STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SCHOOL BOARD OF ST. LUCIE COUNTY, FLORIDA,
Petitioner,
vs.

RENYA JONES,

Respondent.
_____/

Case Nos. 17-4226TTS

NOTICE OF FILING FINAL ORDER

Petitioner, SCHOOL BOARD OF ST. LUCIE COUNTY, FLORIDA, in accordance with Section 120.57(1)(m), Fla. Stat., confirms the filing by electronic means, as required by Section 120.52(5), Fla. Stat., of a copy of the Final Order entered by The School Board of St. Lucie County, Florida, in the above matter on June 12, 2018.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by e-mail to Nicholas Wolfmeyer, Esq., and Eric Lindstrom, Esq., Egan, Lev, Lindstrom & Siwica, P.A., nwolfmeyer@eganlev.com, and elindstrom@eganlev.com, P.O. Box 2231, Orlando, FL 32802, this 13th day of June, 2018.

/s/ Barbara L. Sadaka
Barbara L. Sadaka
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St. Lucie County School Board
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BEFORE THE SCHOOL BOARD OF ST. LUCIE COUNTY, FLORIDA

ST. LUCIE COUNTY SCHOOL BOARD,
Petitioner,

v. DOAH Case No. 17-4226TTS

RENYA JONES,
Respondent.

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(1)(k) and (1), Florida Statutes.

Appearances

For Petitioner: Barbara L. Sadaka, Esquire
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The School District of St. Lucie County, Florida
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Port St. Lucie, Florida 34986

For Respondent: Nicholas Wolfmeyer, Esquire
Egan, Lev, Lindstrom & Siwica, P.A.
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Introduction

The Respondent Renya Jones is a teacher with a professional service contract employed by the Petitioner St. Lucie County School Board at Village Green Environmental Studies School. In May 2017, the Petitioner, by and through the Superintendent of Schools, advised the Respondent that he planned to recommend terminating her employment with the School Board on charges that she had violated various School Board policies and the Principles of Professional Conduct for the Education Profession. The Superintendent also advised the Respondent of her right to a hearing, and that if

she chose to exercise her hearing right he would recommend her suspension without pay pending the outcome of the hearing.

The Respondent timely requested a formal administrative hearing. At its meeting held June 13, 2017, the School Board suspended the Respondent without pay and directed referral of the case to the Division of Administrative Hearings of the Florida Department of Administration ("DOAH") for a hearing before an Administrative Law Judge ("ALJ"). On July 25, 2017, the School Board filed a Petition for Termination with DOAH.

The hearing was conducted by the ALJ on December 4, 2017, in Port St. Lucie, St. Lucie County, Florida. On February 22, 2018, the ALJ entered a Recommended Order finding that the Respondent was intoxicated when she reported for work and while on duty on May 8, 2017, refused to submit to a drug test when directed, and failed to protect students from conditions harmful to learning. Recommended Order at pp. 30-37, ¶¶ 60, 61, 69-75, and 78. The ALJ determined that the Petitioner had met its burden of proof to demonstrate just cause for terminating the Respondent, and recommended that the School Board enter a final order finding that the Respondent's conduct constitutes just cause for termination. Recommended Order at pp. 38-39, ¶¶ 80 and 81 and Recommendation. The Recommended Order has been forwarded to the School Board in accordance with Section 120.57(1), Florida Statutes, and is attached to and made a part of this Final Order.

The Respondent filed written exceptions to the Recommended Order ("Respondent's Exceptions") with DOAH on March 9, 2018, but did not formally file those exceptions with the School Board as required by Section 120.57(1)(k), Fla. Stat., and Fla. Admin. Code Rule 28-106.217(1). The Petitioner filed a response to the exceptions ("Petitioner's Response") on March 19, 2018, including argument that the exceptions should be denied as untimely. *See* Fla. Admin. Code Rule 28-

106.217(3); Petitioner's Response at pp. 1-2. Both parties have also submitted proposed forms of final order.

