

PUBLIC EDUCATION

Public Education: Adverse Personnel Actions

Raven v. Manatee County School Board,
2009 WL 4282920 (Fla. 2d Dist. App. Dec. 2, 2009)

Teachers and other public school employees have a statutory right to counsel during investigatory interviews conducted by school board members or their delegated representatives, and an employee's refusal to appear for an interview without counsel is not proper grounds for termination.

FACTS AND PROCEDURAL HISTORY

The Manatee County Sheriff's Office and State Child Protective Services personnel jointly investigated an allegation of possible inappropriate interaction between a teacher, Todd Raven, and one of his students. The investigators found no criminal activity and did not file charges against Raven. After a detective informed the Manatee County School Board (Board) of these findings, the Board's Office of Professional Standards (OPS) launched its own investigation.

OPS summoned Raven for an interview and advised him not to bring an attorney. When Raven appeared for the interview with his attorney, OPS again advised Raven that the attorney could not be present. Raven then declined to participate in the interview. As a result, the Board suspended Raven without pay pending his termination. Raven then petitioned for an evidentiary hearing, and the Board referred the matter to the state Division of Administrative Hearings.

An administrative law judge (ALJ) conducted a hearing and found that the Board had violated Raven's right to counsel. The ALJ recommended adoption of a final order reversing the suspension and compensating Raven for lost pay. However, the Board rejected the ALJ's recommended order and terminated Raven.

Raven sought judicial review of the Board's decision.

ANALYSIS

Raven argued that he had a statutory right to be represented by counsel during the OPS investigatory interview. He cited Florida's Administrative Procedure Act, which states in part: "Any person compelled to appear, or who appears voluntarily, before any presiding officer or agency in an investigation or in any agency proceeding has the right, at his or her own expense, to be accompanied, represented, and advised by counsel or by other qualified representatives." Fla. Stat. § 120.62(2) (2007).

The Board argued that Raven's refusal to sit for the interview constituted just cause for termination, as well as misconduct in office, gross insubordination, and a violation of Board Policy 6.13, which requires all employees to cooperate fully with OPS investigations. Moreover, the Board argued that Section 120.62(2) did not afford Raven a right to counsel because the OPS investigator was not a "presiding officer" or "agency" within the meaning of the statute. In short, the Board argued that the right to counsel would apply only if the Board itself, sitting as a collegial body, were to conduct an investigation and summon an employee for an interview.

The Second District Court of Appeal rejected the Board's position as unreasonable. Although the court agreed that the Board has authority to conduct investigations on its own, the court also found that "the School Board has elected not to conduct investigations of teacher misconduct but instead has delegated all of its investigatory authority over these types of complaints to OPS." *Raven*, 2009 WL 4282920 at 3. Thus, OPS constituted an "agency in an investigation" under Section 120.62(2).

The court reversed the Board's final order and remanded the case for entry of a new order consistent with that recommended by the ALJ.

SIGNIFICANCE

Florida's Administrative Procedure Act affords public employees a right to counsel during investigatory interviews regarding allegations against them, even if agency leaders have delegated investigatory authority to officials within the agency and below the rank of presiding officer.

RESEARCH REFERENCE

- 2 Fla. Jur. 2d *Administrative Law* § 262 (2005).

Mark Johnson

Public Education: Charter Schools

***Survivors Charter Schools, Inc. v. School Board of
Palm Beach County,***
3 So. 3d 1220 (Fla. 2009)

The Administrative Procedure Act (APA) does not apply to county school-board procedures for immediate termination of charter schools. Florida law permits the immediate termination of a charter school for good cause or when students' health, safety, or welfare is threatened.

FACTS AND PROCEDURAL HISTORY

The School Board of Palm Beach County (School Board) entered into two ten-year charters with Survivors Charter Schools, Inc. (Survivors) for the operation of two charter schools. The charters included a provision for immediate termination after twenty-four hour notice by the School Board. The immediate termination clause permitted the School Board to terminate the charters for good cause or if the health, safety, or welfare of the students was threatened or impaired. The termination provision did not expressly include or exclude the APA's termination process.

An audit of Survivor's two charter schools resulted in findings of fiscal mismanagement. Relying on the audit and the superintendent's recommendation for immediate termination, the School Board notified Survivors of a special meeting to discuss the audit and recommendation. Survivors and the local constituents took part in the special meeting with the School Board. Following the meeting, the School Board approved the termination of Survivors' charters and a notice of immediate termination was hand-delivered to Survivors' two charter schools.

