Agenda

August 15, 2025
School Board of Manatee County
School Board Special Meeting - 9:00 AM
Walter Miller School Support Center
Board Room

Times Indicated are Approximate

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. APPROVAL OF THE AGENDA

4. NEW BUSINESS

1. Final Hearing Concerning Exceptions to DOAH Recommended Order in the Matter of Manatee County School Board v. Verlin Wilhoit, DOAH Case No. 25-0360.

5. ADJOURNMENT

AGENDA ITEM NO. 4.1

School Board of Manatee County
August 15, 2025 - School Board Special Meeting
Action Item

Title
Final Hearing Concerning Exceptions to DOAH Recommended Order in the Matter of Manatee County School Board v. Verlin Wilhoit, DOAH Case No. 25-0360.

Executive Summary
Verlin Wilhoit is employed by the School Board of Manatee County. Based on misconduct, the Superintendent recommended the termination of Mr. Wilhoit. An Administrative Complaint for Employee termination was prepared and served upon Mr. Wilhoit on December 20, 2024. Mr. Wilhoit requested an Administrative Hearing disputing the acts of misconduct.

A hearing on the merits was convened and entered before an administrative law judge on July 7, 2025. On July 21, 2025, the Respondent filed an Exception to the Recommended Order.

The Board must consider the ALJ's Recommended Order, the Respondent's Exceptions to the Recommended Order, and enter a Final Order. The Board may adopt the Exceptions to the Recommended Order as the final order of the board, or may reach other legal conclusions. The Board shall give both parties an opportunity to address the Exceptions and each party's respective position. The Board will then deliberate and vote on a Final Order.

This item aligns with the District's Strategic Plan Goal(s) which state(s):

Ready To Grow | Goal 6
Maintain our robust security readiness and safety system across the District

Recommendation
Superintendent recommends the board hearing all exceptions to the proposed recommended order find the original recommendation for termination in the matter of Manatee County School Board v. Verlin Wilhoit, DOAH Case No. 25-0360, as an appropriate final order of the Board, and enter a Final Order modifying the penalty to suspension without pay for an appropriate time period and other sanctions less than termination.

Financial Impact
The financial impact includes legal fees for District's outside counsel and are included in the general fund budget.

Contact
Submitting Department: Legal
Initiated By: Kimberly Anderson

Attachments:
Recommended Order(64145984.1)
Wilhoit Exceptions

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE COUNTY SCHOOL BOARD,

Petitioner,

Case No. 25-0360TTS

vs.

VERLIN WILHOIT,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held in Bradenton, Florida, on May 5, 2025, before Brandice D. Dickson, Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Thomas Martin Gonzalez, Esquire
GrayRobinson, P.A.
101 East Kennedy Boulevard, Suite 4000
Tampa, Florida 33602

For Respondent: Verlin Bruce Wilhoit, Ph.D., pro se
2405 South Radcliffe Place
Bradenton, Florida 34207

STATEMENT OF THE ISSUE

The issue to be decided is whether Petitioner has just cause to terminate the employment of Respondent.

PRELIMINARY STATEMENT

On December 18, 2024, the Superintendent of Petitioner, Manatee County School Board (MCSB), gave notice to Respondent of his intent to terminate

Respondent's employment based on Petitioner's Statement of Charges of even date. On January 10, 2025, Respondent requested a formal administrative hearing and Petitioner referred the matter to DOAH on January 23, 2025, for assignment of an ALJ.

The undersigned received the case on January 27, 2025. The parties requested the final hearing be conducted at the MCSB Administrative Building in Bradenton, Florida, on March 26, 2025, which request was granted. Respondent's Motion to Dismiss, filed February 18, 2025, was granted, without prejudice, and Petitioner filed its Amended Statement of Charges (Amended Statement) on March 7, 2025. Respondent's Unopposed Motion to Continue the Final Hearing, filed March 13, 2025, was granted and the final hearing was rescheduled for May 5, 2025, when the hearing took place.

Respondent's motions in limine to preclude mention of his prior disciplinary history with Petitioner and/or of insubordination were denied. Petitioner's motion to quash Respondent's subpoena ad testificandum compelling Petitioner's Superintendent's testimony at the final hearing was denied without prejudice on April 28, 2025. On May 2, 2025, Petitioner renewed its motion, which was granted for the reasons stated on the record during the final hearing.

Petitioner presented the testimony of Troy Nelson, Lisa Lyon, Zackery Solly, and Laurie Breslin and Petitioner's Exhibits 1 through 33 were received into evidence. Respondent testified on his own behalf and presented the testimony of Joseph Roberts, Roy Shaw, James Hird, and Mitchell Teitelbaum. Respondent's Exhibits 1 through 11 were received into evidence.

A transcript of the final hearing was ordered and the parties agreed to submit their proposed recommended orders (PROs) 20 days after the Transcript was filed.[1] The one-volume Transcript was filed with DOAH on May 21, 2025. Both parties timely filed PROs, which have been considered in this Recommended Order.

Unless stated otherwise, citations to statutes and rules are to the versions in effect at the time of the acts alleged to warrant discipline.

FINDINGS OF FACT

1. Respondent was initially employed by Petitioner in 1995, was an instructional teacher at Manatee County High School, was reassigned to the exceptional student education (ESE) classroom unit, and left Petitioner's employ in the middle of the 1997-1998 school year. Respondent returned to work with Petitioner at Palmetto High School during the 1999-2000 school year, left once more to pursue a career in broadcasting, returned to Petitioner's employ in 2002, and has been an employee of MCSB since that time.

2. During the 2024-2025 school year, Respondent was a specialist in Petitioner's Safe and Drug-Free School Program within the Dropout Prevention and Alternate Education Department. He has served in that program since the 2002-2003 school year.

3. Respondent is an educational support employee as opposed to being an instructional employee or an administrator. No collective bargaining agreement was shown to govern Respondent's employment with Petitioner.

[1] By agreeing to a deadline for post-hearing submissions of more than ten days after the filing of the transcript, the parties waived the 30-day timeframe for issuance of the Recommended Order. *See* Fla. Admin. Code R. 28-106.216.