Concerning the Petitioner's argument that the Respondent's Exceptions should be denied as untimely, such argument will be treated as a motion to strike. The Respondent's Exceptions were timely served on counsel to the Petitioner, as required by Fla. Admin. Code Rule 28-106.110, and the Petitioner has presented no indication of prejudice resulting from the Respondent's failure to file the exceptions directly with the School Board as the agency responsible for rendering final agency action. The motion to strike the Respondent's Exceptions is denied.

The School Board met on May 15, 2018, in Port St. Lucie, St. Lucie County, Florida, to take final agency action. At the hearing on May 15, 2018, 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 complete record in this proceeding, the School Board finds and determines as follows:

Rulings on Exceptions

An agency may reject or modify an ALJ's finding of fact only if the finding is not supported by competent, substantial evidence, or the proceedings on which the finding was based did not comply with essential requirements of law. *See* Section 120.57(1)(1), Fla. Stat.; *Abrams v. Seminole County School Board*, 73 So. 3d 285, 294 (Fla. 5th D.C.A. 2011); *Schrimsher v. School Board of Palm Beach County*, 694 So. 2d 856, 860 (Fla. 4th D.C.A. 1997). The agency has no authority to reweigh conflicting evidence. *See, e.g., Heifetz v. Department of Business Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). The agency may adopt the ALJ's findings of fact and conclusions of law in a recommended order, or the agency may reject or modify the conclusions of law over

which it has substantive jurisdiction. *See* Section 120.57(1)(1), Fla. Stat. *See also State Contracting and Engineering Corporation v. Department of Transportation*, 709 So. 2d 607 (Fla. 1st D.C.A. 1998) (an agency is not required to defer to the ALJ on issues of law). The agency may accept the recommended penalty in a recommended order, but may not reduce or increase the penalty without review of the complete record and without stating with particularity its reasons in the final order, by citing to the record in justifying its action. *See* Section 120.57(1)(1), Fla. Stat.

The Respondent's Exceptions will be addressed in order.

Respondent's Exception No. 1. The Respondent excepts to the finding of fact in paragraph 6 of the Recommended Order regarding contractual hours for teachers at Village Green during the 2016-2017 school year, arguing there was conflicting testimony on the matter. Recommended Order at p. 5. *See* Respondent's Exceptions at pp. 1-2. The Petitioner counters by referencing other testimony regarding hours for teachers and students. *See* Petitioner's Response at pp. 3-4.

"Evidentiary matters such as credibility of witnesses and resolution of conflicting evidence are the prerogative of the ALJ as the finder of fact in administrative proceedings." *Reily Enterprises, LLC v. Florida Department of Environmental Protection*, 990 So. 2d 1248, 1251 (Fla. 4th DCA 2008). "In a fact-driven case such as this, where an employee's conduct is at issue, great weight is given to the findings of the [ALJ], who has the opportunity to hear the witnesses' testimony and evaluate their credibility." *Resnick v. Flagler County School Board*, 46 So. 3d 1110, 1112 (Fla. 5th D.C.A. 2010). *See also Siewert v. Casey*, 80 So. 3d 1114, 1116 (Fla. 4th D.C.A. 2012) (the finder of fact is to weigh the credibility of witnesses). "If there is competent substantial evidence in the record to support the ALJ's findings of fact, the agency may not reject them, modify them, substitute its findings, or make new findings." *Rogers v. Dept. of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005).

The Respondent's Exception No. 1 is rejected as the challenged finding of fact in paragraph 6 of the Recommended Order is supported by competent substantial evidence.

Respondent's Exception No. 2. The Respondent excepts to the finding of fact in paragraph 11 of the Recommended Order that on the morning of the events leading to the charges against her students were beginning "to come in for practice on the school play," and in particular to any implication that students were seen entering her classroom. Recommended Order at p.7. *See* Respondent's Exceptions at pp. 2-3. The Petitioner responds by noting the testimony of other school staff members regarding their efforts to shield students from seeing the Respondent in a disheveled condition. *See* Petitioner's Response at pp. 4-5.

