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November 17, 2004

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
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Ms. Diane Hill-Scott
P.O. Box 501586
Marathon, Florida 33050

AT

*Re: Randy Acevedo, Superintendent of Schools formerly John Paget,
Superintendent of Schools, Petitioner v. Diane Hill-Scott, Respondent,
before the Monroe County School Board, Monroe County, Florida
(DOAH Case No. 04-2060)*

REM-CWS

NOTICE OF RENDITION OF FINAL ORDER AND NOTICE OF JUDICIAL REVIEW

Dear Ms. Hill-Scott:

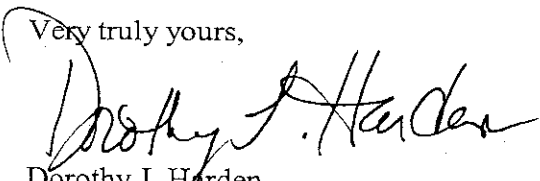
Enclosed please find a copy of the Final Agency Order of School Board of Monroe County, rendered on November 16, 2004, in connection with the above-referenced matter. In accordance with § 120.569(1), Fla. Stat., please be advised that judicial review of this order is available under § 120.68, Fla. Stat.. Please also be advised that the following review is available, the following procedure for obtaining such judicial review, and the following time limits apply. Section 120.68 provides, in relevant part:

- (1) A party who is adversely affected by final agency action is entitled to judicial review. A preliminary, procedural, or intermediate order of the agency or of an administrative law judge of the Division of Administrative Hearings is immediately reviewable if review of the final agency decision would not provide an adequate remedy.
- (2)(a) Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law. All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the rendition of the order being appealed.

- (3) The filing of the petition does not itself stay enforcement of the agency decision, but if the agency decision has the effect of suspending or revoking a license, supersedeas shall be granted as a matter of right upon such conditions as are reasonable, unless the court, upon petition of the agency, determines that a supersedeas would constitute a probable danger to the health, safety, or welfare of the state. The agency also may grant a stay upon appropriate terms, but, whether or not the action has the effect of suspending or revoking a license, a petition to the agency for a stay is not a prerequisite to a petition to the court for supersedeas. In any event the court shall specify the conditions, if any, upon which the stay or supersedeas is granted.
- (4) Judicial review of any agency action shall be confined to the record transmitted and any additions made thereto in accordance with paragraph (7)(a).
- (5) The record for judicial review shall be compiled in accordance with the Florida Rules of Appellate Procedure.

A copy of § 120.68, Fla. Stat., which specifies in fuller detail the judicial review available, is also enclosed. In addition, please note that you will have to pay any filing fees and comply with any other requirements of any appellate court and you should file any notice or petition with the clerk (administrative assistant) to the Monroe County School Board, Ms. Dori Collins. You are further referred to the Florida Rules of Appellate Procedure, which specify the requirements for filing a notice of appeal or petition for review.

Very truly yours,


Dorothy J. Harden
For the Firm

DJH:dh

Encls. (11/16/04 Final Agency Order and § 120.68, Fla. Stat.)

cc: Mr. Randy Acevedo, Superintendent of Monroe County Schools (w/encls.)
Daniel J. Woodring, Esq., DOAH General Counsel (w/encls.)
Clerk of the Division of Administrative Hearings (w/encls.)
Ms. Cheryl Allen, Monroe County Schools (w/encls.)
Ms. Dori Collins (w/o encls.)
Dirk M. Smits, Esq. (w/o encls.)
Scott Siverson, Esq. (w/encls.)
Scott C. Black, Esq. (w/encls.)

West's F.S.A. § 120.68

West's Florida Statutes Annotated Currentness

Title X. Public Officers, Employees, and Records

Chapter 120. Administrative Procedure Act (Refs & Annos)

120.68. Judicial review

(1) A party who is adversely affected by final agency action is entitled to judicial review. A preliminary, procedural, or intermediate order of the agency or of an administrative law judge of the Division of Administrative Hearings is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2)(a) Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law. All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the rendition of the order being appealed. If the appeal is of an order rendered in a proceeding initiated under s. 120.56, the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee.

(b) When proceedings under this chapter are consolidated for final hearing and the parties to the consolidated proceeding seek review of final or interlocutory orders in more than one district court of appeal, the courts of appeal are authorized to transfer and consolidate the review proceedings. The court may transfer such appellate proceedings on its own motion, upon motion of a party to one of the appellate proceedings, or by stipulation of the parties to the appellate proceedings. In determining whether to transfer a proceeding, the court may consider such factors as the interrelationship of the parties and the proceedings, the desirability of avoiding inconsistent results in related matters, judicial economy, and the burden on the parties of reproducing the record for use in multiple appellate courts.

