



Duval County Public Schools

February 14, 2012, Special Board Meeting

Ms. Betty Burney, Chairman
Mr. Fred "Fel" Lee, Vice-Chairman
Ms. Martha Barrett
Ms. Ms. Becki Couch
Mr. W. C. Gentry
Ms. Mr. Tommy Hazouri
Mr. Ms. Paula D. Wright
Mr. Ed Pratt-Dannals, Superintendent

ATTENDANCE AT THIS SPECIAL MEETING OF THE DUVAL COUNTY SCHOOL BOARD: All Board Members were present, with the exception of Ms. Martha Barrett, who was out of town. Mr. Ed Pratt-Dannals, Superintendent, and Ms. Karen Chastain, Assistant Deputy General Counsel, Office of General Counsel, were also present.

Call Meeting to Order

[CALL MEETING TO ORDER - SPECIAL MEETING](#)

Minutes:

The Chairman called the Special Board Meeting to order at 10:10 a.m.

Comments From Audience

Reports

Approval of Agenda

[APPROVAL OF THE FEBRUARY 14, 2012. AGENDA](#)

Motions:

That the Duval County School Board approve the February 14, 2012, Agenda as submitted on February 10, 2012, with the following changes: - PASS

1. There were no changes.

Vote Results

Motion: Thomas Hazouri

Second: Fred Lee

Betty Burney - Aye

Rebecca Couch - Aye

William Gentry - Aye

Thomas Hazouri - Aye

Fred Lee - Aye

Paula Wright - Aye

Approval of Minutes

Approval of Consent Agenda

Consent Agenda

Human Resource Services - Professional Standards

[1. FINAL ORDER RE DUVAL COUNTY SCHOOL BOARD vs STEVEN MAKOWSKI](#)

Minutes:

Chairman Burney convened the meeting pursuant to the Duval County Teacher Tenure Act to consider the Recommended Order in *Duval County School Board vs. Stephen Makowski*. We have received and reviewed the record of this matter and the Administrative Law Judge's Recommended Order.

At this point, the Chairman turned the meeting over to Ms. Karen Chastain, Chief Deputy General Counsel, Office of General

Counsel.

Ms. Chastain read the following statement:

"Mr. Makowski was charged with using school district technology to download and view pornographic material during work hours. The ALJ concluded that these charges were supported by record evidence, and in the conclusion on page 26 of the Recommended Order to recommended "That the School Board enter a Final Order finding Respondent guilty of immorality and misconduct in office and imposing the following sanctions: Uphold Respondent's suspension from February 2, 2011, through the date of the Final Order, and require Respondent to complete remedial training concerning professionalism and the proper use of school property." RO, P. 26."

Neither of the parties filed exceptions to the Recommended Order.

At the conclusion of this hearing, the Board will issue a Final Order which adopts, rejects, or modifies all or part of the ALJ's Recommended Order. While doing so, I will assist you, the Board, with the requirements of the Tenure Act and Chapter 120 of the Florida Statutes, which include the following:

Your proceeding today is a "De Novo" review of the entire matter, which means a new review.

Reviewing Conclusions of Law:

If the Board modifies or rejects the ALJ's Conclusion(s) of Law, the Final Order must state with particularity the Board's reasons and explain why its substituted Conclusions of Law are equally or more reasonable than those of the ALJ.

Reviewing Findings of Fact:

The Board cannot modify the ALJ's Findings of Fact unless it determines that: (A) The Findings of Fact were not based upon competent, substantial evidence, or, (B) the proceeding's on which the Findings were based did not comply with essential requirements of law.

Reviewing Recommended Discipline:

If the Board reduces or increases the ALJ's recommended penalty, the Final Order must state with particularity the Board's reasons and cite portions of the record which justify its decision.

Majority Vote:

The Tenure Act requires a finding by a majority vote that any one or more of the causes/charges outlines in the Notice of Termination have been sustained by the evidence. Without such a finding, the charges must be dismissed. Once issued, the School Board must provide a copy of its Final Order to DOAH within fifteen (15) days.

Even though neither party filed exceptions to the Recommended Order, it is my advice that the Board permit each side five (5) minutes for comments, if any, to you. Board Members may then ask each side questions they may have, if any. Thereafter, the Board will begin its deliberations. At the conclusion of its deliberations, the Board will render a final decision on the matter.

The Chairman called on Mr. David Hertz, General Counsel for Duval Teachers United, who is representing Mr. Makowski in this matter.