The Respondent's Exception No. 2 is rejected as the challenged finding of fact in paragraph 11 of the Recommended Order is supported by competent substantial evidence.

Respondent's Exception No. 3. The Respondent excepts to the findings of fact in paragraphs 10 and 14 of the Recommended Order that the Respondent smelled of alcohol on her arrival and before she left her school, and that her stomach was showing. Recommended Order at pp. 6-8. *See* Respondent's Exceptions at pp. 3-4. In reply, the Petitioner cites the testimony of various school staff members that supports the challenged findings. *See* Petitioner's Response at pp. 5-7.

The Respondent's Exception No. 3 is rejected as the challenged findings of fact in paragraphs 10 and 14 of the Recommended Order are supported by competent substantial evidence.

Respondent's Exception No. 4. The Respondent excepts to the finding of fact in paragraph 15 of the Recommended Order that no substitute teacher was procured for the Respondent following her departure from the school on the morning of the events in question. Recommended Order at p. 8. *See* Respondent's Exceptions at p. 4. The Petitioner counters that the record included testimony supporting the ALJ's finding. *See* Petitioner's Response at p. 7.

The Respondent's Exception No. 4 is rejected as the challenged finding of fact in paragraph 15 of the Recommended Order is supported by competent substantial evidence.

Respondent's Exception No. 5. The Respondent excepts to the to the findings of fact in paragraph 20 of the Recommended Order that the school media specialist told the Respondent not to return to the school, and to contact the principal before returning. Recommended Order at p. 10. *See* Petitioner's Exceptions at p. 5. The Petitioner responds by citing various testimony supporting the ALJ's findings. *See* Petitioner's Response at pp. 7-8.

The Respondent's Exception No. 5 is rejected as the challenged findings of fact in paragraph 20 of the Recommended Order are supported by competent substantial evidence.

Respondent's Exception No. 6. The Respondent excepts to the finding of fact in paragraph 24 of the Recommended Order that reasonable suspicion existed warranting testing the Respondent for drugs and alcohol based upon her appearance, behavior, and the smell of alcohol. Recommended Order at p. 12. *See* Respondent's Exceptions at p. 6. In response, the Petitioner references the testimony of various witnesses confirming the ALJ's determination. *See* Petitioner's Response at pp. 9-10.

The Respondent's Exception No. 6 is rejected as the challenged finding of fact in paragraph 24 of the Recommended Order is supported by competent substantial evidence.

Respondent's Exception No. 7. The Respondent excepts to the findings of fact in paragraphs 27 and 28 of the Recommended Order reflecting that the Respondent had more than one box cutter in her possession. Recommended Order at p. 13. *See* Respondent's Exceptions at p. 6. The Petitioner acknowledges that the record in fact reflects that the Respondent was in possession of a single box cutter, and concurs with the Respondent's exception. *See* Petitioner's Response at p. 10.

The Respondent's Exception No. 7 is granted and the third sentence of paragraph 27 and (the entirety of) paragraph 28 of the Recommended Order are revised to read:

> 27. . . . From his vantage point standing by the table, he could see a large ziplock bag of capsules in her purse, as well as a box cutter. . . .
>
> 28. Mr. Rodriguez took her explanation at face value, but advised her that he was going to hold onto both the bag of capsules and the box cutter as a safety measure while she was transported, and return them to her when they were finished.

Respondent's Exception No. 8. The Respondent excepts to the to the finding of fact in paragraph 32 of the Recommended Order that although there may be reasonable suspicion that an individual is under the influence of either drugs or alcohol, without testing the source of the influence is difficult to know with certainty. Recommended Order at p. 14. *See* Respondent's Exceptions at pp. 6-7. The Respondent contends there was no testimony that anyone suspected her of being under the influence of drugs as opposed to alcohol. *Id.* In reply, the Petitioner notes testimony that supports the questioned finding. See Petitioner's Response at pp. 10-11.

The Respondent's Exception No. 8 is rejected as the challenged finding of fact in paragraph 32 of the Recommended Order is supported by competent substantial evidence.

