

The School Board of Escambia County
215 West Garden Street
Pensacola, Florida 32502
Telephone: (850) 469-6362 / Facsimile (850) 469-6303

FILED
2009 JAN -8 A 10:59
DIVISION OF ADMINISTRATIVE HEARINGS

Jeff Bergosh
District 1

Gerald Boone, Vice Chair
District 2

Linda Moultrie
District 3

Patricia Hightower, Chair
District 4

Bill Slayton
District 5

Donna Sessions Waters
General Counsel

January 5, 2009

IN RE: Margaret Benson, Reba Davis, Deborah Elleard,
Deborah Gregory, Ida Lanier, Phyllis Malone,
Vicki Outzen, and Janet Taylor, Petitioners,
vs.
Escambia County School Board.

DOAH Case No. 08-1202

AGENCY CERTIFICATION

I HEREBY CERTIFY that the attached Final Order Adopting the "Recommended Order" issued by Administrative Law Judge, Harry L. Hooper, in the above-styled case is a true and correct copy of the original that was approved by the Escambia County School Board at its properly advertised school board meeting on November 18, 2008, at Pensacola, Escambia County, Florida.

Wanda Willis

Wanda Willis, Agency Clerk
Escambia County School District
215 West Garden Street
Pensacola, Florida 32502
(850) 469-6362, Telephone
(850) 469-6303, Facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of the original of the Final Order Adopting the Recommended Order" issued by Administrative Law Judge, Harry L. Hooper was mailed to the Clerk of the Division of Administrative Hearings, Claudia Llado, with a copy to the Honorable Harry L. Hooper, Administrative Law Judge, Division of Administrative Hearings at The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, Joseph L. Hammons, Esquire, 17 West Cervantes Street, Pensacola, Florida 32501, and H. B. Stivers, Esquire, Attorney for Petitioners, 245 East Virginia Street, Tallahassee, Florida 32301, on this 5 day of January 2009, at Pensacola, Escambia County, Florida.

Wanda Willis

Wanda Willis

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FILED

MARGARET BENSON, REBA DAVIS,
DEBORAH ELLEARD, DEBORAH GREGORY,
IDA LANIER, PHYLLIS MALONE,
VICKI OUTZEN, AND JANET TAYLOR,

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DIVISION OF
ADMINISTRATIVE
HEARINGS

Petitioners,

vs.

DOAH Case No.: 08-1202

ESCAMBIA COUNTY SCHOOL BOARD,

Respondent.

FINAL ORDER ADOPTING THE FINDINGS OF FACT AND REJECTING
CONCLUSIONS OF LAW OF THE ADMINISTRATIVE LAW JUDGE

Pursuant to notice, a formal hearing was held in this matter on July 8, 2008, before the Division of Administrative Hearings, by Administrative Law Judge, Harry L. Hooper, in Pensacola, Florida. The hearing was convened to determine whether Respondent properly considered prior teaching experience when calculating an appropriate salary for Petitioners.

Judge Hooper issued a Recommended Order on August 21, 2008. Judge Hooper determined that a two-year statute of limitations applied in the case, making the period for filing suit run from the time of filing on April 2, 2007 back to April 2, 2005. Judge Hooper ruled that the Petitioners were entitled to have their pay recalculated as of April 2, 2005, giving them credit for each year of full-time public school teaching service earned in the State of Florida or outside the state and to be paid accordingly. Judge Hooper made findings of fact which are supported by the record. Both parties have filed exceptions to the proposed order.

Pursuant to Section 120.57(1)(i), *Fla. Stat.*, the School Board of Escambia County, Florida hereby adopts Judge Hooper's conclusions of fact, with one exception: by stipulation of the parties the School Board accepts the Petitioner's exception to Paragraph 12 as noted in the Amended Exceptions to the Recommended Order filed September 5, 2008. Deborah Gregory did request that the board recognize each of her 16 years of teaching service, and this request was denied as to the period of August 2002 through May 31, 2006.

