

FILED

February 28, 2012

2012 MAR -1 A 11: 49

Honorable Lawrence P. Stevenson  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

Re: Duval County School Board (DCSB) vs. Steven Makowski  
DOAH Case No.: 11-0638TTS

Honorable Lawrence P. Stevenson:

The Duval County School Board has reviewed the record in DOAH case number 11-0638TTS and issued the enclosed Final Order.

If you have any questions regarding this matter, please do not hesitate to contact me.

Respectfully,



Sonita Young  
Executive Director, Policy and Compliance

Enclosure

cc: David D'Agata  
Assistant General Counsel  
City of Jacksonville  
Office of General Counsel  
117 West Duval Street, Suite 480  
Jacksonville, Florida 32202

David A. Hertz  
General Counsel  
Duval Teachers' United  
1601 Atlantic Boulevard  
Jacksonville, Florida 32207

Clerk of the Division of Administrative Hearings  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

STATE OF FLORIDA  
THE SCHOOL BOARD OF DUVAL COUNTY, FLORIDA

In Re: Dismissal of Instructional Employee

February 28, 2012

FILED  
2012 MAR -1 A 11:49  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

DUVAL COUNTY SCHOOL BOARD,

Employer/Petitioner,

DOAH Case No.: 11-0638TTS

vs.

STEVEN MAKOWSKI,

Employee/Respondent.

**FINAL ORDER OF DISMISSAL**

On January 28, 2011, Ed Pratt-Dannals, Superintendent of Duval County Public Schools (the "District"), issued to Respondent a Notice of Termination of Employment Contract and Immediate Suspension without Pay ("Notice of Termination") based on charges that he used District technology to download and view sexual materials during work hours, in violation of District policies, Florida Department of Education ("FDOE") Rule 6B-1.001(3), and Sections 1012.795(1)(d),(g) and (j) of the Florida Statutes.

Respondent challenged his termination and, at his request, the above-styled case was opened and a hearing was held by the Honorable Lawrence P. Stevenson, an Administrative Law Judge ("ALJ") assigned by the State of Florida's Division of Administrative Hearings ("DOAH").

In sum, the ALJ is charged with determining whether: (a) the charges in the Notice of Termination are supported by competent and substantial evidence; and (b) the termination complied with due process and other protections afforded to Respondent under the Duval County Teacher Tenure Act, Laws of Florida, Chapter 21197

(1941)(“Tenure Act”), Chapter 120 of the Florida Statutes, and the Collective Bargaining Agreement between the District and Duval Teachers United.

The DOAH hearing took place on July 20, 2011, and both parties were represented by legal counsel. Throughout the hearing, the ALJ took evidence and heard sworn testimony of several witnesses. In light of the testimonial and documentary evidence, the argument of counsel, and both parties’ proposed recommended orders, the designated ALJ issued an Order on November 21, 2011, which recommended that:

“the School Board enter a final order finding Respondent guilty of immorality and misconduct in office and imposing the following sanctions: uphold Respondent’s suspension from February 2, 2011 through the date of the final order, and require Respondent to complete remedial training concerning professionalism and the proper use of school property” RO, p. 26.

Having filed no exceptions to the Recommended Order, the parties thereafter appeared at a hearing before The School Board of Duval County, Florida (the “Board”) on February 14, 2012.

Upon an independent examination of the entire record in this matter, the Board hereby adopts the ALJ’s Findings of Fact and Conclusions of Law, but rejects the recommendation to reduce Respondent’s discipline from termination to suspension of employment. In addition to those reasons discussed below, the Board’s decision is based on the gravity of the proven charges against Respondent, and the ALJ’s failure to supply meaningful reasons for reducing the level of discipline in this matter while the ALJ likewise recognized the Board’s having discretion regarding the discipline.

As the ALJ noted in the Recommended Order, Respondent conducted “many internet searches” during school hours on a District computer using sexually explicit

search terms, which led to the display of websites and on-line videos that were clearly obscene and pornographic. RO, ¶¶ 5, 32. Respondent also visited “Craigslist” postings in which he “appeared to be arranging meetings” with other persons in the Jacksonville area “for the express purpose of engaging in sexual activity.” RO, ¶ 15.