Respondent's Exception No. 9. The Respondent excepts to the finding of fact in paragraph 42 of the Recommended Order that she reported for and remained on duty on the date of the events in question. Recommended Order at p. 17. *See* Respondent's Exceptions at p. 7. The Petitioner responds by citing testimony and other evidence reflecting that the Respondent was on duty on the involved date. *See* Petitioner's Response at pp. 11-12.

The Respondent's Exception No. 9 is rejected as the challenged finding of fact in paragraph 42 of the Recommended Order is supported by competent substantial evidence.

Respondent's Exception No. 10. The Respondent excepts to the conclusions of law in paragraph 60 of the Recommended Order, and in particular to the determination that the "Respondent

was intoxicated when she reported for work and while she was on duty on May 8, 2017." Recommended Order at p. 30. *See* Respondent's Exceptions at pp.7-8. She argues that there was no competent substantial evidence to establish that she was intoxicated prior to leaving the school. *Id.* In reply, the Petitioner references testimonial evidence that supports the ALJ's conclusion. *See* Petitioner's Response at pp. 12-15.

The Respondent's Exception No. 10 is rejected as the conclusions of law set forth in paragraph 60 of the Recommended Order are supported by competent legal authority and the factual findings underpinning those conclusions are supported by competent substantial evidence.

Respondent's Exception No. 11. The Respondent excepts to the conclusions of law in paragraph 61 of the Recommended Order determining that the breathalyzer confirmed that the Respondent was under the influence of alcohol, and that the "readings were well above any acceptable limit", and to the statements in paragraph 62 that she did not argue that the test results were inadmissible nor object to the admissibility of the test results at the hearing. Recommended Order at pp. 30-31. She notes her filing of a motion *in limine* challenging admissibility of the results. *See* Respondent's Exceptions at pp. 8-9. The Petitioner responds by pointing out, as the ALJ noted, that the Respondent had herself included the breathalyzer test results in her proposed findings of fact (Respondent's Proposed Final Order at ¶¶ 53 and 54), and that after losing the motion *in limine* she did not subsequently object to admission of the test results into evidence. *See* Petitioner's Response at pp. 15-16.

The Respondent's Exception No. 11 is rejected as the challenged conclusions of law set forth in paragraphs 61 and 62 of the Recommended Order are supported by competent legal authority and the factual findings underpinning those conclusions are supported by competent substantial evidence.

Respondent's Exception No. 12. The Respondent excepts to the conclusions of law in paragraph 65 of the Recommended Order determining that her refusal to submit to a urinalysis rendered

moot the School District's failure to comply with breathalyzer post-test procedures, and to any implication that she had a responsibility to raise the matter during her due process meeting following testing. Recommended Order at p. 32. *See* Respondent's Exceptions at p. 9. In response, the Petitioner cites to exhibits and testimony demonstrating that the Petitioner refused to participate in drug and alcohol testing after being directed to do so. *See* Petitioner's Response at pp. 16-17.

The Respondent's being intoxicated while on duty, and her refusal to submit to a urinalysis, not the results of the breathalyzer, were the bases for her termination. *See* Recommended Order at pp. 30, 33, and 34, ¶¶ 60, 61, and 68-70. The ALJ correctly determined that the Respondent's own volitional acts, not the District's failure to follow post-test procedures with respect to the breathalyzer results, rendered moot any challenge to those procedures. *Cf. 51 Island Way Condominium Association, Inc. v. Williams*, 458 So.2d 364, 367 (Fla. 2d D.C.A. 1984) (case rendered moot by a party's volitional act rather than a circumstance beyond that party's control).

The Respondent's Exception No. 12 is rejected as the challenged conclusions of law set forth in paragraph 65 of the Recommended Order are supported by competent legal authority and the factual findings underpinning those conclusions are supported by competent substantial evidence.

