. Ag. for Health Care Admin., 731 So. 2d 67, 69 (Fla. 4th DCA 1999); Cottrill v. Dep't of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Klein v. Dep't of Bus. & Prof'l Reg., 625 So. 2d 1237, 1238-39 (Fla. 2d DCA 1993); Delk v. Dep't of Prof'l Reg., 595 So. 2d 966, 967 (Fla. 5th DCA 1992); Willner v. Dep't of Prof'l Reg., Bd. of Med., 563 So. 2d 805, 806 (Fla. 1st DCA 1990), rev. denied, 576 So. 2d 295 (Fla. 1991).

51. In an administrative proceeding to suspend or dismiss a member of the instructional staff, the school board bears the burden of proving, by a preponderance of the evidence, each element of the charged offense(s). See, e.g., McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996).

52. The instructional staff member's guilt or innocence is a question of ultimate fact to be decided in the context of each

alleged violation. McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

53. In its Charging Letter, the School Board asserted several theories for terminating Nathaniel's employment, each of which depended on factual allegations that the School Board failed to prove. In a nutshell, the School Board blamed Coach Joe for Isaiah's inexcusable and intolerable behavior, asserting that the "situation could have been avoided by you [that is, Nathaniel] if you had not 1) taunted the student with the comments 'are you going to do something with your hands', 2) continued to move toward the student in an aggressive manner forcing him to step backwards, and 3) physically push[ed] and yell[ed] at the student." The School Board further alleged that Nathaniel had "escalated the situation, both verbally and physically" and had acted in a manner that was "harmful to the student's physical and mental health," disparaged the student, and caused him unnecessary embarrassment.

54. Contrary to these allegations, although Nathaniel had no burden to establish his innocence, the facts as set forth above demonstrate that Coach Joe *complied with* the Principles of Professional Conduct for the Education Profession in Florida when he reasonably subdued Isaiah, who was defiant, disruptive, disorderly, and physically aggressive, potentially endangering

others and causing the kind of commotion that interferes with classroom instruction and is harmful to learning. See Fla. Admin. Code R. 6A-10.081(3) (a) (The teacher "[s]hall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety."); see also Packer v. Orange Cnty. Sch. Bd., 881 So. 2d 1204, 1208 (Fla. 5th DCA 2004) (school board must adopt ALJ's finding that there was no improper touching when teacher applied reasonable force against a disruptive student for the lawful purposes of maintaining order and protecting others).

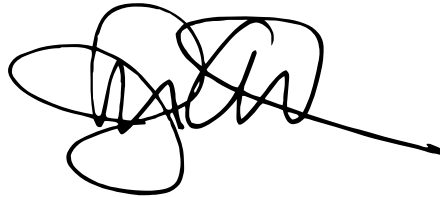
55. To be very clear, the entire situation could have been avoided, contrary to the School Board's unsubstantiated allegations, if only *Isaiah* had not impudently and gratuitously mocked Coach Joe in the hallway; had not called Coach Joe a nigger, without the slightest provocation, in Ms. Bradshaw's classroom; had not obstinately refused, without *any* grounds, to obey the simple command to just take his seat; and had not committed a battery upon a teacher. Someone escalated the situation, all right. That someone was *Isaiah*.

56. Thus, all of the charges against Nathaniel necessarily fail, as a matter of fact. Due to this dispositive failure of proof, it is not necessary to make additional conclusions of law.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Indian River County School Board enter a final order exonerating Nathaniel of all charges brought against him in this proceeding.

DONE AND ENTERED this 31st day of January, 2017, in Tallahassee, Leon County, Florida.



JOHN G. VAN LANINGHAM
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of January, 2017.

ENDNOTES

^{1/} Some witnesses recall Coach Joe saying, "Don't let him [meaning Isaiah] out of class." In this version, Nathaniel's focus is on Isaiah, instead of the general policy of keeping kids in class during lunch periods. The distinction makes no difference.

^{2/} As both Coach Joe and Isaiah are African American, Isaiah's statement seems neither to have been intended nor understood as a racial slur; the name-calling was meant, no doubt, to belittle and demean Coach Joe as a teacher, authority figure, and man, but probably not as a *black* man. Still, the extreme offensiveness of Isaiah's contemptuous comment is self-evident, even if it was not likely racist in nature.

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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.

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