Prior Discipline for Misconduct

4. In 2000, the principal of Palmetto High School held a conference with Respondent to discuss areas of concern, including sending students home without administrative approval, being confrontational with students, controlling students in his class, and making unprofessional comments. Respondent was advised during that conference that he needed to correct the areas of concern discussed. The conference constituted a verbal reprimand.

5. In 2015, Respondent was given a letter of reprimand from Petitioner's Director of the ESE unit for failure to follow procedures. Respondent submitted a rebuttal to the discipline, but did not grieve it or request an investigation with findings.

6. In June 2018, Respondent was investigated by Petitioner for a book he had written in 2007 entitled *The Man Code*. The investigation found he wrote the book on personal time and was entitled to freedom of expression, but "many of the opinions in the book are also components of character education" which raised concern with Petitioner about crossover of those opinions into his professional life. He was found in violation of MCSB standards of ethical conduct and Florida Administrative Code Rule 6A-10.081, "Principles of Professional Conduct for the Education Profession in Florida." Respondent received a written reprimand, among other disciplinary measures. Respondent submitted a rebuttal to the discipline, but did not grieve it or request an investigation with findings.

7. In October 2018, a complaint was made against Respondent for "angrily yelling and threatening a fellow employee." Following an investigation into the incident, Petitioner disciplined Respondent with a letter of reprimand, a two-day suspension, and referral to an anger management course. Respondent submitted a rebuttal to the discipline, but did not grieve it or request an investigation with findings.

8. In 2020, Respondent was again reprimanded for violation of rule 6A-10.081 after he was observed having a heated disagreement with a colleague.

Additionally, he received a five-day suspension without pay, and was placed on an Performance Improvement Plan. At that time, he was advised that any "further low performance will be viewed as an unwillingness to meet the required standards of work and will … result in a recommendation for immediate termination of your employment." Respondent submitted a rebuttal to the discipline, but did not grieve it or request an investigation with findings. In his rebuttal, he asserted that in his prior disciplinary cases he was "denied any appeal of the findings and no avenue (other than a rebuttal letter) to dispute the false allegations."[2] He further asserted that his prior disciplinary history with Petitioner is the result of "incompetent investigating" and that he would file a lawsuit against Petitioner if there is "any future administrative action against [him] that is built upon this faulty progressive process of discipline … ."

9. In 2023, the then-Superintendent received a call from the Florida Department of Education (FDOE) regarding correspondence Respondent sent to it about a student. Petitioner, concluding Respondent's correspondence to FDOE was inappropriate, issued Respondent a letter of reprimand. In addition, Respondent was discharged from Petitioner's Interagency Threat Assessment Team, and prevented from presenting at the 2023-2024 Student Code of Conduct Board Workshop. Respondent submitted a rebuttal to the discipline, but did not grieve it or request an investigation with findings.

Altercation with student K.Y.

10. In his role as a specialist, Respondent is a school board district employee assigned to rotate between four schools in the district, including Sugg Middle School (SMS), to address attendance issues.

[2] Since 2003, section 1012.31(2)(d), Florida Statutes, has afforded school board employees, such as Respondent, the ability to rebut allegations of misconduct and, if the employee believes the allegations to be false, the right to request an inquiry wherein findings are made. Respondent filed rebuttals to five of the incidents of prior misconduct alleged against him, but he did not invoke his statutory right to an investigation for any discipline after 2003. Likewise, Respondent admitted he did not grieve any of the six prior instances of discipline or otherwise appeal them.

11. In his role, Respondent is not authorized to administer discipline to any student and, prior to the events of September 30, 2024, he had been admonished by his direct supervisor, Lisa Lyon, not to get "pulled into things" such as supervising students at SMS as it distracted him from his assigned duties. Ms. Lyon further admonished Respondent to retreat to his office at SMS when he felt himself getting pulled into assisting the SMS staff with supervision of students.

12. James Hird, the principal of SMS, testified, credibly, that he requested Respondent assist with supervision of students in the cafeteria during lunch periods, and in the gymnasium before and after school. Respondent felt compelled to help supervise SMS in accordance with Mr. Hird's request, and did so on numerous occasions. Respondent believed Ms. Lyon knew that he continued to assist supervising SMS students.

13. On September 30, 2024, Respondent was in the SMS cafeteria supervising a lunch period. In addition to rows of tables on the ground floor, the cafeteria also has a raised stage area where children are allowed to eat their lunch.[3] A student in the stage area complained to Respondent that another student, K.Y., spit in the complaining student's food. While Respondent listened to the student's complaint, assistant principal Paula Hart arrived on the stage and took control of the situation.

14. It is undisputed that, at this point, no decision had been made that K.Y. had, in fact, spit in the other student's food. K.Y. left the stage area and walked toward the stairs to go to the lower level of the cafeteria while carrying his tray toward the garbage cans. Respondent trailed after K.Y. because he did not want K.Y. to "leave the scene of [the] crime." Respondent was not asked by anyone, including Ms. Hart, to follow K.Y. or ensure he did not leave the cafeteria.

[3] Two videos of the incident were entered into evidence at the final hearing. The videos are not accompanied by audio, but they both give clear views of the incident. The undersigned has reviewed both videos several times each in preparation of this Recommended Order.

15. Respondent describes himself as "super loud" and an ex-United States Army Sergeant. K.Y. is a slightly-built sixth-grade student who is demonstrably smaller in stature than Respondent. In the 17 seconds Respondent trailed behind K.Y. by a few feet on his way to the garbage cans, Respondent told K.Y., "[t]his could be a battery if you spit in her food and she ate it," "this is serious, we've got witnesses, we've got cameras, if you did what you did, it's going to be serious and you're going to have consequences." Respondent's statement given shortly after the incident stated that he told K.Y. at this time that he was "going to ensure he is consequenced appropriately, as this behavior was very consistent with behaviors he has shown multiple times each day, every day I am at the school to witness it."[4]

16. Just before K.Y. reached the garbage cans, he threw his tray on the floor. Immediately, Respondent put both his hands on K.Y.'s arms and pushed him two steps back. K.Y. then pushed Respondent's upper chest/lower neck and then Respondent jerked K.Y.'s body, and spun him around so that Respondent and K.Y. faced the same direction. Respondent then attempted to lift K.Y. off the ground, but could not effectuate the maneuver. Respondent then placed his left arm around K.Y.'s neck and, while keeping K.Y. in this chokehold, dragged and/or pulled K.Y. for seven seconds toward the cafeteria doors in an attempt to remove him.

