BEFORE THE SCHOOL BOARD OF SEMINOLE COUNTY, FLORIDA

WILLIAM VOGEL, as Superintendent of Public Schools for Seminole County, Florida,

Petitioner,

vs.

DALE W. REICHARD,

Respondent.

FINAL ORDER

The Petitioner, William Vogel ("Dr. Vogel"), as Superintendent of Schools for Seminole County, Florida petitions The School Board of Seminole County, Florida ("School Board"), to terminate the employment of the Respondent, Dale W. Reichard ("Mr. Reichard"), on the grounds of misconduct in office and conduct unbecoming an employee of the School Board. By letter dated May 10, 2007, Dr. Vogel notified Mr. Reichard of his intention to recommend Mr. Reichard's termination for misconduct in office on account of Mr. Reichard's arrest for possession of cocaine and marijuana. In the same correspondence, Dr. Vogel suspended Mr. Reichard with pay, effective at the close of business on May 10, 2007, and informed Mr. Reichard that he would recommend to the School Board at its next meeting that Mr. Reichard be suspended without pay. Mr. Reichard was in fact suspended without pay, effective May 30, 2007.

Mr. Reichard timely filed a request for an administrative hearing. The matter was therefore referred to the Florida Division of Administrative Hearings ("DOAH") on June 11, 2007 by the filing by Dr. Vogel of a Petition for Termination. In his Petition, Dr.

Vogel charged Mr. Reichard with misconduct in office and conduct unbecoming an employee of the School Board. DOAH assigned the matter to Administrative Law Judge ("ALJ") William F. Quattlebaum for the conduct of the hearing requested by Mr. Reichard. No evidentiary hearing was conducted because there were no disputed issues of fact and Mr. Reichard and Dr. Vogel, through their respective legal representatives, stipulated to the facts upon which the matter was to be decided.

On June 2, 2008, the ALJ submitted his recommended order, which included recommended findings of fact and conclusions of law and recommended that the School Board enter a final order reinstating the employment of Mr. Reichard. Mr. Reichard did not file exceptions to the Recommended Order. Dr. Vogel filed exceptions supported by argument and submitted a proposed final order. The proposed final order included proposed findings of fact and conclusions of law. Mr. Reichard filed a response to the exceptions filed by Dr. Vogel.

On August 12, 2008, the School Board heard oral argument by the representatives of Dr. Vogel and Mr. Reichard. The School Board has considered both the submittals of the parties and the argument offered by each. Being thereby advised in the matter, the School Board adopts the findings of fact as recommended by the ALJ. Although the findings of fact proposed by Dr. Vogel are nearly identical to those recommended by the ALJ, to the extent they differ in any way, the School Board rejects the findings of fact proposed by Dr. Vogel and adopts the ALJ's recommendations in their entirety.

Dr. Vogel filed four exceptions to the Recommended Order, which exceptions are set forth in numbered paragraphs 1, 2, 3 and 5 of the Exceptions to the Recommended Order and Motion for Entry of a Final Order in Accord with Petitioner's Proposed

Recommended Order ("Exceptions"). The remaining numbered paragraphs of the Exceptions contained argument in support, or amplification, of the four exceptions.

In paragraph 1 of the Exceptions, Dr. Vogel argues that the ALJ erred in relying on the decisions of the First and Second District Courts of Appeal in MacMillan v. Nassau County School Board, 678 So.2d 226 (Fla. 1st DCA 1993) and McNeil v. Pinellas County School Board, 678 So.2d 476 (Fla. 2d. DCA 1996). In paragraph 2 of the Exceptions, Dr. Vogel argues that the ALJ erred in concluding that the stipulated testimony of Dr. Vogel and Robert Lindquist, the principal of Oviedo High School, was insufficient as a matter of law to sustain any of the charges made against Mr. Reichard. In paragraph 3 of the Exceptions, Dr. Vogel argues that the ALJ erred by rejecting Purvis v. Marion County School Board, 766 So.2d 492 (Fla. 5th DCA 2000). Finally, in paragraph 5 of the Exceptions, Dr. Vogel argues that the ALJ erred by rejecting his position that Mr. Reichard's conduct in and of itself supports the conclusion that Mr. Reichard violated Fla. Admin. Code R. 6B-1.001 and 6B-1.006.

For the reasons set forth the remaining paragraphs of the Exceptions and the argument set forth in Part IV of Dr. Vogel's proposed final order, the School Board grants Dr. Vogel's exceptions.

In paragraph 56 of the Recommended Order, the ALJ concluded that "the mere fact of drug use or possession, absent additional information is insufficient to reasonably lead to the conclusion that [Mr. Reichard] was acting unethically . . . ." The "additional information" to which the ALJ referred in this conclusion is identified in paragraph 58 of the recommended conclusions, in which the ALJ writes that "no evidence establishes that

the matter has been the subject of any negative reaction by anyone other than the principal and the superintendent."

