

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BEFORE THE SCHOOL BOARD OF LAKE COUNTY, FLORIDA

LAKE COUNTY SCHOOL BOARD,

Petitioner,

vs.

DOAH No. 12-2270TTS

JACLYN OCKERMAN,

Respondent.

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DIVISION OF
ADMINISTRATIVE
HEARINGS

SCHOOL BOARD FINAL ORDER

Pursuant to notice, a formal evidentiary hearing was held on September 10, 2012 before the Division of Administrative Hearings by Administrative Law Judge E. Gary Early. The subject matter of the hearing was whether Respondent violated Florida Administrative Code Rule 6B-1.006(3)(a) of the Code of Ethics and the Principles of Professional Conduct of the Education Profession and, if so, the nature of the sanctions.

Judge Early issued a Recommended Order on November 14, 2012. Judge Early determined that Petitioner had proven some, but not all of the charges against Respondent and recommended that Respondent's employment be reinstated and the Step 1 sanction of counseling as described in Petitioner's Progressive Discipline Method be imposed.

On November 29, 2012, Petitioner submitted exceptions to the Recommended Order and on December 7, 2012, Respondent filed her responses thereto. Pursuant to §120.57, Florida Statutes, the School Board ruled on each of the filed exceptions as follows:

1. The exception to paragraph 17 of the Recommended Order is granted. In the last

sentence of paragraph 17, the phrase "never saw Respondent roughly handle a student" is determined by the School Board to not be based on competent substantial evidence, and is stricken. The referenced Finding of Fact deals with the testimony of Ms. Atwood and what she witnessed in the classroom, and incorrectly states Ms. Atwood testified she never saw Ms. Ockerman roughly handle a student. However, Ms. Atwood testified at the hearing:

Q. Did you ever see Ms. Ockerman roughly or physically handle one of the students either to move them or to stop them from doing something?

A. Yes.

Hearing Transcript page 39, lines 2-5.

2. The exception to paragraph 66 of the Recommended Order is granted. In the last sentence of paragraph 66, the phrase "depending upon the infraction" is determined by the School Board as necessary in order to show the purpose of the Progressive Discipline Method, is based on competent substantial evidence, and is added to the end of the sentence. The referenced Finding of Fact addresses the purpose of Petitioner's Progressive Discipline Method as testified to by Ms. Nelsen. However, the finding does not include the entire purpose as related by Ms. Nelsen. Ms. Nelson testified:

Q. And isn't the purpose of the progressive discipline to let the employee know what they did wrong and give them a chance to correct their behavior?

A. That is the purpose depending on the infraction.

Hearing Transcript Page 19, Lines 21-24.

3. The exception to paragraph 72 of the Recommended Order is granted. Paragraph 72 is determined by the School Board to be a Conclusion of Law rather than a Finding of Fact. Accordingly, the School Board modifies the Recommended Order by redesignating the referenced sentence as a Conclusion of Law. The School Board makes this revision as it appears Judge Early

simply placed the conclusion in the wrong section of the Recommended Order.

4. The exception to paragraph 75 of the Recommended Order was withdrawn by Petitioner, and the School Board does not rule on this exception.

5. The exception to paragraph 76 of the Recommended Order is granted. Paragraph 76 is determined by the School Board to be a Conclusion of Law rather than a Finding of Fact. Accordingly, the School Board modifies the Recommended Order by redesignating the referenced paragraph as a Conclusion of Law. The School Board makes this revision as it appears Judge Early simply placed the conclusion in the wrong section of the Recommended Order.