(3) The filing of the petition does not itself stay enforcement of the agency decision, but if the agency decision has the effect of suspending or revoking a license, supersedeas shall be granted as a matter of right upon such conditions as are reasonable, unless the court, upon petition of the agency, determines that a supersedeas would constitute a probable danger to the health, safety, or welfare of the state. The agency also may grant a stay upon appropriate terms, but, whether or not the action has the effect of suspending or revoking a license, a petition to the agency for a stay is not a prerequisite to a petition to the court for supersedeas. In any event the court shall specify the conditions, if any, upon which the stay or supersedeas is granted.

(4) Judicial review of any agency action shall be confined to the record transmitted and any additions made thereto in accordance with paragraph (7)(a).

(5) The record for judicial review shall be compiled in accordance with the Florida Rules of Appellate Procedure.

(6)(a) The reviewing court's decision may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

1. Order agency action required by law; order agency exercise of discretion when required by law; set

aside agency action; remand the case for further agency proceedings; or decide the rights, privileges, obligations, requirements, or procedures at issue between the parties; and

2. Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(b) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(7) The court shall remand a case to the agency for further proceedings consistent with the court's decision or set aside agency action, as appropriate, when it finds that:

(a) There has been no hearing prior to agency action and the reviewing court finds that the validity of the action depends upon disputed facts;

(b) The agency's action depends on any finding of fact that is not supported by competent, substantial evidence in the record of a hearing conducted pursuant to ss. 120.569 and 120.57; however, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact;

(c) The fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure;

(d) The agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action; or

(e) The agency's exercise of discretion was:

1. Outside the range of discretion delegated to the agency by law;

2. Inconsistent with agency rule;

3. Inconsistent with officially stated agency policy or a prior agency practice, if deviation therefrom is not explained by the agency; or

4. Otherwise in violation of a constitutional or statutory provision;

but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(8) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency's action.

(9) No petition challenging an agency rule as an invalid exercise of delegated legislative authority shall be instituted pursuant to this section, except to review an order entered pursuant to a proceeding under s. 120.56 or an agency's findings of immediate danger, necessity, and procedural fairness prerequisite to the adoption of an emergency rule pursuant to s. 120.54(4), unless the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact.

(10) If an administrative law judge's final order depends on any fact found by the administrative law judge, the court shall not substitute its judgment for that of the administrative law judge as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside the final order of the administrative law judge or remand the case to the administrative law judge, if it finds that the final order depends on any finding of fact that is not supported by competent substantial evidence in the record of the proceeding.

CREDIT(S)

Amended by Laws 1996, c. 96-159, § 35, eff. Oct. 1, 1996; Laws 1997, c. 97-176, § 15, eff. May 30, 1997; Laws 2003, c. 2003-94, § 8, eff. June 4, 2003.

HISTORICAL AND STATUTORY NOTES

Derivation:

Laws 1992, c. 92-166, § 10.
 Laws 1991, c. 91-30, § 6.
 Laws 1990, c. 90-302, § 36.
 Laws 1987, c. 87-385, § 7.
 Laws 1984, c. 84-173, § 4.
 Laws 1978, c. 78-425, § 11.
 Laws 1977, c. 77-174, § 1.
 Laws 1977, c. 77-104, § 38.
 Laws 1976, c. 76-131, § 13.
 Laws 1974, c. 74-310, § 1.

Amendment Notes:

Laws 1976, c. 76-131, amending subsec. (3), inserted the words following "enforcement of the agency decision" in the first sentence and following "upon appropriate terms" in the second sentence.

Laws 1977, c. 77-104, a reviser's bill corrected a statute reference.

Laws 1977, c. 77-174, a reviser's bill, amended this section to reflect language editorially inserted or substituted in the interest of clarity by the division of statutory revision and indexing.

Laws 1978, c. 78-425, interpolated the second sentence of subsec. (1); and, in subsec. (3), rewrote the second sentence which prior thereto provided merely that the agency or reviewing court could grant a stay, and inserted ", if any," in the third sentence.

Laws 1984, c. 84-173, § 4, in subsec. (1), inserted "including any order of a hearing officer" in the third sentence; and in subsec. (12), divided par. (b) into pars. (b) and (c), inserted "inconsistent with" in par. (c), and redesignated former par. (c) as par. (d).

Laws 1987, c. 87-385, § 7, eff. October 1, 1987, interpolated the second sentence of subsec. (2).

Laws 1990, c. 90-302, § 36, eff. Oct. 1, 1990, reenacted subsec. (8) without change to incorporate

amendment to § 120.53 in references thereto.

Laws 1990, c. 90-302, § 37, provides:

"This act shall take effect upon becoming a law, except that section 36 of this act shall take effect October 1, 1990, and shall apply to invitations to bid or requests for proposals issued on or after that date."