17. When he got close to the cafeteria doors, another SMS staff member was able to diffuse the situation and Respondent released K.Y. Respondent admitted that he released K.Y. to that staff member because he "didn't want to agitate the kid any further."

18. It is clear to the undersigned that K.Y. had heard Respondent's accusatory commentary toward him because at one point during the 17 seconds Respondent trailed K.Y., K.Y. turned his head to look at Respondent. Respondent testified that K.Y. heard him because Respondent is "a loud guy"

[4] Prior to the altercation, Respondent was aware that K.Y. had acted out on many occasions and was prone to violent outbursts resulting in numerous referrals.

and he knows he was heard even over the din of the cafeteria noise. It is also clear that Respondent agitated K.Y., which triggered K.Y. to react to Respondent's comments by throwing his tray to the floor.

19. About an hour or so after the incident with K.Y., Respondent was asked by the Bradenton Police Department (BPD) to give a statement as to what occurred. In that statement, Respondent asserted that K.Y. put his hands on Respondent first. This statement was clearly false and Respondent admitted to its falsity at the final hearing. Respondent asserted throughout the final hearing that he acted only out of self-defense because he perceived a threat from K.Y. when the tray was thrown to the floor. This testimony is not credited and the undersigned does not find Respondent acted in self-defense. Rather, the undersigned finds that Respondent was the aggressor at all times during the altercation with K.Y.

20. On October 1, 2024, K.Y.'s mother emailed the school board to complain about Respondent's actions. The school board opened an investigation and Respondent was placed on paid administrative leave pending the outcome.

21. Troy Nelson, an investigator for Petitioner's Office of Professional Standards, conducted the investigation. Mr. Nelson interviewed Respondent and other witnesses to the incident, reviewed the videos from the SMS cafeteria, and was given the statement BPD took of Respondent's initial recounting of the altercation. Mr. Nelson completed his investigative report and routed it, with the aforementioned materials, to the Disciplinary Review Committee (DRC). Mr. Nelson did not make any findings in his report and left the decision as to whether Respondent should be disciplined to the DRC. The DRC was also given a copy of Respondent's prior disciplinary history records, including Respondent's rebuttals.

22. The DRC was comprised of the deputy superintendent of operations, the deputy of instruction, the human resources chief, and the executive director of the department of the employee investigated. The DRC met as a

group to discuss the evidence presented to them by Mr. Nelson and decide what, if any, discipline was warranted for Respondent.

23. On October 23, 2024, the DRC recommended Respondent be terminated. Laurie Breslin, Petitioner's Family Engagement Executive Director and member of the DRC that reviewed Respondent's conduct, testified, credibly, that the DRC decided to recommend termination based on the results of the investigation into Respondent's altercation with K.Y. in combination with Petitioner's progressive discipline policy.

24. On October 31, 2024, Petitioner's Superintendent, Dr. Jason Wysong, received the DRC's recommendation. On December 18, 2024, Dr. Wysong gave notice to Respondent he intended to recommend Petitioner terminate him.

25. The Employee Handbook for MCSB, adopted by the school board, in place during the 2024-2025 school year provided, in pertinent part:

> Disciplinary action may be taken against an employee for just cause. Employees have the right to grieve a disciplinary action they feel is unjust or unfair. The School Board employs a progressive discipline program intended to adjust the inappropriate behavior of employees. Under this program, employees may be reprimanded, suspended with or without pay, or terminated. The program is progressive in that, except in cases that constitute a real imminent danger to the district or a flagrant violation, discipline will normally follow these steps: 1) Verbal Reprimand, 2) Written Reprimand, 3) Suspension (with or without pay), and 4) Termination.

26. The Amended Statement states, in pertinent part:

> 3. The Petitioner charges that grounds for dismissal exist based on the following:
>
> a) On October 1, 2024, District administration became aware of a parent complaint that Respondent allegedly engaged in a physical

altercation and improper restraint of a student at Sugg Middle School on September 30, 2024. The report indicated that while Respondent was assisting with supervision of students in the school cafeteria during lunch, Respondent approached the student and physically restrained the student around the student's head and neck. Through investigation at the school, the Office of Professional Standards reviewed video tape of the incident establishing that Respondent physically restrained a defiant student while attempting to remove the student from the cafeteria.

b) Respondent's use of restraint was not in accordance with escort and restraint techniques in compliance with District adopted Professional Crisis Management (PCM) protocols. Under PCM training, physical restraint is only appropriate after exhausting non-contact, de-escalation techniques, and as a last resort to minimize any risk of injury to the student or staff. At the time of the subject incident, Respondent had not been trained and was not certified to use PCM protocols; Respondent was not authorized to employ PCM compliant escort and restraint procedures on any student. Respondent's restraint of the subject student was not in accordance with appropriate PCM protocols. Use of restraint of any student was not within the scope of the Respondent's job duties as a Specialist, Safe & Drug Free Program, in the Student Services Department.

c) Respondent was subsequently reassigned from job duties at Sugg Middle School having no contact with students. The Office of Professional Standards investigated the allegations and substantiated the complaint. Attached hereto and incorporated herein is the Office of Professional Standard's investigative report. See Exhibit "A".

4. Respondent has been subject to prior progressive discipline for previous employment-related misconduct. Respondent has received multiple letters of reprimand, served various suspensions

from work, has been provided directives concerning his conduct, and has been reassigned job responsibilities directly related to efforts to improve his job performance. Previous attempts at progressive discipline have proved unsuccessful in bringing about desired improvement in Respondent's behavioral conduct on the job.