Survivors appealed the decision of the School Board to the State Board of Education (State Board), which referred the matter to the Charter School Appeal Commission (CSAC). The CSAC held an informal hearing and found that the School Board had

competent and substantial evidence for the termination of one, but not both of Survivors' charter schools. The matter then proceeded to the State Board for review. After considering the CSAC's findings as well as additional comments from Survivors, the State Board entered a final order to uphold the immediate termination of both charters.

Survivors appealed to the Fourth District Court of Appeal. The Fourth District considered whether the APA applied to the School Board's termination of the charters and if so, what due process protections the APA required. The Fourth District Court of Appeal concluded the APA applied to the School Board's termination of the charters even if the charter agreement does not incorporate the APA. *Survivors Charter Schools, Inc. v. School Board of Palm Beach Co.*, 968 So. 2d 39, 43 (Fla. 4th Dist. App. 2007). The School Board appealed to the Florida Supreme Court. The Court reversed the Fourth District, holding that the APA does not apply to charter-school emergency termination procedures.

ANALYSIS

The primary issue before the Court was whether charter-school terminations must conform to both the charter-school-termination provision in Florida Statutes Section 1002.33 and the heightened procedures contained in the APA. Florida's charter-school statute contains a termination provision that permits the immediate termination of a charter school under certain circumstances. Conversely, Florida's APA contains a provision requiring agencies to conduct a hearing whenever decisions are made that determine substantial interests of a party. Furthermore, the APA requires that a party give reasonable notice prior to the hearing.

Florida Statutes Section 1002.33 authorizes the creation of charter schools. Subsection 1002.33(8) permits a school board to terminate a charter school immediately if the school board determines that good cause has been shown or if the health, safety, or welfare of the students is threatened. The decision for immediate termination is appealable to the State Board. The CSAC handles all appeals and makes a recommendation to the State Board. Florida Statutes Section 1002.33(6)(f)(2) expressly indicates that the State Board's decision is not subject to the APA. However, no

similar exemption was provided for the initial determination made by the School Board.

The Court briefly summarized the APA as a body of procedures for agency decision-making and for parties challenging agency rules. All agencies must follow the APA unless exempted by legislation. The Court recognized that the School Board is an agency as defined under the APA. Under the APA, when an agency makes a decision that affects a substantial interest of a party, a hearing must take place. Furthermore, the APA requires reasonable notice before a hearing on substantial rights can take place.

Accordingly, the Court resolved to determine whether the charter-school statute exempts school boards from the APA's heightened requirements. To reconcile the conflict between the two statutes, the Court considered whether the legislature intended to subject "immediate" terminations of charter schools to the potential delay that could result from compliance with the APA. Because Florida's charter-school statute does not define the word "immediately," the Court considered the dictionary definition—without interval of time—and concluded that the immediate-termination procedures in the charter-school statute were not intended to be accomplished over a period of weeks or months—a likely result if the APA were applicable to a school board's immediate-termination decision. Where emergency circumstances threaten the students' health, safety, or welfare, school boards are justified in using the immediate-termination procedures in Florida Statutes Section 1002.33(8)(d) and are not required to comply with the APA. Further, the Court noted that the immediate-termination provision was limited to situations where students' health, safety, or welfare is threatened and where good cause for termination is demonstrated.

The Court then addressed whether due process requires compliance with the APA's requirements. After noting that due process is flexible and requires only the procedural protections that the situation demands, the Court concluded that the charter-school statute provides adequate notice and opportunity to be heard. The Court explained that the APA is a product of the legislature and was never intended to offer the exclusive means of affording due process to a party. The Court concluded that "[w]hile the notice and hearing procedures contained in the APA are

crafted in part to provide due process in administrative proceedings, [the APA] is not the sole method by which a party may receive due process.” *Survivors Charter Schools, Inc.*, 3 So. 3d at 1235.

SIGNIFICANCE

The Florida Supreme Court used plain-language statutory construction to reconcile the differences between Florida’s charter-school statute and the APA. Accordingly, the Court explained that the Legislature’s use of the phrase *immediate termination* meant without an interval of time. Thus, the Court signaled that compliance with the APA is not mandated when the Legislature provides that immediate action may be taken on an issue such as charter-school terminations and when such provisions incorporate adequate due process protections.

RESEARCH REFERENCES

- 46 Fla. Jur. 2d *Schools, Universities, and Colleges* § 296 (2006 & Supp. 2009).
- 48A Fla. Jur. 2d *Statutes* § 112 (2007 & Supp. 2009).
- Jason Stearns, Student Author, *Recent Developments: Survivors Charter Schools, Inc. v. School Board of Palm Beach Co.*, 37 Stetson L. Rev. 738 (2008).

J. Chris Bristow