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**ELECTRONIC FILING—eALJ**

October 10, 2012

Ms. Claudia Llado  
Clerk of the Division  
Division of Administrative Hearings  
Florida Department of Administration  
1230 Apalachee Parkway  
Tallahassee, FL 32399-3060

Re: St. Lucie County School Board v. Lurana Hillard, DOAH Case No. 12-1254

Our File No. 500-230

Dear Ms. Llado:

In accordance with Section 120.57(1)(m), Fla. Stat., this confirms the filing by electronic means, as required by Ch. 2011-208, § 7, Laws of Fla., of a copy of the Final Order entered by The School Board of St. Lucie County, Florida, in the above matter on October 9, 2012. Please advise if any additional information or documentation is needed from the School Board.

Respectfully submitted,

  
Daniel B. Harrell  
Attorney for The School Board of St. Lucie County

DBH/

Enclosures

cc: Mr. Michael J. Lannon  
Mr. Mark F. Kelly, Esquire  
Ms. Elizabeth Coke, Esq.  
Ms. Christine L. Harrison

SCH 0500230 DOAH Final Order LTR.wpd

BEFORE THE SCHOOL BOARD OF ST. LUCIE COUNTY, FLORIDA

ST. LUCIE COUNTY SCHOOL BOARD,  
Petitioner,

v.

DOAH Case No. 12-1254

LURANA HILLARD,  
Respondent.

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FINAL ORDER

THIS CAUSE came before The School Board of St. Lucie County, Florida (“School Board”), as governing body of The School District of St. Lucie County, Florida (“District”), for final agency action in accordance with Section 120.57(2), Fla. Stat.

Appearances

For Petitioner: Elizabeth Coke, Esquire  
Richeson & Coke, P.A.  
317 South Second Street  
Post Office Box 4048  
Fort Pierce, Florida 34948-4048

For Respondent: Mark F. Kelly, Esquire  
Kelly and McKee, P.A.  
1718 East Seventh Avenue, suite 301  
Post Office Box 75638  
Tampa, Florida 33675-0638

Introduction

The Respondent Lurana Hillard is a school psychologist who was employed by the Petitioner St. Lucie County School Board during school years 2005-2006 through 2008-2009 as a Program Specialist for School Psychology and School Psychologists. The Respondent was a participant in or member of the Florida Retirement System (“FRS”), and she had entered the FRS’s Deferred Retirement Option Program (“DROP”) on July 1, 2002. The School Board did not reappoint the Respond-

ent as a Program Specialist for the 2009-2010 school year, although during the 2009-2010 and subsequent school years, the Board employed the Respondent as a School Psychologist.

In August 2009, the Respondent filed suit in Circuit Court alleging that by terminating her employment as a Program Specialist following the 2008-2009 school year, the School Board had breached an employment contract with her. The suit was dismissed for failure to exhaust administrative remedies. In January 2012, the dismissal was affirmed on appeal, without prejudice to the Respondent seeking an administrative hearing.

By petition for administrative hearing filed with the School Board in February 2012 (“Petition”), the Respondent again contended that her termination as a Program Specialist after the 2008-2009 school year constituted the breach of an employment contract. She argued that she was “entitled to the monetary value of the salary and benefits she would have earned during the 2009-2010 school year, along with retirement contributions and any other applicable benefits, less interim earnings.” Petition at ¶2. The School Board referred the Petition to the Division of Administrative Hearings of the Florida Department of Administration for an administrative hearing. Ultimately the parties jointly requested that the Administrative Law Judge (“ALJ”) issue a recommended order based on stipulated facts and legal arguments presented by the parties.

On July 18, 2012, the ALJ entered a Recommended Order finding that no contract for continuing employment through the 2009-2010 school year existed between the Respondent and the School Board, and that any such mutual agreement would have been contrary to governing law. Recommended Order at pp. 27-30, ¶¶ 16-20. The ALJ recommended that the School Board enter a final order rejecting the Respondent’s contention that she was entitled to employment as a contract educator through the 2009-2010 school year, and declining to award her the relief requested in her Petition.

Recommended Order at p. 31. The Recommended Order has been forwarded to the School Board in accordance with Section 120.57, Fla. Stat., and is attached to and made a part of this Final Order.

Counsel to the Respondent filed written exceptions to the Recommended Order on August 13, 2012 (“Respondent’s Exceptions”). Counsel to the Superintendent as Petitioner did not file any exception to the Recommended Order but filed a response to the Respondent’s exceptions on September 5, 2012 (“Petitioner’s Response”). Both parties also submitted proposed forms of final order.