While the ALJ stated that the images “did not approach the legal definition of obscenity,” he appropriately determined that they were nevertheless pornographic and “likely met the definition of ‘obscene activities’ set forth in the [District’s] Acceptable Use Policy.” RO, ¶¶ 5, 47, fn.8. And although the ALJ stated in one part of the Recommended Order that none of the images “involved children,” he stated elsewhere that the persons depicted therein “may or may not have been less than 18 years old.” RO, ¶¶ 5, 26, fn. 3.

Notably, the District’s Chief Human Resources Officer, Vicki Reynolds, testified during the administrative hearing that had she seen the entire investigative report including the email fragments, then her initial recommendation to the Board would have been termination of Respondent’s employment. RO, ¶ 20.

Also notably, the Respondent denied committing such misconduct during the District’s investigation, and his first admission did not occur until his deposition related to this proceeding, whereupon Respondent admitted he lied to District investigators. RO, ¶¶ 22, Respondent again admitted these transgressions and other acts of misconduct contained in the Notice of Termination during the administrative hearing for this matter. RO, ¶¶ 24, 25. Respondent also agreed to two years of probation to settle a parallel case brought by the Education Practices Commission (RO, ¶ 31).

The Board specifically concurs with the ALJ's conclusion that "the very nature of [Respondent's] actions ... show such a failure of good judgment as to permit the inference that his effectiveness in the school system and his service in the community have been impaired." RO, ¶ 47. The Board also specifically agrees with the ALJ's conclusion that "[Respondent's] actions met the definitions of 'immorality' and 'misconduct in office.'" RO, ¶ 52.

But the Board finds no wisdom in the ALJ's determination that Respondent's actions "were [not] unethical' in the sense of affecting [his] professionalism [...]." RO, ¶ 52. Instead, the Board cannot conclude that a teacher can commit such acts of misconduct and immorality using a District computer during work hours, and also remain ethical in any sense.

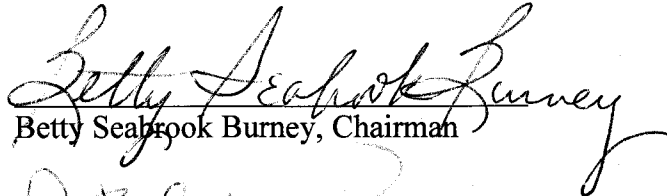
It was only after careful deliberation that this Board unanimously decided to terminate Respondent's employment at the outset of these proceedings. Thereafter, as a result of this administrative proceeding, the ALJ's recommended discipline appears to be his impression of what he considered fair. Although the ALJ did not accord deference to this Board's judgment, the ALJ did recognize the Board has discretion when the ALJ recommended a lesser penalty than the Board's initial discipline of termination. RO, ¶ 34. After careful deliberation to enter this Final Order for this administrative proceeding, the Board could not ignore its constitutional obligations and overarching imperative to preserve the welfare of students in our care, particularly in light of the Board's adopting the ALJ's Findings of Fact and Conclusions of Law, and the Board's findings set forth above.


Therefore, in light of the foregoing, it is **ORDERED** that:

1. Administrative Law Judge Lawrence P. Stevenson's Findings of Fact and Conclusions of Law are hereby **ADOPTED**; however, based on the reasons set forth above, the Board rejects his recommendation to reduce Respondent's discipline from termination to suspension of employment.

2. Respondent's employment with Duval County Public Schools is hereby **TERMINATED for cause**.

Entered this 28th day of February, 2012 by majority vote of The School Board of Duval County, Florida.

  
Betty Seabrook Burney, Chairman

  
Sonita Young, Agency Clerk

**Copies to:**

David A. Hertz, Esq.  
General Counsel  
Duval Teachers United  
1601 Atlantic Boulevard  
Jacksonville, FL 32207  
*Counsel for Respondent*

David J. D'Agata  
Assistant General Counsel  
City of Jacksonville  
Office of General Counsel  
117 West Duval Street, Suite 480  
Jacksonville, FL 32202  
*Counsel for Petitioner*