5. Petitioner is authorized to recommend to the School Board the dismissal of employees for just cause. The bases for just cause which a School Board may terminate an employee's professional services contract are identified in section 1012.33(1)(a), Florida Statutes. Each support staff member of the School Board is subject to standards of conduct set forth in Manatee County School Board Policy 4213, which requires that a support staff member shall not inappropriately associate with students at any time in a manner which may give the appearance of impropriety, including, but not limited to, the creation or participation in any situation or activity which could be considered abusive, among other issues. School Board of Manatee County, Policy 4213, G. The pertinent subsection of the policy further provides that "[a]ny inappropriate conduct with a student by any staff member will subject the offender to potential criminal liability and discipline up to and including termination of employment." *Id* Based on each and every prior paragraph of this Statement of Charges, Petitioner finds there is just cause to recommend termination of Respondent's employment.

27. MCSB Policy 4213 states, in pertinent part:

G. A support staff member shall not inappropriately associate with students at any time in a manner which may give the appearance of impropriety, including, but not limited to, the creation or participation in any situation or activity which could be considered abusive or sexually suggestive or involve illegal substances such as drugs, alcohol, or tobacco. Any sexual or other inappropriate conduct with a student by any staff member will subject the

> offender to potential criminal liability and discipline up to and including termination of employment.

Ultimate Findings of Fact

28. Respondent is an educational support employee of Petitioner and is subject to MCSB Policy 4213 and the progressive discipline policy in the MCSB Employee Handbook.

29. Respondent has received progressive discipline from Petitioner, including reprimands and suspensions, for prior allegations of misconduct that were investigated. Those measures were not grieved at the time discipline was meted out, were never overturned or otherwise rescinded, and were part of Respondent's personnel record with Petitioner when the 2024 incident with K.Y. occurred.[5]

30. Respondent's conduct with K.Y., including threatening him with a charge of battery, antagonizing K.Y. into a reaction, instigating the physical altercation with K.Y., placing K.Y. in a chokehold while dragging/pulling him, and wholly failing to de-escalate the situation with K.Y., was inappropriate and—specifically because Respondent was the aggressor and laid hands on K.Y. first—"could be considered abusive." As such, Respondent's actions violated MCSB Policy 4213, and there is just cause for discipline.

31. The preponderance of the evidence supports following Petitioner's progressive discipline policy, and the sequential penalty of termination established in the Employee Handbook is appropriate.

[5] Whether any of the prior discipline Petitioner instituted against Respondent was just or unjust is not before the undersigned to decide. The relevance of the prior disciplinary actions is that they actually occurred and the severity of the discipline followed Petitioner's policy of progressive discipline. Respondent admits that each of the underlying actions occurred, even though he disagrees with Petitioner's view of his culpability and believes the incidents were either blown out of proportion or discipline was pursued for personal reasons.

CONCLUSIONS OF LAW

32. DOAH has jurisdiction over the parties and subject matter of this proceeding. *See* §§ 120.569 and 120.57, Fla. Stat.; *Smith v. Sch. Bd. of Hillsborough Cnty.*, 2025 WL 1450361 (Fla. 2d DCA 2025) ("school board's decision to terminate an employee is one affecting the employee's substantial interests; therefore, the employee is entitled to a formal hearing under section 120.57(1)").

33. Petitioner bears the burden in this proceeding to prove, by a preponderance of the evidence, that just cause exists to terminate Respondent's employment. *Id.* at *1.

34. Because Respondent is an educational support employee with the school board, his employment, and termination therefrom, is governed by section 1012.40, which states:

> (1) As used in this section:
>
> (a) "Educational support employee" means any person employed by a district school system who is employed as a teacher assistant, an education paraprofessional, a member of the transportation department, a member of the operations department, a member of the maintenance department, a member of food service, a secretary, or a clerical employee, or any other person who by virtue of his or her position of employment is not required to be certified by the Department of Education or district school board pursuant to s. 1012.39. This section does not apply to persons employed in confidential or management positions. This section applies to all employees who are not temporary or casual and whose duties require 20 or more hours in each normal working week.
>
> (b) "Employee" means any person employed as an educational support employee.
>
> (2)(a) Each educational support employee shall be employed on probationary status for a period to be determined through the appropriate collective

> bargaining agreement or by district school board rule in cases where a collective bargaining agreement does not exist.
>
> (b) Upon successful completion of the probationary period by the employee, the employee's status shall continue from year to year unless the district school superintendent terminates the employee for reasons stated in the collective bargaining agreement, or in district school board rule in cases where a collective bargaining agreement does not exist, or reduces the number of employees on a districtwide basis for financial reasons.
>
> (c) In the event a district school superintendent seeks termination of an employee, the district school board may suspend the employee with or without pay. The employee shall receive written notice and shall have the opportunity to formally appeal the termination. The appeals process shall be determined by the appropriate collective bargaining process or by district school board rule in the event there is no collective bargaining agreement.

35. Petitioner is authorized to adopt rules governing personnel matters for all school district employees. *See* § 1012.23(1), Fla. Stat. As stated above, in the absence of a collective bargaining agreement, an educational support employee's employment may be terminated by a school board's superintendent for reasons stated in a school board rule.

36. Whether particular charged conduct constitutes a violation of a specified statute or rule is a question of ultimate fact to be determined by the trier of fact. *McKinney v. Castor*, 667 So. 2d 387, 389 (Fla. 1st DCA 1995). Here, Petitioner carried its burden and has proven by a preponderance of the evidence that Respondent violated MCSB Policy 4213.

37. Respondent's violation of MCSB Policy 4213 subjects him to discipline as stated therein.

38. Between 2000 and 2023, Respondent was progressively disciplined by Petitioner six times with a verbal reprimand, several written reprimands,

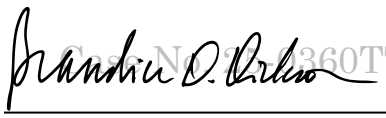
two suspensions, and removal of job responsibilities short of termination. As stated in the MCSB Employee Handbook, the next step after suspension in the progressive discipline rubric followed by Petitioner is termination.