Respondent's Exception No. 13. The Respondent excepts to the conclusions of law in paragraph 68 of the Recommended Order that there is no requirement in School Board policy that she be informed at the time of refusing to submit to a urinalysis that refusal would result in termination, and that the Respondent's training in the drug-free workplace policy should have alerted her to this consequence. Recommended Order at p. 33. *See* Respondent's Exceptions pp. 9-10. The Petitioner replies by pointing to record evidence demonstrating the Respondent's pre-employment drug testing and drug-free workplace policy training. *See* Petitioner's Response at p. 17.

The Respondent's Exception No. 13 is rejected as the challenged conclusions of law set forth in paragraph 68 of the Recommended Order are supported by competent legal authority and the factual findings underpinning those conclusions are supported by competent substantial evidence.

Respondent's Exception No. 14. The Respondent excepts to the conclusion of law in paragraph 69 of the Recommended Order that she was insubordinate in violation of School Board policy by refusing to submit to drug testing. Recommended Order at p. 34. *See* Respondent's Exceptions at p. 10. She argues that at worst her refusal was "an isolated incident" that did not constitute insubordination, citing *Smith v. School Board of Leon County*, 405 So.2d 183 (Fla. 1st D.C.A. 1981). *Id.* In response, the Petitioner asserts that the Respondent's refusal ultimately was to a proper order from a supervisory staff member directing the Respondent to submit to a reasonable suspicion drug test. *See* Petitioner's Response at pp. 17-18.

Unlike this proceeding, at issue in *Smith* was a statute and rule that specifically forbade *gross* insubordination. 405 So.2d at 184, 185. Moreover, the incident for which employee termination was sought in *Smith* did not amount to a refusal to obey a direct order, and the conduct was determined to be at worst "contemptuous" and not "insubordinate." 405 So.2d at 185. In contrast, the rule at issue here, School Board Policy 6.301(3)(b)(i), forbids "insubordination," and the conduct of the Respondent included her refusal to obey a direct order on an important matter, drug or alcohol abuse, that directly affected the safety and welfare of her students. The refusal by a public employee to abide by a valid order may be classified as insubordination, and such insubordination may serve as a valid basis for lawful dismissal. *See, e.g., Rice-Lamar v. City of Fort Lauderdale*, 232 F.3d 836, 842 (11th Cir. 2000).

The Respondent's Exception No. 14 is rejected as the challenged conclusion of law set forth in paragraph 69 of the Recommended Order is supported by competent legal authority and the factual findings underpinning that conclusion are supported by competent substantial evidence.

Respondent's Exception No. 15. The Respondent excepts to the conclusions of law in paragraph 78 of the Recommended Order, challenging the ALJ's determinations that she failed "to protect students from conditions harmful to learning," came to school intoxicated and was "in her classroom while students were scheduled to be present," and appeared "in the classroom during work hours reeking of alcohol and clearly under its influence . . ." Recommended Order at p. 37. *See* Respondent's Exceptions at p. 11. In reply, the Petitioner notes record evidence supporting the ALJ's determinations. See Petitioner's Response at pp. 18-19.

The Respondent's Exception No. 15 is rejected as the challenged conclusions of law set forth in paragraph 78 of the Recommended Order are supported by competent legal authority and the factual findings underpinning those conclusions are supported by competent substantial evidence.

Respondent's Exception No. 16. The Respondent excepts to the conclusions of law in paragraph 81 of the Recommended Order regarding the import of the School Board's drug and alcohol policy. The ALJ determined that although one provision of the policy provides that a first-time offender testing positive will be offered an opportunity to participate in a rehabilitation program (*see* Policy 6.60(5)(g)), another provision provides that an employee who refuses to test without a valid medical explanation after receiving notice of the requirement for testing shall be subject to discharge (*see* Policy 6.60(5)(b)). Recommended Order at pp. 38-39. The ALJ also found that the Respondent refused the urinalysis even after being advised by the testing facility staff that her refusal would be reported to the Board. *Id.*

The Respondent appears to argue that because participation in rehabilitation is available to a first-time offender it should likewise be available to the Respondent for her refusal to submit to testing. *See* Respondent's Exceptions at p. 11. The Petitioner responds that there was no mandatory duty to advise the Respondent of the consequences of her refusal to submit to testing, which consequences are set forth in the policy applied by the ALJ. *See* Petitioner's Response at p. 19.