However, the School Board rejects Judge Hooper's findings of law. The School Board specifically finds that the analysis in the Recommended Order of the Administrative Law Judge on a virtually identical question in *Charles Keene v. Escambia County School Board*, Case Number 07-2125, adopted by the School Board on January 22, 2008 is more persuasive and well-reasoned than that in the Recommended Order in the instant case. The reasons for this finding include, but are not limited to the following:

- 1) The plain language of the statute [Section 1012.336(3)(g), *Fla. Stat.*] demonstrates the intent to require school boards to treat years of experience outside the school district the same as years of experience within the school district. (*Keene*, paragraph 38).
- 2) The statute is designed to ensure that teachers having prior service outside Florida are treated equally with teachers having prior service in Florida. . . [not] to confer a benefit on teachers who retire outside of Florida while denying that same benefit to teachers who retire in Florida by using years of service earned in Florida. (*Keene*, paragraph 40).

- 3) Although the ALJ in the instant case stated that the evidence and law herein called for a conclusion opposite that of *Keene*, he did not identify what factors in the evidence called for such a conclusion. In actuality, the material facts are so similar that legally, the cases call for the same result. Otherwise, the district is bound by opposing requirements on the same question, and has no ability to answer this question when it arises in future cases.
- 4) Although the ALJ in the instant case concluded that the facts required to establish the elements of equitable estoppel were not present, this conclusion is not reasonable in light of the evidence contained in the transcript of the July 8, 2008 hearing.
- 5) Under identical facts, the *Keene* ALJ concluded that the petitioner was estopped from completing the contractual periods of employment and then claiming that he must be paid a higher rate of compensation for the period already served, than that to which he agreed when the offer of employment was extended. (*Keene* at paragraph 44).
- 6) In light of this conclusion of law, issues of the applicable statute of limitations and attorney fees are moot.
- 7) As the issue of statute of limitations is moot, the Petitioner's Exceptions to Paragraph 47 and 49 are likewise moot and need not be addressed.
- 8) In that the School Board of Escambia County, Florida has adopted the legal of analysis of the *Keene* case, it is not necessary to address the

Respondent's exceptions to Paragraphs 25, 27, 29, 32, 35, 40, and 41 in the Respondent's Exceptions and objections filed September 5, 2008.

- 9) In that the School Board of Escambia County, Florida has adopted the legal of analysis of the *Keene* case, it is not necessary to address the Respondent's exception to Paragraph 44 in the Respondent's Exceptions and objections filed September 5, 2008.
- 10) In that the statute of limitations issue is moot, it is not necessary to address the Respondent's exception to Paragraph 51 in the Respondent's Exceptions and objections filed September 5, 2008.

The parties have thirty (30) days from the rendition of this Order to file a notice of appeal in accordance with Section 120.68, *Fla.Stat.*

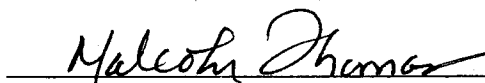
ADOPTED by the School Board of Escambia County, Florida, in open meeting this 16th day of December 2008.


Patricia Hightower, Chair

APPROVED
ESCAMBIA COUNTY SCHOOL BOARD

DEC 16 2008

Attest:


Malcolm Thomas, Superintendent of Schools

MALCOLM THOMAS, SUPERINTENDENT
VERIFIED BY RECORDING SECRETARY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this 5 day of ~~December~~, 2008, to:
January 2009

Harry L. Hooper, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building,
1230 Apalachee Parkway, Tallahassee, FL 32399-3060

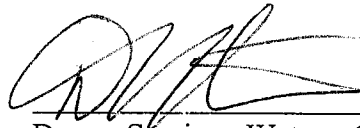
Joseph L. Hammons, Esquire, Hammons, Longoria & Whittaker, P.A., 17 West Cervantes Street,
Pensacola, FL 32501

H. B. Stivers, Esq. Levine & Stivers, 245 East Virginia Street, Tallahassee, FL 32301

Superintendent, School Board of Escambia County, 215 West Garden Street, Pensacola, FL 32502

Dr. Eric J. Smith, Commissioner of Education, Turlington Building, Suite 1514, 325 West Gaines Street,
Tallahassee, FL 32399-0400

Debbie Kearney, General Counsel, Department of Education, Turlington Building, Room 1244, 325 West
Gaines Street, Tallahassee, FL 32399-0400.



Donna Sessions Waters, General Counsel
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