39. Because Petitioner exhausted all disciplinary steps articulated in its progressive discipline policy prior to the September 30, 2024, altercation between Respondent and K.Y., Petitioner has just cause to terminate Respondent. *Pinellas Cnty. Sch. Bd v. Thomas*, Case No. 11-5436 (Fla. DOAH May 12, 2012; Fla. PCSB June 12, 2012) (school board had just cause to terminate an educational support employee for violation of school board rule using progressive discipline).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner terminate Respondent in accordance with its progressive discipline policy.

DONE AND ENTERED this 7th day of July, 2025, in Tallahassee, Leon County, Florida.


Case No. 24-6360TTS

BRANDICE D. DICKSON
Administrative Law Judge
DOAH Tallahassee Office

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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of July, 2025.

COPIES FURNISHED:

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Manny Diaz, Jr., Commissioner of Education
(eServed)

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.

STATE OF FLORIDA

DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE COUNTY SCHOOL BOARD (Petitioner)

vs. **Case No. 25-0360TTS**

VERLIN WILHOIT (Respondent)

_____/

RESPONDENT'S EXCEPTIONS TO THE FINAL RECOMMENDED ORDER

Pursuant to Rule 28-106.217, Fla. Admin. Code, Respondent, Dr. Verlin B. Wilhoit respectfully submits the following exceptions to the Final Recommended Order (FRO) issued by the Administrative Law Judge (ALJ) in DOAH Case No. 25-0360TTS. These exceptions are based on evidence and testimony presented during the hearing and identify key factual and legal errors, including mischaracterizations of testimony, improper application of policy, procedural deficiencies, and failure to properly weigh critical evidence. Each exception below references specific findings or omissions in the Final Recommended Order and offers legal and evidentiary support for reconsideration.

EXCEPTION 1: Procedural Irregularity in ALJ's Acceptance of Renewed Motion to Exclude Witness Testimony (Dr. Jason Wysong)

Challenged Procedural Ruling:

The ALJ accepted the Petitioner's renewed motion to exclude Dr. Jason Wysong's testimony, filed on May 2, 2025 - after the stated April 30 deadline. This reversed the ALJ's earlier ruling on April 28, which denied the same request.

Exception:

Dr. Wilhoit objects to the ALJ's decision to accept and rule on a motion submitted after the court's own deadline, especially since the ALJ had clearly told both parties no motions would be accepted beyond April 30. Dr. Wilhoit honored this deadline and told the DOAH clerk he would not be filing a response to remain compliant with the ALJ's directive. However, the Petitioner's late motion was not only accepted but granted at the hearing without giving Dr. Wilhoit any meaningful opportunity to respond. This resulted in unfair procedural prejudice under Florida's due process standards.

The renewed motion was granted in part on an affidavit from Dr. Wysong claiming he had "no personal knowledge" of the OPS investigation. However, Troy Nelson, the District's OPS investigator, testified under oath that Dr. Wysong did have personal knowledge of the case and authorized it to go to the Discipline Review Committee (DRC) based on that knowledge. This testimony appears on pages 63–64 of the hearing transcript and directly contradicts the affidavit used to justify excluding him as a witness.

Additionally, during the recorded OPS interview on October 17, 2024 (Respondent's Exhibit 002), Mr. Nelson informed Dr. Wilhoit the case was already being sent to the DRC, which was four days *before* the investigation was finalized. That timing confirms that Dr. Wysong not only had personal knowledge of the facts – facts which contained no findings – but he authorized this case to go to the DRC before the investigation was even completed.

By accepting a late motion and blocking this key testimony without allowing a formal rebuttal, the ALJ denied Dr. Wilhoit the chance to challenge flaws in the District's disciplinary process. The ruling violated the court's own deadline and Dr. Wilhoit's right to a fair defense.

EXCEPTION 2: Minimization of No Findings, Mischaracterization of the OPS Investigator's Role, and Improper Reliance on Undocumented "Ethical Violation" by the Discipline Review Committee (FRO Paragraphs 21–22)

Challenged Finding:

The ALJ found that OPS Investigator Troy Nelson made no findings in his report and "left the decision" to discipline Dr. Wilhoit to the Discipline Review Committee (DRC). The ALJ also credited the claim that the DRC determined an "ethical violation," occurred despite there being no documentation to support that conclusion.

Exception:

Dr. Wilhoit objects to the ALJ's characterization that Mr. Nelson made no investigative findings and simply left the decision of discipline to the DRC. This misrepresents Mr. Nelson's role and downplays the critical fact that his investigation concluded with no policy, rule, or law violations noted - a central issue in this case that the ALJ minimized entirely.

Mr. Nelson, a trained law enforcement officer and expert in district policy, testified that it was his job to determine whether any violations occurred. After a full investigation, he noted no violations of any policy, rule, or law in the OPS report. He additionally testified that "Typically, if there's no findings, then it doesn't go to the Disciplinary Review Committee." *(Transcript, Page 61, Lines 22–23).* Despite this, the case was referred to the DRC anyway, without any documented findings in the OPS report and prior to the completion of the investigation - facts the ALJ improperly minimized.

It is also not Mr. Nelson's job to recommend discipline to the DRC. Therefore, the ALJ's statement that Mr. Nelson "left the decision" to the DRC is both factually and procedurally misleading.

Mr. Nelson further testified that the DRC considered and discussed the fact that K.Y. verbally threatened Dr. Wilhoit, which would have supported a self-defense claim. The basis for this belief appears to stem only from the knowledge that it was contained in his report. But this was directly contradicted by Dr. Laurie Breslin, a DRC member and the Executive Director of Student Support, who testified that she was unaware of any such threat being made by K.Y. *(Transcript, Page 278:20).* This shows that a key fact supporting Dr. Wilhoit's defense was not considered by the DRC, raising serious concerns about the fairness and completeness of the process that led to recommending termination.

In addition, there is no documentation in the DRC's records showing that the committee found an "ethical violation" that was absent in the investigative report. Mr. Nelson testified that it was the DRC which identified the violation, after his investigation failed to identify one *(Transcript, Page 57, Lines 20–21).* Yet in the Findings/Recommendations section of their report, no such violation is noted *(Petitioner Exhibit 25)*.

