

Indian River County District School Board
Special District School Board Meeting
February 5, 2013 at 12:30 p.m.
AGENDA

It is hereby advised that if a person decides to appeal any decision made by the Board with respect to any matter considered at this meeting, he/she will need to ensure that a verbatim record is made that includes the testimony and evidence upon which the appeal is to be made.

Special Meeting

- I. OPEN SPECIAL MEETING – Chairman Johnson
- II. PURPOSE OF THE MEETING – Chairman Johnson
- III. ACTION AGENDA
 - A. Joint Motion to Continue Hearing Involving the Recommendation for Termination of Alan Seiden – Ms. D’Agresta**

The Parties have filed a Joint Motion to Continue the Employee Termination Hearing of Alan Seiden, currently scheduled for February 7, 2013. The basis for the requested continuance is the recent, unanticipated discovery of a significant number of emails that are relevant to the pending hearing and not previously disclosed. The Joint Motion is provided in the back-up materials for this Agenda. The School Board is required to review the Joint Motion and make a determination whether to grant or deny the Joint Motion to Continue. In the event the School Board grants the Joint Motion, the School Board will need to set the date for the Employee Termination Hearing. The Parties have suggested April 11, 2013, April 18, 2013, or April 25, 2013.
 - B. Motion to Disqualify Agency Personnel (School Board) as the Hearing Officer in the Employee Termination Hearing of Alan Seiden – Ms. D’Agresta**

Mr. Seiden has filed a Motion to Disqualify Agency Personnel, alleging the School Board is prohibited from serving as the Hearing Officer in the pending Employee Termination Hearing on the basis of personal interest. The Superintendent has filed a Response in Opposition to the Motion to Disqualify. Both of these pleadings are provided in the back-up materials for this Agenda. The School Board is required to review the Motion and Response; and to make a determination whether to grant or deny the Motion to Disqualify.
- IV. CLOSING COMMENTS – Chairman Johnson
- V. ADJOURNMENT – Chairman Johnson

Anyone who needs a special accommodation for this meeting/workshop may contact the School District's American Disabilities Act Coordinator, at 564-3060 (TTY 564-8507) at least 48 hours in advance of meeting. NOTE: Changes and amendments to the agenda can occur 72 hours prior to the meeting. All business meetings will be held in the Teacher Education Center (TEC) located in the District Central Offices at 1990 25th Street, Vero Beach, unless otherwise specified. Meetings may broadcast live on Comcast Ch. 28 and may be replayed on Wednesday's and Friday's at 7 p.m. and on Saturday's at 9 a.m. The agenda can be accessed by Internet at <http://www.indianriverschools.org>.

THE SCHOOL BOARD OF INDIAN RIVER COUNTY, FLORIDA

FRANCES J. ADAMS, as Superintendent,
the SCHOOL DISTRICT OF INDIAN RIVER
COUNTY, FLORIDA,

Petitioner,

v.

ALAN SEIDEN,

Respondent.

JOINT MOTION TO CONTINUE HEARING

Petitioner, Frances J. Adams, as Superintendent of the School District of Indian River County, by and through her undersigned attorney, files this Motion to Continue the Hearing scheduled for February 7, 2013, and states the following:

1. The hearing is currently scheduled for February 7, 2013.
2. The Parties have been diligently involved in extensive discovery, including but not limited to, interrogatories (written questions to the parties), production of documents, depositions, and requests for public records. For example, eight depositions have been taken and hundreds of pages of documents have been produced.
3. The most recent round of depositions taken on January 28, 2013, revealed the possible existence of additional relevant evidence in the form of emails stored on the School District's computer system. Prior to the January 28, 2013, depositions, the Parties were not aware of any additional relevant evidence.
4. Petitioner has since confirmed that a significant amount of relevant email evidence exists. Petitioner is working diligently with the IT department to obtain this evidence, review for confidential information, and produce it to Respondent.

5. Petitioner hopes to have the evidence to Respondent by Monday, February 4, 2013; however, this evidence will result in the need for a few more depositions. There is insufficient time to schedule these depositions and have the evidence ready in a presentable fashion before the February 7th hearing date.

