STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PALM BEACH COUNTY SCHOOL BOARD,

Petitioner,

DOAH Case No. 19-6177
EMPLOYEE-DISCIPLINE-PBCSD - 20-_____

vs.

WILLIAM LATSON,

Respondent.

AMENDED FINAL ORDER

THIS CAUSE, came before The School Board of Palm Beach County, Florida (hereinafter referred to as "the School Board") pursuant to sections 120.569 and 120.57, Florida Statutes, after an administrative hearing was conducted before the Honorable Robert S. Cohen ("the ALJ") on February 3 through 5, 2020, and on April 16, 2020. The Recommended Order was entered by the ALJ on August 13, 2020, recommending that a final order be entered by the Palm Beach County School Board dismissing the charges against the Respondent.

The School Board previously adopted a final order on October 7, 2020. On November 2, 2020, the School Board voted to rescind its prior vote adopting the October 7th Final Order and discussed modifications to the Recommended Order. This Amended Final Order supersedes and replaces the October 7th Final Order.

IT IS ORDERED AND ADJUDGED as follows:

1. The School Board has jurisdiction of this matter pursuant to section 120.57, Florida Statutes.
2. The School Board has relied solely on the complete record of the administrative proceedings and has not considered any oral or written communications outside the record.

3. The School Board hereby accepts and approves the findings of fact and conclusions of law in the Recommended Order, attached hereto, with the following modifications which are based on a review of the entire record and in accordance with the standards in section 120.57(1), Florida Statutes:

    a. The School Board modifies the "Preliminary Statement" to include the following:

> This entire matter was precipitated by Dr. Latson's stating, "I can't say that the Holocaust is a factual, historical event because I am not in a position to do so as a school district employee" and implying that the Holocaust's authenticity is a matter of opinion in an email to a student's parent. Holocaust denial is a modern form of anti-Semitism, as defined by Fla. Stat. § 1000.05(7)(a)(4), which makes Dr. Latson's statement towards a student's parent, which was made while Dr. Latson was acting in his official capacity as a school principal potentially illegal, discriminatory and grossly inappropriate. Although not the basis of these proceedings, the ALJ found in paragraph 76 of the Recommended Order that, "Rather than carefully choosing his words when speaking with a parent … he offended her by making an endorsement, of sorts, of Holocaust deniers."

    b. The School Board rejects the findings of fact or conclusions of law in paragraph 77 that, "[w]hile Respondent showed less than diligent behavior, under the circumstances of what was happening at home, and in his sporadic answering of telephone calls while vacationing in Jamaica, his actions did not rise to the level of gross insubordination," because these findings are not based upon competent substantial evidence.[1]

        i. The ALJ found in paragraph 30 that "Dr. Latson admits 'that Oswald requested a call back by noon'"; that, "if he had been told to contact Oswald, that would be a directive he had to obey"; and that "even though he spoke with 'individuals' about the reassignment, he made no effort to

[1] "[E]vidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

communicate with Oswald before noon of July 8, 2019." See Answer ¶ 14; Transcript of Final Hearing, Volume I, p. 105:3-7 and Volume II, pp. 187:24 - 188:3.

ii. The ALJ found in paragraph 31 that, "[a]fter speaking with Dr. Latson at 7:36 a.m., Oswald attempted to communicate with him no fewer than six times before noon on July 8, 2019, because of the urgency of the worsening situation. Oswald called Dr. Latson at 8:21 a.m., 9:35 a.m., 10:32 a.m., and 10:42 a.m., and texted him at 8:22 a.m. and 10:32 a.m. When Dr. Latson did not answer the telephone calls, Oswald left voicemails, increasing with urgency, saying the situation was escalating and asking him to return his call." See Complaint ¶ 16; Answer ¶ 16; Transcript of Final Hearing, Volume II, pp. 245:13-24 and 249:19 – 250:7; Petitioner's Exhibits 8, 13, 14, and 26.

iii. The ALJ found in paragraph 32 that, "[i]n response to an automated text sent from Dr. Latson's phone—indic[a]ting he was driving and could not receive notifications, but informing the caller to 'reply urgent' to send a notification with the original message--Oswald texted him the word "urgent" twice at or around 10:32 a.m. Oswald received no response from Dr. Latson." See Petitioner's Exhibit 8.

iv. The ALJ found in paragraph 33 that, "[b]etween 7:36 a.m. and noon on July 8, 2019, Dr. Latson placed nine and received four telephone calls to and from friends, family members, colleagues, and Johnson. Apparently, his

cellular phone was functioning during this time." See Petitioner's Exhibit 15.