6. The exception to paragraph 90 of the Recommended Order is denied.

7. The exception to paragraph 91 of the Recommended Order is denied.

8. The exception to paragraph 92 of the Recommended is granted. Pursuant to §120.57(1)(l), Florida Statutes, the School Board may reject or modify a Conclusion of Law which interprets an administrative rule over which the School Board has substantive jurisdiction. The School Board finds that it has substantive jurisdiction over its Progressive Discipline Method and determines that Judge Early has misinterpreted the implementation of the Progressive Discipline Method to require any and all discipline matters to go through progressive discipline steps. However, the only testimony in the record provides that progressive discipline is used "depending upon the infraction" and not for every discipline matter, regardless of the infraction. Accordingly, the School Board determines that the Conclusion of Law in Paragraph 92 shall be modified to include at the beginning of the paragraph, "Petitioner's Progressive Discipline Method is utilized for employee discipline matters, depending upon the infraction." The School Board determines this modified Conclusion of Law is as reasonable or more reasonable than the original Conclusion of Law recommended by Judge Early and is supported by the testimony of Ms. Neslen at Hearing Transcript Page 19, Lines 21-24, the actual Progressive Discipline Method admitted as Petitioner's Exhibit "7", and the modified Findings of Fact at paragraph 66 of the Recommended Order, as described above.

9. The exception to Recommendation (c) of the Recommended Order is granted.

Pursuant to the overwhelming weight of legal authority, the School Board may not dictate a personnel recommendation to the Superintendent. Rather, the School Board must take action at duly noticed School Board meetings on personnel recommendations made by the Superintendent of the School Board. *McCalister v. Bay School Board*, 971 So. 2d 1020 (Fla. 1st DCA 2008); *Cox v. Osceola School Board*, 669 So. 2d 353 (Fla. 5th DCA 1996). Accordingly, the School Board determines it is legally required to delete the phrase "to a position equivalent to that previously held" from Recommendation (c).

10. The exception to Recommendation (d) of the Recommended Order is granted. Pursuant to Article IX, Section 4 of the Florida Constitution, School Boards are vested with the constitutional authority to operate, control and supervise all free public schools within the school district. Judge Early may not dictate to the School Board a particular sanction, but must leave such a determination to the School Board. See also, *Bell v. Dade School Board*, 681 So. 2d 843 (Fla. 3^d DCA 1996) (Court remanded employee discipline case to School Board for imposition of sanction to be set by the School Board.) Accordingly, the School Board determines Recommendation (d) shall be stricken.

Pursuant to §120.57, Florida Statutes, the School Board adopts the Findings of Fact and the Conclusions of Law contained in the Recommended Order attached hereto, except as specifically modified above. In addition to the Recommendations of Judge Early as set out in the Recommended Order and as modified above, the School Board does hereby Order the Respondent to immediately comply with the Step 1 sanction of the School Board's Progressive Discipline Method.

DONE AND ADOPTED by the School Board of Lake County, Florida this 28th day of

January, 2013.

THE SCHOOL BOARD OF LAKE
COUNTY, FLORIDA

By: Kyleen Fischer
Kyleen Fischer, Chairperson

ATTEST:

Susan Moxely
Dr. Susan Moxely, Superintendent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular mail on this 31st day of January, 2013 to: **E. Gary Early, Administrative Law Judge**, Department of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; **Susan E. Moxley, E.D., Superintendent**, School District of Lake County, Florida, 201 West Burleigh Boulevard, Tavares, Florida 32778; **Stephen W. Johnson, Esq.**, McLin & Burnsed, P.O. Box 491357, Leesburg, Florida 34749-1357; **Alfred Truesdell, Esq., Jill S. Schwartz & Associates, P.A.**, 655 W. Morse Boulevard, Suite 212, Winter Park, Florida 32789; **Lois S. Tepper, Interim General Counsel**, Department of Education, Turlington Building, Suite 1244, 325 West Gaines Street, Tallahassee, Florida 32399; and **Dr. Tony Bennett, Commissioner of Education**, Department of Education, Turlington Building, Suite 1514, 325 West Gaines Street, Tallahassee, Florida 32399.

By: Natalie Challenger
Natalie Challenger, Clerk to the School Board
Of Lake County, State of Florida
201 W. Burleigh Boulevard
Tavares, Florida 32778-2407

NOTICE OF RIGHTS OF APPEAL

Notice is hereby given that this is a final agency order and a party adversely affected may seek judicial review. Judicial review is sought pursuant to the provisions in §120.68, Florida Statutes. 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. Appellate proceedings are 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.