Mr. Hertz indicated that if the Board voted to terminate Mr. Makowski, that they would file an appeal and we could be held liable for attorney's fees and back pay, which could amount to between \$50,000 and \$80,000. He also indicated that Mr. Makowski had served the District for seven (7) years with no complaints, and, the District currently had an opening for a Speech Therapist, which is Mr. Makowski's area. Mr. Hertz spoke to the legality of the situation before the Board, indicating that the incident occurred during the first week of school prior to students reporting. He stated that his client had some free time, and that while he did violate the rules and the act was of a questionable nature, no students were present, and he had 3 times as many hits on his computer for personal business, weather reports, banking, etc. Mr. Hertz said that there was no gross morality or moral turpitude issues involved. Mr. Makowski lost a full year of work and benefits. He believes the critical point is that no students were involved or potentially involved, and that Mr. Makowski was contrite and did not attempt to hide what he did. He believes that he can guarantee that he will never do it again.

Mr. David D'Agata, Assistant General Counsel, Office of General Counsel, spoke on behalf of the District. Mr. D'Agata informed the Board that it was their discretion as to what discipline to impose. He stated that Mr. Hertz pointed out the possible dollar impact with respect to an appeal, however, the Board also has to consider the impact of placing in a school someone found guilty of immorality, pointing out that the laptop was owned by the District; used it many times during work hours, using many vulgar

search terms, and downloaded pornography and pictures; all in violation of our Acceptable Use Policy.

Board Members were provided an opportunity to ask questions. After the question and answer period, the Board deliberated, and took action on the recommendations contained herein.

Board Member Gentry recommended that the Board enter into the record the following Findings of Fact that he thought were most important.

- **Paragraph 5 of the Recommended Order does find that Mr. Makowski made many inappropriate internet searches on the District issued computer, and which led to display of inappropriate websites, and that these materials were pornographic.**
- **Although as brought out in my questions, Mr. Makowski did admit the inappropriate conduct, and that he did do these things, at the hearing, as he did in his deposition, but he lied about it until that point in time. The AJ was impressed that he seemed to be honest with him. Plus he was caught. And if you read, I know you have, but if you read the order, one of the cases cited by the City, by the County, seemed like a similar case, but in that case the person had been accessing pornographic information, but for a long time the County hadn't caught him. And he distinguished that by saying, well here, he was caught immediately. So, the fact that we have a good system for finding people like this is an excuse for not terminating them, because, after all, they only did it once. But it kind of gives reason, which to me is a very flawed reason. I applaud the fact that we have such a good system that we can uncover inappropriate use of our computers. Particularly when it involves pornographic use.**
- **Paragraph 53, the Judge found that he did violate Acceptable Use Policy, which says, no software can filter out all of the materials that are unacceptable for academic purposes and it should be clearly understood by all staff and all students and their parents/guardians that intentional access to such material, in any form, is strictly forbidden. So it is supposed to be understood by our parents and students that it is strictly forbidden for a teacher to do conduct like this. The teacher that is being recommended to be put back in the classroom.**
- **Also, on Page 24, under Appropriate Behavior, it expressly says in our policies that this sort of conduct is grounds for termination, quoting "Users who disregard the federal, state and local laws and codes, district policies, guidelines, standards, procedures and controls may have their privileges suspended, revoked, and disciplinary action taken against them, including termination."**
- **Paragraph 47 says in part, "The very nature of Mr. Makowski's actions - - searching for pornographic images while he sat in the classroom of an elementary school - - show such a failure of good judgment as to permit the inference that his effectiveness in the**

school system and his service in the community have been impaired.”

- **Paragraph 34, he recommended the School Board exercise its discretion to approve a lesser penalty than the proposed termination.**

Speakers:

Ms. Betty Burney, Board Chairman
Ms. Karen Chastain, Assistant General Counsel
Mr. David Hertz, General Counsel, Duval Teachers United
Mr. David D'Agata, Assistant General Counsel, Office of General Counsel
Ms. Paula D. Wright, Board Member
Mr. W. C. Gentry, Board Member
Mr. Tommy Hazouri, Board Member
Ms. Becki Couch, Board Member
Mr. Fred "Fel" Lee, Board Vice-Chairman

Motions:

That the Duval County School Board adopt the Administrative Law Judge's Findings of Fact and - PASS
Conclusions of Law.

Vote Results

Motion: William Gentry

Second: Fred Lee

Betty Burney	- Aye
Rebecca Couch	- Aye
William Gentry	- Aye
Thomas Hazouri	- Aye
Fred Lee	- Aye
Paula Wright	- Aye

Motions:

That the Duval County School Board approve the citations to the record, and on the basis of that, and other matters set out in the Findings of Fact, that we direct a Final Order be issued that - PASS

changes the discipline recommended to termination of Mr. Makowski's appointment.

Vote Results

Motion: William Gentry

Second: Thomas Hazouri

Betty Burney - Aye

Rebecca Couch - Aye

William Gentry - Aye

Thomas Hazouri - Aye

Fred Lee - Aye

Paula Wright - Aye

Discussion

For The Record

Adjournment

ADJOURNMENT

Minutes:

The Chairman adjourned the Special Board Meeting at 10:55 a.m.

BSC

Superintendent

Chairman