6. The Parties recognize and respect the fact that School Board has previously agreed to continue the hearing; however, the circumstances justifying this Motion were unforeseen by the Parties despite their best efforts.

7. This Motion is not being filed for purposes of delay and is necessary in order to ensure that the Parties have all the available evidence for the School Board to fully and fairly hear and decide this case.

8. The Parties respectfully request that the School Board reschedule the hearing for April 11, 2013, April 18, 2013, or April 25, 2013. If none of these dates are workable for the School Board, then the Parties will supply additional dates for consideration.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was sent via US Mail and E-Mail to Thomas Johnson, Esq., Johnson.thomas.l@verizon.net and Suzanne D'Agresta, P.O. Box 2873, Orlando, FL 32802, on this 1st day of February 2013.



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THE SCHOOL BOARD OF INDIAN RIVER COUNTY, FLORIDA

**FRANCES J. ADAMS, as Superintendent,
the SCHOOL DISTRICT OF INDIAN RIVER
COUNTY, FLORIDA,**

Petitioner,

v.

ALAN SEIDEN,

Respondent.

MOTION TO DISQUALIFY AGENCY PERSONNEL

Respondent, ALAN SEIDEN, through the undersigned counsel, and pursuant to Florida Statute §120.665, hereby moves to disqualify the members of the Indian River School Board from adjudicating the above proceeding, and further states as follows:

1. A final hearing in this matter has been scheduled for Thursday, February 7, 2013.
2. During Respondent's deposition, taken on January 22, 2013, questions were raised regarding Respondent's training in the area of Autistic Spectrum Disorders (ASD).
3. Respondent's teaching certificate does not carry the ASD endorsement, nor has it carried the endorsement for the past two years, during which he was assigned to teach children affected by autism.
4. As such, Respondent was teaching "out-of-field" as that term is used in Florida Statutes, §1012.42, which states as follows:

(1) Assistance.--Each district school board shall adopt and implement a plan to assist any teacher teaching out-of-field, and priority consideration in

professional development activities shall be given to a teacher who is teaching out-of-field. The district school board shall require that the teacher participate in a certification or staff development program designed to provide the teacher with the competencies required for the assigned duties. The board-approved assistance plan must include duties of administrative personnel and other instructional personnel to provide students with instructional services.

(2) Notification requirements.--When a teacher in a district school system is assigned teaching duties in a class dealing with subject matter that is outside the field in which the teacher is certified, outside the field that was the applicant's minor field of study, or outside the field in which the applicant has demonstrated sufficient subject area expertise, as determined by district school board policy in the subject area to be taught, the parents of all students in the class shall be notified in writing of such assignment.

5. At no time did the School Board, or any of its agents, "require that [Respondent] participate in a certification or staff development program designed to provide the teacher with the competencies required for the assigned duties."

6. Neither did the School Board notify the parents of any students of Respondent that Respondent was teaching out-of-field.

7. Having the School Board adjudicate the question of whether Respondent was properly trained, was provided opportunities to be trained properly, or was given the assistance needed as a result of his out-of-field assignment would require the School Board to determine its own culpability regarding this issue.

8. In addition to the matters set forth above, a question also arises regarding the actions of the School Board and its responsibilities pursuant to Florida Statute, §39.201, which requires as follows:

(1)(a) Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian,

caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

(b) Reporters in the following occupation categories are required to provide their names to the hotline staff:

* * * * *

4. School teacher or other school official or personnel;

9. The penalty for failing to make the report required by §39.201 is set forth in §39.205:

A person who is required to report known or suspected child abuse, abandonment, or neglect and who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A judge subject to discipline pursuant to s. 12, Art. V of the Florida Constitution shall not be subject to criminal prosecution when the information was received in the course of official duties.

10. In the Superintendent's letter dated September 24, 2012, it is alleged that Respondent failed to protect student K.E. from conditions harmful to the learning environment and/or ***to the student's mental and physical health and safety.*** Superintendent's September 24, 2012 Letter, page 2, paragraphs 3 and 4.¹

11. Respondent observes that the members of the School Board are "school officials" and will be in the position to determine if they improperly failed to notify the proper authorities when first presented with the Superintendent's September 24, 2012 Letters.