The School Board met on October 1 and 9, 2012, in Fort Pierce, St. Lucie County, Florida, to take final agency action. At the hearing on October 1, 2012, argument was presented by counsel for each of the parties. Upon consideration of the Recommended Order, the Respondent’s Exceptions, the Petitioner’s Response, the proposed forms of final order, and argument of counsel to the parties, and upon a review of the record in this proceeding, the School Board finds and determines as follows:

Rulings on Exceptions

Respondent’s Exception No. 1. The Respondent excepts to the ALJ’s conclusion of law in Paragraph 14 of the Recommended Order “to the extent it implies that Respondent failed to prove the existence of a contractual agreement between her and the School Board covering” the relevant period. Recommended Order at pp. 23-24. See Respondent’s Exceptions at pp. 1-2. The Petitioner responds that of the two documents asserted to constitute a contract (an email and a DROP extension form), the latter clearly reflects that the Respondent’s employment was to be “on an annual contract basis for each year of participation” within the relevant period. Recommended Order at pp. 23 and 29-30, ¶¶ 13 and 19. See Petitioner’s Response at p. 3.

The Respondent's Exception No. 1 is rejected as the conclusions of law in Paragraph 14 are consistent with the stipulated record and supported by competent substantial evidence and competent legal authority.

Respondent's Exception No. 2. The Respondent excepts to the conclusion of law in Paragraph 15 of the Recommended Order "to the extent that it implies that the burden was on Respondent to prove a contract containing all definite terms and conditions of her employment." Recommended Order at pp. 24-27. See Respondent's Exceptions at p. 2. The Petitioner replies that the burden of proof falls on the party asserting an affirmative issue, and here the Respondent failed to prove the existence of a three year contract of employment. Recommended Order at pp. 23-24, ¶ 14. See Petitioner's Response at p. 4.

The Respondent's Exception No. 2 is rejected as the conclusions of law in Paragraph 15 are consistent with the stipulated record and supported by competent substantial evidence and competent legal authority.

Respondent's Exception No. 3. The Respondent excepts to the conclusions of law contained in Paragraphs 16, 17, and 18 of the Recommended Order that the documents referenced in such paragraphs "do not constitute an objective manifestation of mutual consent . . . that her employment continue through the 2009-2010 school year." Recommended Order at pp. 27-29. See Respondent's Exceptions at pp. 2-3. The Petitioner counters that Section 121.091(13), Fla. Stat., provides that participation in DROP "does not guarantee employment for the specified period of DROP" and that participation "beyond the initial 60 month period" (which initial period for the Respondent was school years 2002-2003 through 2006-2007) "shall be on an annual contract basis." Therefore, the Board's authorization for the Respondent to participate in DROP for *up to* an additional three years did not constitute an employment contract for the entire three-year period. See Petitioner's Response at p. 5.

The Respondent's Exception No. 3 is rejected as the conclusions of law in Paragraphs 16, 17, and 18 are consistent with the stipulated record and supported by competent substantial evidence and competent legal authority.

Respondent's Exception No. 4. The Respondent excepts to the conclusion of law in Paragraph 19 of the Recommended Order that a provision in Section 121.091(13), Fla. Stat., implicitly negates other provisions that the Respondent argues "clearly provide that the [FRS] member's employment shall continue through the entire period of DROP." Recommended Order at pp. 29-30. See Respondent's Exceptions at p. 3. The Petitioner answers by pointing out that the Respondent is relying upon language in Section 121.091(9)(b), Fla. Stat., which provision is explicitly subject to the employment limitation in subsection (13). See Petitioner's Response at pp. 5-6.

The Respondent's Exception No. 4 is rejected as the conclusions of law in Paragraph 19 are supported by competent legal authority.

Respondent's Exception No. 5. The Respondent excepts to the conclusion of law in Paragraph 20 of the Recommended Order "that Respondent's contentions based on [Section 121.091, Fla. Stat.] are inconsistent with prior case law generally applicable to teachers on annual contracts," contending that the decisions cited by the ALJ "are inapplicable to this case" because those decisions did not arise under the DROP extension provisions. Recommended Order at pp. 30-31. See Respondent's Exceptions at pp. 3-4. The Petitioner responds that as determined by the ALJ, the Respondent was employed on an annual contract basis in compliance with Section 121.091(13), and that non-reappointment for the 2009-2010 school year caused no compensable damage. Recommended Order at pp. 29-30, ¶¶ 19 and 20. See Petitioner's Response at pp. 6-7.

The Respondent's Exception No. 5 is rejected as the conclusions of law in Paragraph 20 are consistent with the stipulated record and supported by competent substantial evidence and competent legal authority.