v. The ALJ found in paragraph 34 that, "[a]t approximately 12:33 p.m., not having heard back from Dr. Latson, Oswald sent Dr. Latson a text and an email informing him that Oswald was reassigning him to the District Office. Dr. Gonzalo La Cava, Petitioner's chief of human resources, also left Dr. Latson a voicemail about the reassignment. Oswald's text to Dr. Latson was as follows: 'I have left you numerous messages to contact me. I am reassigning you to the district office. Please call me ASAP.'" See Transcript of Final Hearing, Volume II, p. 246; Petitioner's Exhibit 8.

vi. The ALJ found in paragraph 35 that "Dr. Latson's argument, as opposed to his testimony, explaining his failure to respond to Oswald on July 8, 2019, is inconsistent. Dr. Latson initially justified his lack of a response to Oswald by arguing that the text he received from Oswald about being removed as principal of SRHS 'did not seem to invite a response.' In fact, that text closed with the words, 'Please call me ASAP.' In his Answer, Dr. Latson alleged that after he received the message about the re-assignment, he 'attempted to email Oswald, but the message did not go through.' At hearing, Dr. Latson testified that he tried to text Oswald around 12:30 p.m., but the text did not go through. He also testified that he attempted to email Oswald at 9:30 p.m. from Jamaica." Answer ¶ 16; Transcript of Final Hearing, Volume I, pp. 105:8-21, 110:8 – 112:4, 112:10-16; Petitioner's Exhibits 8 and 24.

vii. The ALJ found in paragraph 36 that "Dr. Latson explains his lack of response to Oswald by saying he was already on the phone whenever Oswald was trying to call and the calls could not have gone through. His telephone records, however, showed that other calls he was making during this time were interrupted and he was able to connect with the incoming caller." Transcript of Final Hearing, Volume II, p. 167; Petitioner's Exhibit 15.

viii. Accordingly, the School Board substitutes the finding of fact or more reasonable conclusion of law that Dr. Latson's actions did rise to the level of gross insubordination, based on the ALJ's findings of fact in paragraphs 30 through 36, which show Dr. Latson's intentional refusal to obey a direct order, reasonable in nature, given by and with proper authority.

c. The School Board rejects the finding of fact in paragraph 79 that Petitioner "did not provide evidence that Dr. Latson's words violated a direct order from his supervisors or from the School Board's reasonable policies," because this finding is not based upon competent substantial evidence.

i. The ALJ found in paragraph 26 that Deputy Superintendent Oswald told Dr. Latson on July 6, 2019 "not to make any statements and to not say anything and that we are working internally with the communications department about this" and that "Oswald specifically directed Dr. Latson not to make any further contact at that time." See Transcript of Final Hearing, Volume II, pp. 240:12-25, 241:1-14.

ii. The ALJ found in paragraph 40 that, "Although he did not respond to Oswald, Dr. Latson did email the faculty and staff at SRHS. The email was obtained by the author of the July 5, 2019, article. His email opened with the paragraph: 'I have been reassigned to the district office due to a statement that was not accurately relayed to the newspaper by one of our parents. It is unfortunate that someone can make a false statement and do so anonymously and it holds credibility but that is the world we live in.'" See Petitioner's Exhibit 9.

iii. The ALJ found in paragraph 44 that Dr. Latson sent the email to the faculty and staff at Spanish River High School ("SRHS") on the afternoon of July 8, 2019. See Petitioner's Exhibit 9.

iv. The ALJ found in paragraph 46 that, "[w]hile news of Dr. Latson's reassignment had dampened the public reaction which the District was dealing with after publication of the July 5, 2019, article, Dr. Latson's statement in the email re-energized the public. Instead of reconciliation over his poorly worded April 2018 emails, Dr. Latson's placement of blame on the parent undermined the apology and made matters worse. There was 'complete outrage [by District personnel] that he would do that to a parent.' An article which appeared in the *Post* on July 9, 2019, was headlined, 'More calls for Spanish River High principal's firing after he blames parent.' The article included the sub-heading, 'Principal William Latson's farewell message prompted an anti-hate group and two Boca-area legislators to join calls for his termination.' On July 10, 2019, the *Post* published an article

headlined, 'In defiant farewell, ousted principal blames parent.' Dr. Latson does not dispute that the public reaction to his email was negative, which he learned of while he was still in Jamaica." See Transcript of Final Hearing, Volume II, pp. 193:12 – 194:22, 227, 254 and Volume III, p. 506; Respondent's Exhibits 35 and 38 [post articles].

