

Approved in Open Board Meeting, April 1, 2014

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
OFFICE OF THE SUPERINTENDENT

February 25, 2014
Tuesday, 9:00 a.m.

MINUTES OF SPECIAL MEETING

The School Board of Broward County, Florida, met in special session at 9:13 a.m., Tuesday, February 25, 2014, in the Board Room of the Kathleen C. Wright Administrative Center, 600 Southeast Third Avenue, Fort Lauderdale, Florida. Present were: Chair Patricia Good, Vice Chair Donna P. Korn; Members (Robin Bartleman appeared telephonically), Abby M. Freedman, Laurie Rich Levinson, Ann Murray, Dr. Rosalind Osgood, Nora Rupert; Superintendent Robert W. Runcie; and J. Paul Carland, II., Esq.

Mrs. Bartleman arrived on the dais at 9:25 a.m.

Call to Order The call to order was followed by the Pledge of Allegiance to the Flag of the United States of America.

Close Agenda Upon motion by Mrs. Korn, seconded by Mrs. Rupert and carried, the Agenda was approved and declared closed. Ms. Murray had not yet assumed her seat on the dais. (6-0 vote)

1. Broward County School Board vs. Raymond Wantroba (Adopted)

Motion was made by Mrs. Korn, seconded by Mrs. Rupert and carried, to (1) Consider the Recommended Order, rendered on December 4, 2013 by Claude B. Arrington, Administrative Law Judge, in the matter of Broward County School Board vs. Raymond Wantroba, Case No. 13-1488TTS, before the State of Florida Division of Administrative Hearings; (2) Rule upon Petitioner's Exceptions to the Recommended Order and Respondent's Response thereto and (3) Render a final order based upon the actions in numbers (1) and (2) above. (8-0 vote)

In April 2013, The School Board approved the recommendation from the Superintendent of Schools to terminate Mr. Raymond Wantroba, a teacher. The legal basis for his termination was immorality, misconduct in office, and insubordination. Mr. Wantroba challenged The School Board's action and requested an administrative hearing before the State of Florida Division of Administrative Hearings.

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Following the administrative hearing, the Administrative Law Judge issued a Recommended Order, recommending that The School Board enter a final order adopting the Findings of Fact and Conclusions of Law set forth in the Recommended Order and further recommended that the final order suspend Raymond Wantroba's employment without pay through the end of the 2013-2014 School Year.

The School Board, by and through the Superintendent and his cadre counsel, filed Exceptions to the Recommended Order. The Respondent, by and through his counsel, filed a response to the Exceptions.

The School Board of Broward County Florida must take final agency action by rendering a final order after considering the Recommended Order, ruling upon Petitioner's Exceptions and the Respondent's Response to Petitioner's Exceptions.

The Record may contain confidential information and has not been redacted. Accordingly, it has been provided under separate cover.

There is no financial impact to the District.

Mr. Carland informed that the Board will consider and review an employee discipline matter upon the recommendation by an Administrative Law Judge. An administrative hearing was held on September 26, 2013; the Administrative Law Judge has returned a Recommended Order with Findings of Fact, Conclusions of Law, and recommended penalty of suspension.

Explaining the process to be followed during the meeting, Mr. Carland stated the Board will review and consider the exception to the recommended penalty that was filed by the Superintendent, through counsel, to increase the penalty to the original recommendation of termination. The Respondent is represented by Brandon Vicari, Esq. Appearing on behalf of the Petitioner is Debra Klauber, Esq.

Mr. Carland informed that the Board has the discretion to increase or decrease the penalty upon review of the record and if inclined to change the penalty, the reasons must be stated with particularity and citations to the record.

Ms. Klauber provided a historical summary of the incident in the record, as indicated in the Superintendent's Recommended Ruling on Exceptions, and subsequently determined by the Administrative Law Judge that this constituted misconduct and recommended that the teacher be suspended for what ultimately results in a one-and-a-half year suspension. The teacher has been out since last year and the Administrative Law Judge's recommendation was that the teacher be put back to work in the 2014-2015 school year. Ms. Klauber stated it was the principal's recommendation and ultimately the Superintendent's recommendation, with Board approval, the decision to terminate the teacher over this incident.

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Addressing the exceptions, Ms. Klauber focused on four (4) important issues. (1) This incident humiliated and embarrassed the student, which the Administrative Law Judge found was intentional, and violated the code of conduct and professional ethics in a school environment. (2) After the incident happened the teacher approached the student and tried to get the student to smooth the situation over with administration so he would not get in trouble. (3) At the hearing the teacher testified that he had not placed the panties in this specific student's locker, which the Administrative Law Judge determined was not truthful. (4) School Board Policy 4.9 Employee Disciplinary Guidelines does not require looking at this incident standing alone, by itself. The policy allows the Board to look at the history of this particular employee, prior incidents in 2007 and 2011, one dealing with a humiliating and embarrassing incident with a middle school student.

