

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ESCAMBIA COUNTY SCHOOL BOARD,

Petitioner,

vs.

CASE NO.: 18-2270

JUSTIN WARREN,

Respondent.

**FINAL ORDER ACCEPTING PETITIONER'S EXCEPTIONS,
ADOPTING THE RECOMMENDED ORDER IN PART,
MODIFYING THE RECOMMENDED ORDER IN PART**

The Recommended Order of the Division of Administrative Hearings Administrative Law Judge Yolanda Y. Green was entered on May 16, 2019. The Attorney for the Petitioner submitted Exceptions to the Recommended Order on June 18, 2019, to which the Attorney for the Respondent filed a response. The Attorney for the Respondent did not submit any Exceptions to the Recommended Order. A formal hearing on the Petitioner's exceptions was held on Wednesday, October 9, 2019, at 1:00 PM in Room 160, Hall Center at 30 E Texar Drive, Pensacola, Florida 32503, before the five member School Board of Escambia County, Florida, with all five Board members in attendance.

APPEARANCES

FOR PETITIONERS:

Joseph L. Hammons, Esquire
The Hammons Law Firm, P.A.
17 West Cervantes Street
Pensacola, Florida 32501-3125

FILED
2019 NOV 27 PM 3:39
DIVISION OF
ADMINISTRATIVE HEARINGS

FOR RESPONDENT:

Mark S. Levine, Esquire
Ronald G. Stowers, Esquire
Levine & Stivers, LLC
245 East Virginia Street
Tallahassee, Florida 32301

At the formal hearing on the Exceptions of the Petitioner, argument was heard by the full Board on Petitioner's three exceptions. After due consideration, the Board voted by majority vote to accept Petitioner's Exceptions numbered 1, 2 and 3.

Based upon the foregoing, it is:

ORDERED:

1. Petitioners' Exceptions 1, 2 and 3 are accepted/sustained.
2. The Recommended Order entered by the Administrative Law Judge on May 16, 2019, a copy of which is attached hereto as Exhibit A, which Order is modified herein to reflect the ruling of the Board with regard to the Exceptions filed by the Petitioner, is adopted as the Final Order of the School Board of Escambia County, Florida.
3. The Recommended Order is modified as follows:
 - (a) Regarding Paragraph 24 of the Conclusions of Law, the following language is substituted for the existing language:

“In consideration of the absence of any statute, rule, employment contract, collective bargaining agreement, or other authority that would entitle Mr. Warren to relief where Warren was suspended without pay for just cause and thereafter reinstated, the claim for back pay during the period of a valid suspension without pay is not justified or authorized.”

(b) Regarding Paragraph 29 of the Conclusions of Law, the following language is substituted for the existing language:

“That the School Board had just cause to suspend Warren without pay while the felony charges were pending was determined with finality in DOAH Case Number 17-4220, affirmed on appeal. It was Warren’s conduct away from the work place that generated four felony charges that served as the just cause for the suspension of Warren while those charges were pending. Warren was not exonerated. He entered into a plea agreement resulting in three of the four felony charges being dismissed with sentence imposed on the remaining felony charge. While Warren was reinstated after the disqualification offense was dismissed as part of a plea bargain there is no law, rule, contract, CBA, or fairness justification to expend public school funds to compensate Warren for the period he was suspended without pay for just cause based on personal conduct unrelated to the performance of his employment responsibilities.”

(c) Regarding Paragraph 30 of Conclusions of Law, the following language is substituted for existing language:

“The School Board’s practice of awarding or not awarding back pay after an employee was suspended without pay in the event of reinstatement is based on equity and fairness. If an employee is accused of misconduct in the performance of his

duties and exonerated, generally the employee should be reinstated with back pay. If the employee engages in private conduct away from the workplace that generates criminal charges, regardless of the disposition of those charges, there is no equity or fairness that would compel the School Board to use public funds to reimburse an employee for the consequences of his private conduct.”

4. The Board found the foregoing substituted conclusions of law are as or more reasonable than the existing language in the Recommended Order.

Based upon all of the foregoing, it is the Final Order of this Board that Mr. Warren is not entitled to an award of back pay.

DONE AND ORDERED this 19 day of November, 2019, in Pensacola, Escambia County, Florida.

THE SCHOOL BOARD OF
ESCAMBIA COUNTY, FLORIDA



PATTY HIGHTOWER, CHAIR
75 North Pace, Blvd.
Pensacola, Florida 32503
(850) 432-6121

ATTEST:



MALCOLM THOMAS,
Superintendent of Schools

COPIES FURNISHED TO:

Joseph L. Hammons, Esquire
The Hammons Law Firm, P.A.
17 West Cervantes Street
Pensacola, Florida 32501-3125
(served electronically)

APPROVED
ESCAMBIA COUNTY SCHOOL BOARD

NOV 19 2019

Mark S. Levine, Esquire
Ronald G. Stowers, Esquire
Levine & Stivers, LLC
245 East Virginia Street
Tallahassee, Florida 32301
(served electronically)

Malcolm Thomas, Superintendent
Escambia County Schools
75 North Pace, Blvd.
Pensacola, Florida 32503

Richard Corcoran, Commissioner of
Education Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400

Matthew Mears, Esquire, General Counsel
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400
(served electronically)

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, *Florida Statutes*. Review proceedings are governed by the *Florida Rules of Appellate Procedure*. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the School Board of Escambia County, Florida, within thirty days of the rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the First District Court of Appeal, 2000 Drayton Avenue, Tallahassee, Florida 32399-0950.