Notably, the first mention of any violation came nearly two months later, in the formal Statement of Charges, when the District cited Policy 3213 – a policy that applies only to instructional staff, not to support personnel like Dr. Wilhoit. Mr. Nelson testified that this citation was later added by General Counsel Kevin Pendley, not the DRC.

In sum, the ALJ improperly downplayed the fact that the official OPS investigation found no violations, misrepresented the investigator's responsibilities, and relied on an undocumented and unverified conclusion by the DRC. These errors undermine the fairness of the process and do not meet the standard of competent, substantial evidence required under Florida law.

EXCEPTION 3: Misapplication and Vagueness of Policy 4213 as Basis for Termination (FRO Paragraphs 26–27, 30)

Challenged Findings:

The ALJ concluded that Dr. Wilhoit violated Manatee County School Board Policy 4213(G), which prohibits inappropriate associations with students "in a manner which may give the appearance of impropriety," including conduct that "could be considered abusive."

Exception:

Dr. Wilhoit objects to the ALJ's reliance on Policy 4213(G), which was never intended to apply to the type of brief, reactive physical contact that occurred in this case. The ALJ's conclusion misinterprets the policy and relies on vague and overly broad language that fails to give clear notice of prohibited conduct.

Policy 4213(G) is designed to prevent serious misconduct like grooming, sexual behavior, or drug involvement with students. The policy includes examples such as "sexually suggestive" conduct or activity involving "illegal substances such as drugs, alcohol, or tobacco." The full language of the policy section reads:

"A support staff member shall not inappropriately associate with students at any time in a manner which may give the appearance of impropriety, including, but not limited to, the creation or participation in any situation or activity which could be considered abusive or sexually suggestive or involve illegal substances such as drugs, alcohol, or tobacco."

Dr. Wilhoit's actions – briefly restraining a student who had just violently slammed his lunch tray to the ground and made a verbal threat – do not resemble any of the examples listed in this policy. There are no allegations of grooming, abuse, sexual misconduct, or drug-related behavior anywhere in the record.

Further, Mr. Mitch Teitelbaum, the District's former Assistant Superintendent, General Counsel, and policy "gatekeeper", testified that Policy 4213 was not intended to regulate restraint or excessive physical contact. According to Mr. Teitelbaum, the correct policy that applies to such interaction is Policy 4210, which addresses ethical concerns and use-of-force decisions. Despite Mr. Teitelbaum's direct role in policy oversight and his expert testimony, the ALJ dismissed his statements without explanation.

Regarding the language of 4213G, the phrase "could be considered abusive," which the ALJ used as the key violation, is vague and open to interpretation. It is posited within the same sentence as the terms "sexually suggestive" and "illegal substances," which have nothing to do with the actual events in this case. Applying that kind of language here invites subjective, inconsistent enforcement and provides no clear guidance to employees.

Florida law makes clear that vague or overly broad policies cannot be used to justify termination. When policies can result in serious penalties, such as loss of employment, they must be clearly written and strictly construed. Any unclear language must be interpreted in favor of the employee. See *Lester v. Dep't of Prof'l & Occ. Reg.*, 348 So. 2d 923, 925 (Fla. 1st DCA 1977); *City of Miami Beach v. Galbut*, 626 So. 2d 192 (Fla. 1993); *Liner v. Workers Temporary Staffing, Inc.*, 982 So. 2d 108 (Fla. 4th DCA 2007); *Grayned v. City of Rockford*, 408 U.S. 104 (1972).

In summary, using Policy 4213(G) to terminate Dr. Wilhoit is legally unsupported, misinterprets the policy's purpose, and relies on language that is too vague to fairly apply to the facts of this case. The ALJ's conclusion does not meet the standard of competent, substantial evidence and should not be adopted by the School Board.

EXCEPTION 4: Omission of Verbal Threat and Misapplication of Self-Defense Standard (FRO Paragraph 19)

Challenged Finding:

The ALJ rejected Dr. Wilhoit's self-defense claim, stating that he only "perceived a threat" when K.Y. slammed his tray, and concluded that Dr. Wilhoit "was the aggressor at all times during the altercation."

Exception:

Dr. Wilhoit objects to the ALJ's failure to consider critical and uncontested testimony that K.Y. verbally threatened him immediately after slamming his lunch tray to the floor. This detail is essential to understanding why Dr. Wilhoit took physical action and must be considered in evaluating a claim of self-defense.

Dr. Wilhoit testified that the student's verbal threat, combined with the violent slamming of the tray and the sudden motion of the student's arms, led him to believe he was about to be physically attacked. Acting on that belief, he placed both hands on the student's shoulders in an immediate but non-forceful manner to prevent the threat from being carried out. At that point, the student escalated the situation further by grabbing Dr. Wilhoit around the neck area with both hands.

This account was unrefuted, as no other witness contradicted it and the surveillance video contains no audio to dispute Dr. Wilhoit's explanation. Yet, the ALJ ignored the verbal threat entirely, focusing only on the slamming of the tray to establish the perception of an imminent attack. That omission undermines the standard for self-defense, which considers the full context and whether the individual reasonably believed they were about to be harmed.

Importantly, this was not a case of reacting to misbehavior or disrespect – it involved a specific threat of physical harm. Neither Florida law nor the Florida Department of Education's guidance on the Use of Reasonable Force (Respondent's Exhibit 005) requires staff to wait until they are

struck before taking action to protect themself. In fact, the Department's proposed Rule 6A-6.05271, (cited in Exhibit 005), explicitly permits reasonable force when a student "physically attacks, or *threatens to attack*, a staff member or another student."

Florida law mirrors this standard. Section 776.012(1), Florida Statutes, allows the use of non-deadly force when a person reasonably believes such force is necessary to defend against another's imminent use of unlawful force. See also *Keith v. State*, 614 So. 2d 560 (Fla. 1st DCA 1993). The ALJ's conclusion ignores this legal standard and sends a chilling message across the district that staff may not take proportional action to protect themselves from what they reasonably perceive to be an imminent attack.