Ms. Klauber recommended that the Board increase the penalty back to termination, based on the record, which was recommended by the principal and the Superintendent, instead of the one-and-a-half year suspension.

Mr. Vicari stated that the bargaining agreement with the School Board and employees provides an employee to challenge the Superintendent's recommendation for termination to be outsourced to a fair, neutral and unbiased adjudicatory body (ALJ) to examine the case and ultimately render a fair, neutral and unbiased recommended order as to how the School Board should rule. He stated the teacher exercised his due process rights, asked for a full evidentiary hearing in this case, and the Administrative Law Judge, an experienced judge, heard the case and rendered a Recommended Order.

Mr. Vicari informed that the Administrative Law Judge has ruled 95% in favor of the Superintendent and has recommended termination. In this case, the Administrative Law Judge felt that termination was not appropriate based on the unique facts of the case, the teacher's remorsefulness of this action, and the Administrative Law Judge believed this was an isolated incident. The Administrative Law Judge examined the evidence, observed witnesses and determined their credibility, and also considered some mitigating factors in this case. The Administrative Law Judge ultimately came to the conclusion that termination was not appropriate, but instead recommended a 14-month suspension without pay, a serious penalty.

Mr. Vicari stated that the Administrative Law Judge cited the uniqueness of the facts of this case as one of the mitigating circumstances at the school. Providing a historical summary of the incident that occurred in the boys' locker room, as indicated in the record, Mr. Vicari stated that the Administrative Law Judge felt this area was a very relaxed atmosphere and the students would prank one another and the physical education teachers would also prank the students. The Administrative Law Judge felt it was an isolated incident based upon Findings of Fact, and the Board cannot modify or change the Findings of Fact.

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Mr. Vicari further stated other than this incident, the teacher has continually received positive evaluations throughout his lengthy teaching career. Mr. Vicari requested the School Board respect the process, respect the Administrative Law Judge's Recommended Order, and adopt the Recommended Order as the final order of the School Board.

In rebuttal, Ms. Klauber concurred that the process before the Administrative Law Judge is a good, fair and impartial process. Ultimately, it is important to note that the order from the Administrative Law Judge is a Recommended Order, his recommendation made to the Board. Ms. Klauber stated the Petitioner has not taken issue with any of the Findings of Fact or Conclusions of Law by the Administrative Law Judge. This was not insubordination, it was misconduct. This misconduct and the history of the employee warrants the Petitioner's recommendation to increase the penalty to termination.

Responding to Mrs. Bartleman's inquiry, Mr. Carland stated that Chapter 120 provides that when the Recommended Order comes back to the Board the Board may consider the Findings of Fact, Conclusions of Law, and the penalty as recommended by the hearing officer. The statute also provides that there are certain processes that the Board would have to go through if any of those three criteria of the order were to be changed. Mr. Carland further stated in this case the Findings of Fact and Conclusions of Law are not at issue because neither party has taken exception to those; both parties are relying on those to take their position. Mr. Carland said the only concern today is in terms of the exceptions with the recommended penalty. The statute is clear that the discretion is left with the employing agency to review the penalty, increase or decrease the penalty, provided that the Board states with particularity its reasons for doing that with citations to the record.

Mr. Carland informed that the Board has proposed rulings which were filed by both parties; the Superintendent's counsel filed proposed rulings that made detailed findings to the record that they believe support their position for the Board increasing the penalty. Mr. Carland noted, for the record, there was additional information filed and provided to the Board, the proposed rulings for the parties.

Mrs. Freedman inquired whether the Administrative Law Judge was made aware of the teacher's prior discipline issues and whether he took this into account when he made his decision.

Referring to page 7 of the Recommended Order of the hearing officer, paragraphs 17 and 18, Mr. Carland stated that the hearing officer recognized the prior discipline issues and were presented as evidence.

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Motion to Accept (Carried)

Motion was made by Mrs. Freedman, seconded by Mrs. Korn and carried, to accept Petitioner's Exception to the ALJ's recommended penalty of suspension through the 2013-14 school year and move, based on a complete review of the record, that the penalty be increased as proposed by the Superintendent's counsel on the record.

Mrs. Rupert inquired whether behavior modification or sensitivity counseling was provided to the employee as part of the process of suspension.

Mr. Carland responded he was not aware whether this occurred. In terms of the Board's decision today, it would not be relevant. The Board must restrict their decision to the record that has been provided, as was provided to the hearing officer.

A vote was taken on the Motion to Accept.

Mr. Carland advised it would be appropriate for the Chair to entertain a motion to accept the remainder of the hearing officer's Recommended Order.

Second Motion to Accept (Carried)

Motion was made by Mrs. Korn, seconded by Mrs. Rupert and carried, to accept the remainder of the Administrative Law Judge's Recommended Order.
(8-0 vote)

A vote was taken on the Second Motion to Accept.

Mr. Carland informed that the Office of the General Counsel will prepare a Final Order based upon the Board's rulings and will transmit to the parties.

Adjournment This meeting was adjourned at 9:37 a.m.

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