Laws 1991, c. 91-30, § 6, in subsec. (3), designated par. (a) and added par. (b).

Laws 1991, c. 91-191, § 1, amends provisions of Laws 1991, c. 91-30, §§ 11 and 12 which, as amended, provide that c. 91-30 applies to actions instituted on or after March 1, 1992 and that the legislation affecting this section takes effect March 1, 1992.

Laws 1992, c. 92-166, § 10, eff. July 1, 1992, added subsec. (15) providing for judicial review of certain petitions challenging the validity of rules.

Laws 1996, c. 96-159, § 35, eff. Oct. 1, 1996, rewrote this section, which formerly read:

"(1) A party who is adversely affected by final agency action is entitled to judicial review. For purposes of this section, a district school board whose decision is reviewed under the provisions of s. 231.36 and whose final action is modified by a superior administrative decision shall be a party entitled to judicial review of the final action. A preliminary, procedural, or intermediate agency action or ruling, including any order of a hearing officer, is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

"(2) Except in matters for which judicial review by the Supreme Court is provided by law, all proceedings for review shall be instituted by filing a petition in the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides. If the appeal is of an order rendered in a proceeding initiated under s. 120.54(4) or under s. 120.56, the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee. Review proceedings shall be conducted in accordance with the Florida Rules of Appellate Procedure.

"(3)(a) The filing of the petition does not itself stay enforcement of the agency decision, but if the agency decision has the effect of suspending or revoking a license, supersedeas shall be granted as a matter of right upon such conditions as are reasonable, unless the court, upon petition of the agency, determines that a supersedeas would constitute a probable danger to the health, safety, or welfare of the state. The agency may also grant a stay upon appropriate terms, but, whether or not the action has the effect of suspending or revoking a license, a petition to the agency for a stay is not a prerequisite to a petition to the court for supersedeas. In any event, the order shall specify the conditions, if any, upon which the stay or supersedeas is granted.

"(b) The filing of a petition appealing an order issued by a hearing officer under s. 120.535, whether filed by the agency or any other party, does not stay enforcement of the hearing officer's order, unless the court, upon petition of the agency or other party, determines that a stay is necessary to avoid a probable danger to the public health, safety, or welfare. A stay order shall specify the conditions, if any, upon which the stay is granted.

"(4) Judicial review of any agency action shall be confined to the record transmitted and any additions made thereto in accordance with subsection (6).

"(5) The record for judicial review shall consist of the following:

"(a) The agency's written document expressing the order, the statement of reasons therefor, if issued, and the record under s. 120.57, if review of proceedings under that section is sought.

"(b) The agency's written document expressing the action, the statement of reasons therefor, if

issued, and the materials considered by the agency under s. 120.54, if review is sought of proceedings under that section.

"(c) The agency's written document expressing the action, and other written documents identified by the agency as having been considered by it before its action and used as a basis for its action, if review is sought of proceedings under s. 120.56 or s. 120.565 or if there has been no proceeding under s. 120.54 or s. 120.57.

"(6) When there has been no hearing prior to agency action and the reviewing court finds that the validity of the action depends upon disputed facts, the court shall order the agency to conduct a prompt, fact-finding proceeding under this act after having a reasonable opportunity to reconsider its determination on the record of the proceedings.

"(7) The reviewing court shall deal separately with disputed issues of agency procedure, interpretations of law, determinations of fact, or policy within the agency's exercise of delegated discretion.

"(8) The court shall remand the case for further agency action if it finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure. Failure of any agency to comply with s. 120.53 shall be presumed to be a material error in procedure.

"(9) If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

"(a) Set aside or modify the agency action, or

"(b) Remand the case to the agency for further action under a correct interpretation of the provision of law.

"(10) If the agency's action depends on any fact found by the agency in a proceeding meeting the requirements of s. 120.57 of the act, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by competent substantial evidence in the record.

"(11) If the agency's action depends on facts determined pursuant to subsection (6), the court shall set aside, modify, or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency's responsibility.

"(12) The court shall remand the case to the agency if it finds the agency's exercise of discretion to be:

"(a) Outside the range of discretion delegated to the agency by law;

"(b) Inconsistent with an agency rule;

"(c) Inconsistent with an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained by the agency; or

"(d) Otherwise in violation of a constitutional or statutory provision;

"but the court shall not substitute its judgment for that of the agency on an issue of discretion.

"(13)(a) The reviewing court's decision may be mandatory, prohibitory, or declaratory in form; and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court

may:

"1. Order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings, or decide the rights, privileges, obligations, requirements, or procedures at issue between the parties; and

"2. Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

"(b) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

"(14) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency's action.