By disregarding this key testimony, the ALJ's analysis of self-defense is both incomplete and legally insufficient. The conclusion that Dr. Wilhoit was "the aggressor at all times" is not supported by evidence and unfairly penalizes him for taking reasonable steps to protect himself.

EXCEPTION 5: Mischaracterization of Verbal Interaction and Improper Attribution of Instigation (FRO Paragraph 30)

Challenged Finding:

The ALJ concluded that Dr. Wilhoit's conduct included "threatening" K.Y. with a charge of battery and "antagonizing" him into a reaction, deeming this behavior inappropriate.

Exception:

Dr. Wilhoit objects to the ALJ's conclusion that he "threatened" or "antagonized" the student. That finding misrepresents what was actually said and ignores the full context of the interaction. There is no credible evidence from either the video or witness testimony to support that Dr. Wilhoit's words were delivered in a confrontational or inappropriate way.

Dr. Wilhoit testified that he calmly and matter-of-factly told the student that spitting in another student's food could be considered battery if that student consumed it. This statement was legally accurate and relevant to the situation. It was not a threat – it was an explanation of the possible consequences and seriousness of his reported misconduct.

The ALJ's conclusion shifts responsibility away from the student, who responded by slamming a tray at Dr. Wilhoit's feet and verbally threatening him. Framing that escalation as something "provoked" by a reasonable explanation undermines the basic principle of student accountability and places an unfair burden on the staff responsible for supervision.

Additionally, there is no audio in the surveillance video, and no other witness testimony confirming or disputing what was said. The only account of the verbal exchange comes from Dr. Wilhoit's own testimony and written statement. The video shows no visible aggression or physical intimidation from Dr. Wilhoit during the interaction.

Despite this, the ALJ accepted part of Dr. Wilhoit's testimony - that he used the word "battery" but rejected his statement that the student responded by threatening him with physical harm. This is a clear inconsistency. If the ALJ believed Dr. Wilhoit's account of what words he spoke, then she should have also credited his testimony about being threatened, especially when there was no evidence offered to contradict it.

This selective credibility regarding Dr. Wilhoit's testimony led the ALJ to wrongly conclude that he was the instigator of the incident. That conclusion is not supported by the record and reflects an imbalanced evaluation of the available evidence.

In summary, there is no reliable basis for the finding that Dr. Wilhoit provoked or antagonized the student, and no justification for dismissing his uncontested testimony about being threatened.

This mischaracterization materially affects the ALJ's conclusions and should be rejected by the Board.

EXCEPTION 6: Mischaracterization of Physical Contact (FRO Paragraph 16)

Challenged Finding:

The ALJ found that Dr. Wilhoit "pushed [K.Y.] two steps back," then "attempted to lift K.Y. off the ground," and finally "placed his left arm around K.Y.'s neck" while keeping him in "a chokehold."

Exception:

Dr. Wilhoit objects to the ALJ's factual description of the physical contact in Paragraph 16. The surveillance video and multiple witness accounts do not support the finding that a push, lift, or chokehold occurred.

First, the video shows that Dr. Wilhoit did not push the student. He placed his hands immediately but non-forcefully on the outside of K.Y.'s upper arms to create space and prevent a potential attack, as K.Y. had just slammed his tray at Dr. Wilhoit's feet and issued a verbal threat. Any backward movement by K.Y. appeared to be his own reaction, not the result of being pushed.

Second, the claim that Dr. Wilhoit "attempted to lift K.Y. off the ground" is not supported by the video or any testimony. In fact, K.Y. was attempting to drop to the ground to break away. Dr. Wilhoit testified that he was trying to keep the student from going to the ground and to safely escort him out of the crowded cafeteria. At no point in the video do K.Y.'s feet leave the ground.

Finally, the finding that Dr. Wilhoit applied a "chokehold" is not supported by the evidence. Multiple witnesses, including Mr. Harrington and Mr. Ballard, testified that Dr. Wilhoit

attempted to wrap his arms around K.Y.'s torso in a protective hold. His arm inadvertently slipped near the neck area due to the difference in height and the student both struggling and attempting to go to the ground. There is no indication of pressure, force, or intent to restrict breathing.

There was no visible injury, no redness, and no signs of distress seen in the video or reported by any staff. In fact, several witnesses confirmed that K.Y. was loudly yelling threats and profanities throughout the restraint. As Mr. Nelson testified, based on his law enforcement experience, it would be difficult for someone to shout clearly in a crowded cafeteria if their airway was being restricted *(Transcript, Page 40:1–7)*.

This critical testimony, along with the video and eyewitness accounts, refutes the ALJ's description of the incident. The finding that a chokehold occurred is not supported by competent, substantial evidence and paints a misleading picture of what happened. Dr. Wilhoit's actions were measured, used minimal force, and were far from the aggressive behavior described by the ALJ.

EXCEPTION 7: Mischaracterization of Ms. Lyon's Testimony Regarding Alleged Admonishment Not to Supervise Students (FRO Paragraph 11)

Challenged Finding:

The ALJ found that Dr. Wilhoit had been "admonished" by his supervisor, Ms. Lisa Lyon, not to get "pulled into things" like supervising students at Sugg Middle School, and that she directed him to "retreat to his office" when this occurred.

Exception:

Dr. Wilhoit objects to the ALJ's finding that he was specifically "admonished" by Ms. Lyon not

to supervise students and instructed to stay in his office. This interpretation misrepresents Ms. Lyon's testimony and gives the false impression that Dr. Wilhoit knowingly defied a direct order, which is not supported by the hearing record.

In her testimony, Ms. Lyon stated clearly that she did not recall Dr. Wilhoit ever telling her he was supervising students in the cafeteria or other areas of Sugg Middle School. If she was unaware of this activity, it is logically inconsistent to suggest she "admonished" him for it.

During cross-examination, Ms. Lyon explained that her comments about Dr. Wilhoit not getting "pulled into things" were related to external behavioral disruptions, not lunchroom or hallway supervision. These clarifying statements are found on Pages 217–218 of the hearing transcript, where Ms. Lyon confirms that she did not recall being told that Dr. Wilhoit was assisting with student supervision.

