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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

MARK OSTERMEIER,

Appellant,

v.

CASE NO.: 5D16-3549

PAM STEWART, COMMISSIONER
OF EDUCATION,

Appellee.

REPLY BRIEF OF APPELLANT

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ARGUMENT IN RESPONSE TO ANSWER BRIEF

ARGUMENT ONE: Harmless error vel non, Appellant contends that the ALJ committed error by not allowing the Appellant to reopen his case based upon these salient facts:

1. Appellant was not privy to the psychological evaluations and signed an agreement to that effect with the servicing medical provider. His statement that he "passed with flying colors " is beside the mark and follows that no action was taken by the principal because of the evaluations.

2. Appellant properly issued subpoenas for these medical records for the hearing on May 5, 2016. These records were not available at the time of hearing.

3. When the records were received counsel moved for an extension to submit the Proposed Final Order of Respondent.

4. Counsel after reviewing the records immediately filed a Motion to Reopen Respondent's case.

5. Appellant contends that under Florida Statute §59.041, the so-called Harmless Error Statute that the ALJ's failure to reopen his case resulted in a miscarriage of justice. Further, that there was a reasonable probability that a result more favorable to the Appellant would have reached. Further, the Appellant contends he did not get a fair hearing.

6. The Stipulation entered into by the parties did not preclude the Appellant from introducing new evidence. In essence the hearing was de novo.

This Honorable Court has jurisdiction under Florida Statute §120.68(7)(c) to remand a cause the fairness of the proceedings or the correctness of the action may be impaired.

Indeed, the Education Commission's counsel specifically that the Commission had no jurisdiction to remand. (Transcript of Education Practice Commission August 1, 2016, Page 15, Line 22-25, Page 16, Line 1-4).

ARGUMENT TWO: Appellant contends that the Court lost jurisdiction to revoke an expired teaching certificate. Appellant was terminated from employment on July 11, 2011. He did not teach from 2011 to 2016 and is not teaching now. The Education Commission revoked Appellant's Certificate for five (5) years from September, 2016. This is a ten (10) period which is contrary to fair play and more oppressive than a ten year second degree felony conviction.

ARGUMENT THREE: Testimony of JOHN MRK HAYS, District Peer Mentor Teacher: (Transcript, Volume II, Page 467, Line 8), Hearing April 20, 2012): et. seq.

Q. Do you see any redeeming value in Mr. Ostermeier as a teacher?

Appellant contends that he loves teaching and that he cooperated with all Principal Novelli's demands while at Bayside High School, and did not deserve an involuntary transfer.

REBUTTAL OF ARGUMENT PRESENTED IN ANSWER BRIEF


Appellant is imputed with knowledge of records that he was not privy to know. Principal Novelli had absolute power over the Appellant. It is apparent from the testimony that Mr. Novelli not an art lover. He did everything in his power to downgrade art and its various programs. Appellant asserted the need for the students to participate in art as well as the bone of contention of "Portfolio Day" which was the start of the confrontation between them, thus resulting in a hostile work environment.

Appellee's Brief cites cases of some general relevance but beside the mark for the case at bar.

In the interest of fairness and justice this cause should be remanded and "probative value" of the excluded evaluations be considered in reaching a fair and just conclusion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true copies of the foregoing were furnished to BONNIE ANN WILMOT, ESQUIRE, Attorney for Appellee, Florida Department of Education, Office of the General Counsel, 325 West Gaines Steet, Suite 1244, Tallahassee, Florida 32399-0400, by U. S. Mail and E-Mail: bonnie.wilmot@fldoe.org, on this 13th day of April, 2017.

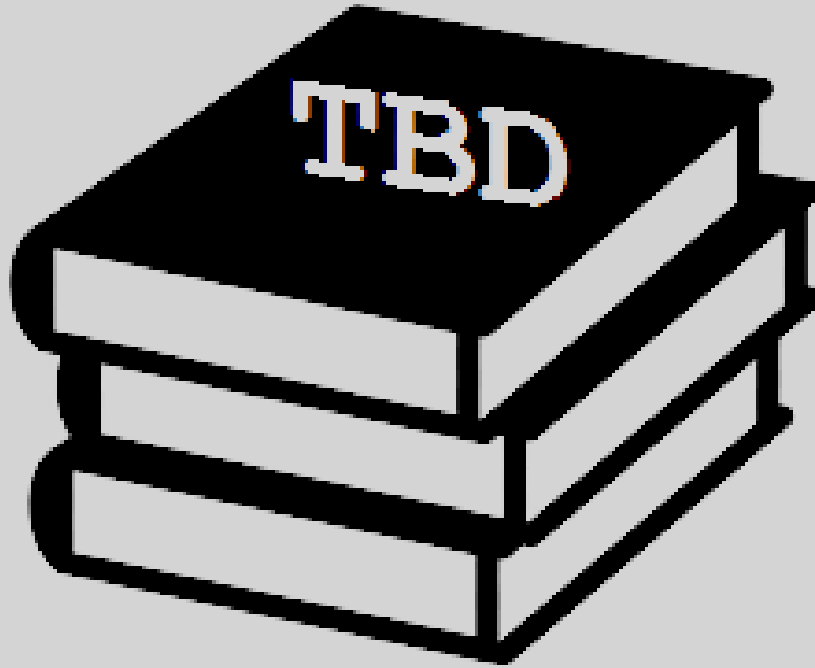


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