Respondent's Exception No. 6. The Respondent excepts to the ALJ's "failure to address" certain contentions set forth in the Respondent's Proposed Recommended Order. See Respondent's Exceptions at pp. 4-6. The Petitioner first replies that the ALJ was not required to address explicitly every contention contained in the Respondent's Proposed Recommended Order. See Petitioner's Response at p. 7. The Petitioner further notes that the conclusions of law adopted by the ALJ implicitly addressed each of the Respondent's cited contentions and thereby rejected those arguments. See Petitioner's Response at pp. 7-8.

The Respondent's Exception No. 6 is rejected as the conclusions of law in Paragraphs 4-21 of the Recommended Order are complete, comprehensive, consistent with the stipulated record, and supported by competent substantial evidence and competent legal authority. *Compare* 120.57(1)(k), Fla. Stat. (requiring an agency, when adopting a final order, to include "an explicit ruling on each exception" unless the exception does not clearly identify the disputed portion of the recommended order, does not identify the legal basis for the exception, or does not include appropriate and specific citations to the record) *with* Fla. Admin. Code Rules 28-106.215 and 28-106.307 (authorizing post-hearing submission of, *inter alia*, proposed orders, but imposing no "explicit ruling" requirement with respect to the arguments contained in such filings).

Respondent's Exception No. 7. The Respondent excepts to the conclusion of law in Paragraph 21 and to the Recommendation of the Recommended Order based on the Respondent's previous arguments. Recommended Order at p. 31. See Respondent's Exceptions at p. 6. The Petitioner answers by stating that the ALJ determined that the Respondent was employed on an annual basis, as

required by statute, and that any School Board agreement to a multi-year employment contract would have been contrary to law and therefore unenforceable. Recommended Order at pp. 27-30, ¶¶ 16-19. See Petitioner's Response at pp. 8-9.

The Respondent's Exception No. 7 is rejected as the both the conclusions of law in Paragraph 21 and the ALJ's Recommendation are consistent with the stipulated record and supported by competent substantial evidence and competent legal authority.

Findings of Fact

Neither party has filed any exception to the (stipulated) Findings of Fact set forth in the Recommended Order. A party who files no exception to the findings of fact contained in a recommended order thereby expresses agreement with, or at least waives any objection to, those findings of fact. *Environmental Coalition of Florida, Inc. v. Broward County*, 586 So. 2d 1212, 1213 (Fla. 1<sup>st</sup> D.C.A. 1991). See also *Henderson v. Department of Health, Board of Nursing*, 954 So. 2d 77, 81 (Fla. 5<sup>th</sup> D.C.A. 2007); *Kantor v. School Board of Monroe County*, 648 So. 2d 1266, 1267 (Fla. 3d D.C.A. 1995).

The School Board adopts the (stipulated) Findings of Fact set forth in paragraph Nos. 1 through 3 of the Recommended Order.

Conclusions of Law

The School Board adopts the Conclusions of Law set forth in paragraph Nos. 4 through 21 of the Recommended Order.

Determination

The School Board adopts the recommended determination set forth in the Recommended Order.



WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the Respondent Lurana Hillard was not entitled to employment as a Program Specialist for School Psychology and School Psychologists during the 2009-2010 school year, she is not entitled to the relief requested in her Petition, and therefore the School Board hereby declines to award the Respondent such relief. This Final Order shall take effect upon filing with the Superintendent of Schools as Secretary of THE SCHOOL BOARD OF ST. LUCIE COUNTY, FLORIDA.

A copy of this Final Order shall be provided to the Division of Administrative Hearings within 15 days of filing.

DONE AND ORDERED this 9<sup>th</sup> day of October, 2012.

THE SCHOOL BOARD OF ST. LUCIE COUNTY, FLORIDA

By: Carol A. Hilson  
CAROL A. HILSON, Chair

Attest: Michael J. Lannon  
MICHAEL J. LANNON, Superintendent and Ex-Officio  
Secretary to The School Board of St. Lucie County, Florida

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## NOTICE OF RIGHT TO APPEAL

Any party adversely affected by this Final Order may seek judicial review pursuant to Section 120.68, Fla. Stat., and Fla. R. App. P. 9.030(b)(1)(C) and 9.110. To initiate an appeal, one copy of a Notice of Appeal must be filed, within the time period stated in the Fla. R. App. P. 9.110, with the Superintendent as Ex-Officio Secretary of The School Board of St. Lucie County, Florida, 4204 Okeechobee Road, Fort Pierce, Florida 34947. A second copy of the Notice of Appeal, together with the applicable filing fee, must be filed with the appropriate District Court of Appeal.

Attachment: Recommended Order

Copies furnished to:

Elizabeth Coke, Esquire  
Mark F. Kelly, Esquire  
Daniel B. Harrell, Esquire  
Clerk, Division of Administrative Hearings