The Respondent's Exception No. 16 is rejected as the challenged conclusions of law set forth in paragraph 81 of the Recommended Order are supported by competent legal authority and the factual findings underpinning those conclusions are supported by competent substantial evidence.

Respondent's Exception No. 17. The Respondent excepts to the conclusions of law in paragraph 70 of the Recommended Order that she violated School Board Policy 6.301(3)(b)(iii) by reporting to work in an intoxicated state, and violated Policy 6.59(1) by being under the influence of alcohol while on duty. Recommended Order at p. 34. *See* Respondent's Exceptions at p. 11. In reply, the Petitioner contends that the record amply supports the ALJ's conclusions. *See* Petitioner's Response at p. 20.

The Respondent's Exception No. 17 is rejected as the challenged conclusions of law set forth in paragraph 70 of the Recommended Order are supported by competent legal authority and the factual findings underpinning those conclusions are supported by competent substantial evidence.

Respondent's Exception No. 18. The Respondent excepts to the conclusions of law in paragraphs 71 and 72 of the Recommended Order, in which the ALJ set forth her determinations that the Respondent was on duty and intoxicated on the day of the events in question. Recommended Order at pp. 34-35. *See* Respondent's Exceptions at pp. 11-12. The Petitioner replies by citing to the record references contained in responses to prior exceptions, asserting that the ALJ's determinations are fully supported. *See* Petitioner's Response at pp. 20-21.

The Respondent's Exception No. 18 is rejected as the challenged conclusions of law set forth in paragraphs 71 and 72 of the Recommended Order are supported by competent legal authority and the factual findings underpinning those conclusions are supported by competent substantial evidence.

Respondent's Exception No. 19. The Respondent excepts to the conclusions of law in paragraphs 73, 74, and 75 of the Recommended Order finding that she violated a rule, policy, regulation, or established procedure (¶ 73), violated the Principles of Professional Conduct for the Education Profession (¶ 74), and violated the Board policy prohibiting alcohol-related offenses (¶ 75). Recommended Order at pp. 35-36. *See* Respondent's Exceptions at pp. 12-13. The Petitioner maintains in response that the record supports the ALJ's fundamental determination that the Respondent was intoxicated on School Board property at a time when she was responsible for children. *See* Petitioner's Response at p. 21.

The Respondent's Exception No. 19 is rejected as the challenged conclusions of law set forth in paragraphs 73, 74, and 75 of the Recommended Order are supported by competent legal authority and the factual findings underpinning those conclusions are supported by competent substantial evidence.

Findings of Fact

The School Board adopts the findings of fact set forth in paragraphs 1 through 26 and 29 through 47 of the Recommended Order, and revises paragraphs 27 and 28, in the manner set forth above.

Conclusions of Law

The School Board adopts the conclusions of law set forth in paragraphs 48 through 81 of the Recommended Order.

Determination; Penalty

The School Board adopts the penalty recommended by the ALJ in paragraphs 80 and 81 and the Recommendation of the Recommended Order, and finds just cause for termination.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the Respondent Renya Jones be, and she is hereby, terminated from her employment with The School Board of St. Lucie County, Florida, as of the effective date of this Final Order. 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, as set forth in Section 120.57(1)(m), Fla. Stat.

* * *

DONE AND ORDERED this 12th day of June, 2018.

THE SCHOOL BOARD OF ST. LUCIE COUNTY, FLORIDA

By: _____
DR. DONNA MILLS, Chair

Attest: _____
E. WAYNE GENT, Superintendent and Ex-Officio Secretary
to The School Board of St. Lucie County, Florida

* * *

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, 501 N.W. University Boulevard, Port St. Lucie, Florida 34986. 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:

Nicholas Wolfmeyer, Esquire
Barbara L. Sadaka, Esquire
Daniel B. Harrell, Esquire
Clerk, Division of Administrative Hearings