The ALJ's cited authorities for the requirement of proof of a "negative reaction" are the MacMillan and McNeil cases. The ALJ did not apply or even discuss the holding of the Fifth District Court of Appeal in Purvis. Purvis holds that impairment of a teacher's fitness for employment may be inferred from the nature of the conduct and the School Board will apply that principle to this cause. Moreover, whether an act is unethical or not an issue which is to be determined by public reaction.

The ALJ faults the opinions of Dr. Vogel and Mr. Lundquist as to Mr. Reichard's conduct as "conclusory." But these opinions were subjects of stipulation by the parties. They are therefore established and binding on the parties as well as the ALJ's and School Board's analyses. So too is the stipulation that Mr. Reichard did not "acknowledge [his] 1981 arrest for marijuana on his application for employment with [the School Board] because he believed that the charge had been expunged or sealed." Recommended conclusion of law, ¶ 45. The word "acknowledge is defined as "to own or admit knowledge."

Moreover, Florida law, set forth in Fla. Stat. § 943.0582(4)(a)(6), expressly provides that a person whose arrest records are the subject of expunction may lawfully deny or "fail to acknowledge" arrests covered by the expunction except, inter alia, when "seeking to be employed by a district school board." Thus the stipulated fact that Mr. Reichard "did not acknowledge" his 1981 arrest is in fact sufficient to establish dishonesty, and his belief that the record had been expunged or sealed was immaterial.

Based on the foregoing, the School Board adopts the ALJ's recommended conclusions of law as set forth in paragraph 47 of the Recommended Order. The School Board rejects the second sentence of paragraph 48 of the Recommended Order, because it is irrelevant to this case and rejects the third sentence of the recommended conclusion. The School Board adopts the first sentence of paragraph 48, which is identical to the proposed conclusion of law set forth by Dr. Vogel in paragraph 49 of his proposed order. The School Board adopts Dr. Vogel's proposed conclusion paragraph 50. The School Board adopts the recommended conclusions of law set forth in paragraphs 50, 51, 52, 66, 67 and the first sentence of paragraph 54 of the Recommended Order.

The School Board rejects the recommended conclusions of law set forth in paragraph 53, the second sentence of paragraph 54 and paragraphs 55, 56,[1] 57, 58, 59, 60, 61, 63, 65 and 68 of the Recommended Order.

The School Board rejects the recommended conclusion of law set forth in paragraphs 49 and 62 of the Recommended Order as being findings of fact which is duplicative of other findings set forth in the stipulated facts.

The School Board rejects recommended conclusion of law paragraph 64 of the Recommended Order as unnecessary.

The School Board adopts the conclusions of law set forth by Dr. Vogel in paragraphs 50 through 67 of his proposed order.

The School Board rejects the recommendation of the ALJ that Mr. Reichard be reinstated.

[1] Paragraph 57 of the recommended conclusions of law contains a typographical omission of the word "not" between the words "is" and "so egregious" and it is to the conclusions as amended by insertion of the omitted word that is rejected.

WHEREFORE, the School Board orders that the employment of the Respondent, Dale W. Reichard, be terminated, effective upon the rendition of this order.

DONE and ORDERED in Sanford, Seminole County, Florida on this 21st day of August, 2008.

THE SCHOOL BOARD OF SEMINOLE COUNTY, FLORIDA

By: Diane Bauer
DIANE BAUER, CHAIRMAN

Copies furnished to:

Ned N. Julian, Jr.
Thomas L. Johnson

NOTICE OF APPEAL RIGHTS

Pursuant to Section 120.68, Fla. Stat., a party to this Final Order may seek judicial review of this Final Order in the appropriate district court of appeal by filing notice of appeal pursuant to the Florida Rules of Appellate Procedure Rule 9.110(c). The original notice of appeal must be filed with Karen Ponder, Agency Clerk, Seminole Public Schools, 400 East Lake Mary Boulevard, Sanford, Florida 32773-7127, no later than thirty (30) days from the date of this Final Order. A copy of the notice of appeal, together with the appropriate filing fee, shall also be filed with the Clerk, District Court of Appeal, Fifth District of Florida, 300 South Beach Street, Daytona, Florida 32114. If the 30th day following the date of this Final Order falls on a Saturday, Sunday or a day when the School Board is closed, the notice of appeal must be filed on the next day that the School Board office is open for business. If a party to this proceeding fails to file a notice of appeal within the time prescribed by law and the rules of court, the party loses the right to appeal this Final Order.