v. The ALJ found in paragraph 50 that "[t]he lesson and perception that Wells and others took from Dr. Latson's removal was that you should not teach controversial subjects. In fact, and as a matter of law, the State of Florida does not consider the occurrence of the Holocaust to be controversial. It does not and cannot prevent any student or parent from holding the absurd 'belief' that the Holocaust did not happen. It can and does mandate that the student will be taught that history is not opinion or belief and that the Holocaust did occur. Through his actions, Dr. Latson caused a great number of people to doubt the commitment of the District to honor that mandate. His unilateral attribution of the reasons for his termination caused further disruption in the SRHS community." See Transcript of Final Hearing, Volume VI, pp. 1069-72, 1182-84, 1240:18 – 1241:15.

vi. The ALJ found in paragraph 51 that "[m]any SRHS faculty and staff were left with the idea that Dr. Latson was reassigned because of the April 2018 emails, and were left with a sense of 'injustice' and 'unfairness.' The Community, the faculty, and the staff were angry, and some of that anger was directed at the complaining parent and her student. Dr. Latson's allocation of blame to the parent and pointing out a 'false statement' also

sowed discontent among the faculty and staff, directed towards the District. Because Dr. Latson's email stating the reasons for his reassignment were the April 2018 emails and, what he considered to be, a false statement from a parent, the faculty and staff felt that the District did not support the staff." See Transcript of Final Hearing, Volume V, pp. 1029:9-17, Volume VI, pp. 1079:3-11, 1130:13-25, 1210:6 – 1212:11.

vii. Accordingly, based on the findings of fact in paragraphs 26, 40, 44, 46, 50, and 51, the School Board substitutes the finding that Dr. Latson's July 8, 2019 email to the faculty and staff at SRHS ("the farewell letter") did violate a direct order from his supervisors.

d. The School Board rejects the finding of fact or conclusion of law in paragraph 79 that "just cause for his termination resulting from gross insubordination was not proven by a preponderance of the evidence," because this finding is not based upon competent substantial evidence. The School Board substitutes the finding of fact or more reasonable conclusion of law that Dr. Latson's actions did rise to the level of gross insubordination, based on the ALJ's findings of fact in paragraphs 30 through 36, as well as 26, 40, 44, 46, 50, and 51, which show Dr. Latson's intentional refusal to obey direct orders, reasonable in nature, given by and with proper authority.

e. The School Board rejects the findings of fact or conclusions of law in paragraph 85 that "the record in this case fails to establish by a preponderance of the evidence that Respondent engaged in misconduct in office, incompetence, or gross insubordination," as not based upon competent substantial evidence, and substitutes the findings of fact or more reasonable conclusions that Dr. Latson engaged in

misconduct in office, incompetence, and gross insubordination for the reasons below.

i. The findings of fact in paragraphs 30 through 36 about Dr. Latson's failure to call Keith Oswald demonstrate misconduct in office, in that Dr. Latson failed to take responsibility and be accountable for his acts or omissions and failed to cooperate with others in protecting and advancing the District and its students, in violation of School Board Policy 3.02.

ii. The findings of fact in paragraphs 26, 40, 44, 46, 50, and 51 about the farewell letter, also demonstrate misconduct in office, in that Dr. Latson again failed to take responsibility and be accountable for his acts or omissions and failed to cooperate with others in protecting and advancing the District and its students, in violation of School Board Policy 3.02. The findings of fact in paragraphs 26, 40, 44, 46, 50, and 51 about the farewell letter, also demonstrate misconduct in office, in that Dr. Latson engaged in behavior that disrupted the student's learning environment and reduced the teacher's ability or his or her colleagues' ability to effectively perform duties.

iii. The findings of fact in paragraphs 30 through 36 about Dr. Latson's failure to call Keith Oswald also demonstrate incompetency: Dr. Latson's failure to communicate appropriately with and relate to administrators.

iv. The findings of fact in paragraphs 26, 40, 44, 46, 50, and 51 about the farewell letter, also demonstrate incompetency, in that Dr. Latson failed to

communicate appropriately with colleagues, administrators, subordinates, or parents.

v. Finally, Dr. Latson's actions did rise to the level of gross insubordination, based on the ALJ's findings of fact in paragraphs 30 through 36, as well as 26, 40, 44, 50, and 51, which show Dr. Latson's intentional refusal to obey direct orders, reasonable in nature, given by and with proper authority.

f. The School Board rejects the finding of fact or conclusion of law in paragraph 85 that "[t]here was, therefore no just cause for his suspension and termination," and substitutes the finding or more reasonable conclusion that there was just cause for Dr. Latson's suspension and termination based on his misconduct in office, incompetency, and gross insubordination, based on the findings of fact in paragraphs 30 through 36 and 26, 40, 44, 46, 50, and 51.