12. As described herein, the circumstances are such that Respondent has a well

1 A copy of the Superintendents September 24, 2012 letter is attached hereto as Exhibit A.

grounded fear that the School Board will be focused on their own interest,² thereby denying Respondent the fair adjudicator to which he is entitled.

13. This motion is made in a timely manner and in good faith and not for the mere purpose of delay.

Respectfully submitted this 25th day of January, 2013.



THOMAS L. JOHNSON, ESQ.
Johnson & Sirmons, LLP
510 Vonderburg Drive, Suite 309
Brandon, FL 33511-5981
813-654-7272
813-662-7444 Facsimile
Florida Bar No. 997447

Attorney for Respondent

² Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or ***interest*** when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding. If the disqualified individual was appointed, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified. If the individual is an elected official, the Governor may appoint a substitute to serve in the matter from which the individual is disqualified. However, if a quorum remains after the individual is disqualified, it shall not be necessary to appoint a substitute.

Florida Statutes, §120.665(1). The phrase "reasonable period of time" was interpreted in Bay Bank & Trust v. Lewis, 634 So.2d 672 (1st DCA 1994). The Bay Bank Court held that motions for disqualification filed eight and ten months after respective petitions for formal hearings were filed were within a "reasonable time" under 120.71, the predecessor of 120.665.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Respondent's Response to Petitioner's Request for Production has been served via U. S. Mail and email on:

Suzanne D'Agresta
School Board Attorney
Brown, Garganese, Weiss, & D'Agresta, P.A.
P.O. Box 2873
Orlando, FL 32802
(sdagresta@orlandolaw.net)

and

Jason L. Odom
Gould Cooksey Fennell, P.A.
979 Beachland Boulevard
Vero Beach, FL 32963
(jodom@gouldcooksey.com)

this 25th day of January, 2013.



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Attorney for Respondent



School District of Indian River County

1990 25th Street • Vero Beach, Florida, 32960-3395 • Telephone: 772-564-3000 • Fax: 772-569-0424

Frances J. Adams, Ed.D. - Superintendent

CHARGING LETTER

September 24, 2012

Alan Seiden
7251 Gullotti Place
Port St. Lucie, FL 34952

VIA: Hand Delivery

Dear Mr. Seiden:

This letter charges you with acts or failure to act when you had a duty to act as an employee of the School District of Indian River County, Florida ("the District"). These acts or omissions constitute just cause for you to be terminated from your position with the District. This correspondence will give you notice of the procedures that will be followed to terminate your employment.

I will recommend at the School Board meeting on October 9, 2012, that your employment with the District be terminated. The school Board meeting will be held at the offices of the School Board of Indian River County, 1990 25th Street, Vero Beach, Florida, and the meeting commences at 6:00 p.m.

Due to the seriousness of this charge, you will be reassigned to the Purchasing Department pending the outcome. This reassignment will be effective September 25, 2012.

You have a right to a hearing as provided in School Board Policies and in Florida Statute Section 1012.33(6). If you want a hearing to challenge your recommended termination then you must make a written request for a hearing by delivering a copy of the written request to me before 4:00 p.m. on October 9, 2012. The Superintendent's office is located at 1990 25th Street, Vero Beach, Florida.

If you timely request a hearing prior to the deadline, then I will recommend that you be suspended without pay until the hearing process is completed. If you timely request a hearing in writing, a hearing will be held pursuant to the Florida Administrative Procedures Act, as set forth in Chapter 120, Florida Statutes, in Florida Statute Section 1012.33, and in School Board Polices. This hearing will either be before the School Board or an administrative law judge assigned by the Florida Division of Administrative Hearings, as provided in Florida Statute Section 1012.33. If you do not timely request a hearing the School Board will consider my recommendation for termination to take effect immediately.