Despite this, the ALJ concluded that Dr. Wilhoit had been warned not to supervise students and had disregarded that instruction – a finding that inflates the seriousness of his actions and misstates the factual record. The use of the term "admonished" in the Recommended Order creates a legally unsupported inference that Dr. Wilhoit acted in defiance of an administrative directive. The finding lacks proper review of the testimony and is unsupported by the record. It should be rejected by the Board as a material factual error.

EXCEPTION 8: ALJ's Omission of Consistent and Credible Exculpatory Witness Statements from All Staff Present During the Incident

Challenged Finding and Omission:

The ALJ's Final Recommended Order does not mention or consider the unanimous, uncontradicted statements of the five school staff members who witnessed the incident on

September 30, 2024, and believed that Dr. Wilhoit's actions were not excessive or harmful to the student. This omission weakens the factual basis of the ALJ's findings.

Exception:

Dr. Wilhoit objects to the ALJ's failure to include or give weight to the eyewitness accounts of all five staff members who were present in the cafeteria during the incident. Each of these witnesses – all employees of Sugg Middle School and unaffiliated with Dr. Wilhoit – consistently stated that his restraint of the student was reasonable, not excessive, and clearly meant to control or protect, not harm.

Their statements were supported by recorded comments made by OPS investigator Troy Nelson during his October 17, 2024, interview with Dr. Wilhoit, in which Mr. Nelson told Dr. Wilhoit that nobody he spoke with believed his actions were excessive.

Despite these consistent and credible statements, the ALJ chose to support a theory that Dr. Wilhoit acted aggressively – without citing a single witness to support that conclusion. The ALJ relied instead on interpretations of the surveillance video, which has no audio and does not contradict any aspect of the staff witnesses' accounts.

In this case, the best direct, real-time accounts of what happened come from these five staff members. Their testimony is the best available evidence regarding the nature and intent of Dr. Wilhoit's actions. By failing to mention or weigh this key evidence, the ALJ provided a one-sided and incomplete version of events.

Florida Statute 120.57 requires that disciplinary decisions be supported by competent substantial evidence. When an ALJ ignores consistent, unchallenged witness testimony – especially from neutral parties – it undermines the fairness and credibility of the fact-finding

process. Excluding this testimony without cause constitutes a serious factual and legal error that should carry significant weight in any decision by the School Board.

EXCEPTION 9: Failure to Weigh Dr. Wilhoit's Exemplary Performance History and Improper Reliance on Contested Prior Discipline

Challenged Omission and Weighting of Evidence:

The ALJ's Recommended Order does not mention Dr. Wilhoit's long history of outstanding service and instead places significant weight on disputed prior disciplinary actions to justify termination.

Exception:

Dr. Wilhoit objects to the ALJ's failure to consider his more than 25 years of high-level, distinguished service to the District. Over the course of his career, he received the highest possible performance evaluations in nearly every year of service at the district level.

This record speaks directly to Dr. Wilhoit's professionalism, competence, and dedication to excellence - key factors that should be considered in any employment decision, especially one involving termination. The ALJ's decision to omit this evidence results in a factually incomplete and unbalanced analysis.

Rather than weighing Dr. Wilhoit's exemplary record of service, the ALJ relied almost exclusively on prior disciplinary actions – actions which:

- Were formally and fervently contested through contemporaneous rebuttal statements;
- Were absent of proper due process or any grievance process made known to Dr. Wilhoit;
- Were shown to be based on grossly inaccurate findings, according to eyewitness testimony;
- And were predicated on accusations wholly unrelated to the nature of the current allegation involving physical contact.

The ALJ dismissed Respondent's rebuttals without analysis, concluding only that he "did not grieve [them] or request an investigation with findings," which is not a valid substitute for independent evaluation of these incidents. The absence of a grievance does not render disciplinary actions undisputed or dispositive – particularly where Dr. Wilhoit openly challenged the veracity of the findings and those challenges were supported by evidence presented at the hearing. The ALJ also failed to give any weight to Dr. Wilhoit's testimony and rebuttal statements that no grievance process was afforded to him aside from the rebuttal letters.

Additionally, the ALJ failed to credit the testimony of eyewitnesses to these prior incidents, as well as *every* witness called in this matter who described their working relationship with Dr. Wilhoit and his working relationship with others in uniformly positive terms – even when those witnesses had firsthand, long-term experience working with him across multiple roles and schools. Their testimony directly contradicts the portrayal of Dr. Wilhoit in the prior HR findings and should have been weighed accordingly.

By ignoring decades of exemplary performance and focusing almost entirely on highly disputed and unrelated prior discipline, the ALJ's findings reflect a one-sided evidentiary review. This violates the requirement for findings to be based on competent, substantial evidence and fails to reflect the fairness and proportionality required under Florida administrative law and due process.

EXCEPTION 10: Use of Discretionary Inference Over Clear Evidence in the Record (FRO Paragraph 36)

Challenged Conclusion:

"Petitioner carried its burden and has proven by a preponderance of the evidence that Respondent violated MCSB Policy 4213."

Exception:

Dr. Wilhoit objects to the ALJ's conclusion as contrary to the totality of the record. The weight of evidence from:

- The video, which showed no aggression or excessive force;
- The five staff witnesses who stated nothing excessive occurred;
- The OPS investigative report, which cited no violation of policy, rule, or law;
- The lack of any injury or harm to the student;
- DCF and law enforcement agencies both declining to investigate or have concerns.

Each point undermines any finding that Dr. Wilhoit's actions constituted "abuse" or a violation of policy. A preponderance of the evidence standard cannot be satisfied where the weight of direct and circumstantial evidence points in the *opposite* direction. The ALJ's determination appears to be based on inference, not on competent substantial evidence, as required under § 120.57, Fla. Stat.

Conclusion

For each of the reasons stated above, Dr. Wilhoit respectfully requests that the School Board of Manatee County reject the ALJ's Final Recommended Order and determine that the proposed termination is not proportional, nor is it supported by the evidence or appropriate application of district policy and law.

Respectfully submitted,



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