g. The School Board rejects the findings of fact or conclusions of law in paragraph 57 that "[n]o witnesses were called to state that progressive discipline was not applicable to this matter," and paragraph 82, that "progressive discipline is currently employed by the District," as not based upon competent substantial evidence. While there was generalized testimony and documentary evidence presented about a practice of progressive discipline, as summarized in paragraphs 55 through 57 and 82 of the Recommended Order, that evidence did not establish a current, mandatory progressive discipline policy for administrators such as Dr. Latson. See Transcript of Final Hearing, Volume V, pp. 794-98, 800-01, 838-44 and Volume VI, pp. 1259-61; Respondent's Exhibit 43 (numbered 19 during the hearing), "The Discipline Process: A Guide for Principals and Department Heads."

There was no evidence of a current, mandatory progressive discipline policy for administrators in an applicable collective bargaining agreement, a contract, a statute, or an adopted School Board Policy.

h. The School Board rejects the ALJ's findings of fact or conclusions of law that were based on the erroneous premise that there was a mandatory progressive discipline policy and are accordingly not supported by competent substantial evidence:

    i. in paragraph 82 that "[t]here was no evidence presented by the District that Dr. Latson's behavior in this matter rose to the level of a 'serious offense' or one that 'puts the District at risk,' to justify a termination without any prior lesser levels of discipline. Under the facts as presented and applying those facts to the relevant law, Dr. Latson's actions do not warrant termination. *See Quiller v. Duval Cty. Sch. Bd.*, 171 So. 3d 745, 746 (Fla. 1st DCA 2015)(following progressive discipline mandated by the school board was required 'unless a severe act of misconduct warranted circumventing the steps.');" that "[h]is poor choices, while not severe enough to warrant termination, do support the School Board's original decision to transfer him to another position within the District"; and "[t]hese acts of poor judgment on Dr. Latson's part should result in a verbal or written reprimand, the lowest rungs on the ladder of progressive discipline."

    ii. In paragraph 85 that "the punishment imposed on Dr. Latson was too severe in light of his 26 years of service, including eight laudable years as principal at SRHS."

i. Finally, the School Board rejects the recommended penalty in this case, set forth in paragraphs 82 and 84 and the "Recommendation" section. Contrary to the ALJ's conclusions, Dr. Latson did commit misconduct in office, incompetency, and gross insubordination, providing just cause for his suspension and termination. There is also no mandatory progressive discipline policy requiring any heightened showing for termination to be appropriate. The School Board deems termination appropriate based on the facts found by the ALJ. While Dr. Latson was not disciplined for his original email to the parent, he was counseled about his poorly worded email. See Recommended Order ¶ 13; Transcript of Final Hearing, Volume I, pp. 29:25 – 30:3, 82:14-19. Yet it was another poorly worded email by Dr. Latson, in which he placed blame on the parent, that undermined the apology and made matters worse. Further, his actions caused a great number of people to doubt the commitment of the School District to honor its statutory mandate to teach its students that the Holocaust did occur and caused further disruption within the SRHS community. The School Board imposes the penalty of suspension and termination of Dr. Latson's employment.

4. This Final Order shall take effect upon being filed with the Clerk of the School Board.

DONE AND ORDERED this 10th day of November, 2020.

The School Board of Palm Beach
County, Florida

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Frank A. Barbieri, Jr., Esq. Chairman Donald E. Fennoy II, Ed.D., Superintendent

NOTICE OF RIGHT TO JUDICIAL REVIEW

This Final Order constitutes final agency action. Any party who is adversely affected by this Final Order has the right to seek judicial review of the Final Order pursuant to Section 120.68, Fla. Stat. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the agency clerk of The School Board of Palm Beach County, Florida, and a second copy, accompanied by appropriate filing fees as prescribed by law, with Fourth District Court of Appeal, or with the District Court of Appeal in the Appellate District, where the party resides, if applicable. The notice of appeal must be filed within thirty (30) days of rendition of the Order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished via email to counsel for Respondent, Thomas E. Elfers Law Office of Thomas Elfers 14036 SW 148 Lane, Miami, FL 33186, thomaselfers@comcast.net, Craig J. Freger, 10247 NW 15th Street, Pembroke Pines, FL 33028, fregerlaw@gmail.com, on this 10th day of November, 2020.

/s/ Shawntoyia Bernard
Shawntoyia Bernard, Esq.
General Counsel for The School Board
of Palm Beach County, Florida