"(15) No petition challenging an agency rule as an invalid exercise of delegated legislative authority shall be instituted pursuant to this section, except to review an order entered pursuant to a proceeding under s. 120.54(4) or s. 120.56, unless the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact."

Laws 1997, c. 97-176, § 15, eff. May 30, 1997, rewrote subsec. (3), which formerly read:

"The filing of a notice or petition does not stay enforcement of the agency decision. The agency may grant a stay upon appropriate terms, but a petition to the agency for a stay is not a prerequisite to a petition to the court for supersedeas. Subject to the Florida Rules of Appellate Procedure, no stay or supersedeas shall be in effect until the party seeking relief files a petition for stay and the agency or court enters an order granting such relief. The order shall specify the conditions, if any, upon which the stay or supersedeas is granted. Where the agency decision has the effect of suspending or revoking a license, a stay shall be granted as a matter of right upon such conditions as are reasonable, unless the agency demonstrates that a stay would constitute a probable danger to the public health, safety, or welfare."

Laws 2003, c. 2003-94, § 8, rewrote subsec. (9), which formerly read:

"(9) No petition challenging an agency rule as an invalid exercise of delegated legislative authority shall be instituted pursuant to this section, except to review an order entered pursuant to a proceeding under s. 120.56, unless the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact."

West's F. S. A. § **120.68**, FL ST § **120.68**

Current through Chapter 472 and H.J.R. No. 1 and S.J.R. No. 2394 (End) of
2004 Second Regular Session of the Eighteenth Legislature

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THE STATE OF FLORIDA
THE SCHOOL BOARD OF MONROE COUNTY, FLORIDA

RANDY ACEVEDO,
Superintendent of Schools; formerly
JOHN PAGET, Superintendent of Schools,

Petitioner,

v.

DIANE HILL-SCOTT,

Respondent.

DOAH Case No. 04-2060

FINAL AGENCY ORDER OF SCHOOL BOARD OF MONROE COUNTY

CAME ON FOR CONSIDERATION on this day before the School Board of Monroe County, Florida (the "School Board"), is the Recommended Order entered October 25, 2004 (the "Recommended Order") by Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings (the "ALJ"), the record from the administrative hearing held August 18, 2004, and the exceptions to the Recommended Order submitted by Respondent, Diane Hill-Scott submitted to Monroe County Schools on November 8 and 9, 2004, via facsimile transmission (the "Exceptions"). After due consideration of the Recommended Order, Respondent's Exceptions thereto, the record of the administrative hearing conducted through the Department of Administrative Hearings, and any representations made at the regularly scheduled School Board meeting on November 16, 2004, the School Board, acting by and through its members, takes the following action and enters the following final order pursuant to Fla. Stat. §§ 120.569 and 120.57:

1. The School Board finds that the Exceptions submitted by Respondent do not clearly indicate the disputed portion of the Recommended Order by page number or paragraph, do not identify the legal basis for the exception, or do not include appropriate and specific citations to the record. Therefore, the School Board need not rule on any of the Exceptions.

2. However, to the extent that any of the Exceptions are properly raised and comply with applicable law, the School Board finds that they are without merit and shall be, and hereby are, REJECTED in their entirety.

3. The School Board finds that there is substantial, competent evidence to support the Recommended Order, including all findings and conclusions of the ALJ, and the recommended penalty of termination.

4. The School Board ADOPTS AND RATIFIES the Recommended Order in its entirety as the final agency order of the School Board, including all findings of fact and all conclusions of law contained in the attached Recommended Order, which findings and conclusions are separately stated. Such separately stated findings of fact and conclusions of law contained in the Recommended Order shall be, and hereby are, ADOPTED AND RATIFIED as the final agency action of the School Board and shall constitute the separate findings of fact and conclusions of law of the School Board in this matter.

5. The Recommended Order is attached hereto and made a part of this Final Agency Order for all purposes.

6. The School Board, acting by and through its members, ACCEPTS the recommended penalty contained in the attached Recommended Order, recommending entry of a final order terminating Respondent Diane Hill-Scott's employment with Monroe County Schools.

IT IS THEREFORE ORDERED that Respondent Diane Hill-Scott shall be, and hereby is, terminated from her employment with Monroe County Schools.

A copy of this final Order shall be transmitted and filed with the agency clerk for the Division of Administrative Hearings within 15 days from the date of this final Order.

DONE AND ENTERED this 16th day of November, 2004, at Key West, Florida.



Eileen Quinn, Chairperson
For the School Board

cc: Randy Acevedo, Superintendent
Monroe County School Board
P.O. Box 1788
Key West, Florida

Daniel J. Woodring, General Counsel
Department of Education
1244 Turlington Building
325 West Gaines Street
Tallahassee, Florida 32399-0400

Ms. Diane Scott
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