"Educate and inspire every student to be successful"

Karen Disney-Brombach
District 1

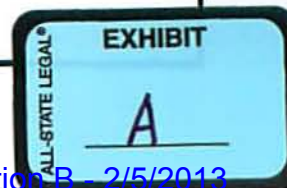
• Jeffrey Pegler
District 2

• Matthew McCain
District 3

• Carol Johnson
District 4

• Claudia Jiménez
District 5

"To serve all students with excellence"
Equal Opportunity Educator and Employer



My recommendation that you be discharged from employment is based on the fact that your acts or omissions disqualify you from being employed in the District and provide just cause for terminating your employment in that:

1. On October 13, 2011, you accompanied students from the autism program at Storm Grove Middle School to a field trip at LaPorte Farms. You were personally responsible for K.E., a student in the autism program. During the field trip, you inappropriately handled K.E.'s behavior, which caused a significant escalation of the matter, by engaging in improper and aggressive physical and verbal actions towards K.E. in violation of School Board Policy, State Board Rules, and the Code of Ethics of the Education Profession in Florida.

2. On October 13, 2011, you violated State Board of Education Rule 6B-1.001, FAC, by your lack of concern for the affected student and your failure to maintain the respect and confidence of your colleagues and students and by failing to maintain the highest degree of ethical conduct.

3. On October 13, 2011, you violated State Board of Education Rule 6B-1.006(3)(a), (b), and (e), FAC, by escalating a student situation and not protecting the student from conditions harmful to the learning environment and/or to the student's mental and physical health and safety; by unreasonably interfering with the student's pursuit of learning; and by exposing the student to unnecessary embarrassment or disparagement.

4. On October 13, 2011, you violated State Board of Education Rule 6B-1.006(3)(a), (b), and (e), FAC, by taking improper physical actions that did not protect the student from conditions harmful to the learning environment and/or to the student's mental and physical health and safety; by unreasonably interfering with the student's pursuit of learning; and by exposing the student to unnecessary embarrassment or disparagement.

5. On October 13, 2011, you violated Rule 6A-5.056, FAC, by committing acts which constitute misconduct in office.

6. On October 13, 2011, you violated School Board Policy 2.17, by your failure to abide by the Code of Ethics of the Education Profession in Florida and by the Principles of Professional Conduct for the Education Profession in Florida.

7. On October 13, 2011, you violated School Board Policy 2.19, by your failure to operate in accordance with the Code of Ethics of the Education Profession in Florida and by the Principles of Professional Conduct for the Education Profession in Florida.

8. On October 13, 2011, you violated School Board Policy 3.41 by your failure to provide proper supervision of students when you have the responsibility for their supervision in the performance of your duties.

9. Based on the above, and your disciplinary record, your conduct was unbecoming of a District employee and of a professional educator and constitutes just cause for your termination from employment.

You have the right to obtain legal representation of your choice to assist you if you should desire representation. If you take no action or fail to timely request a hearing in writing, then the School Board will act on my recommendation to terminate your employment at the October 9, 2012, School Board meeting.

If you have any questions concerning this matter or the procedures that are being followed regarding my recommendation that your employment be terminated, please contact School Board Attorney Suzanne D'Agresta at the Law Offices of Brown, Garganese, Weiss & D'Agresta, P.A. 111 North Orange Avenue, Suite 2000, P.O. Box 2873, Orlando, FL 32802, or call Mrs. D'Agresta at (407) 425-9566, or have your attorney or other representative contact Mrs. D'Agresta.

Sincerely,



Frances J. Adams, Ed.D.
Superintendent

THE SCHOOL BOARD OF INDIAN RIVER COUNTY, FLORIDA

FRANCES J. ADAMS, as Superintendent,
the SCHOOL DISTRICT OF INDIAN RIVER
COUNTY, FLORIDA,

Petitioner,

v.

ALAN SEIDEN,

Respondent.

**PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S
MOTION TO DISQUALIFY AGENCY PERSONNEL**

Petitioner, Frances J. Adams, as Superintendent of the School District of Indian River County, by and through her undersigned attorney, files this Response in Opposition to Respondent, Alan Seiden's, Motion to Disqualify Agency Personnel, and states the following:

1. On January 25, 2013, Respondent filed a Motion to Disqualify the School Board from hearing this matter, alleging: (1) Respondent was teaching "out of field;" therefore, the School Board would have to determine its own culpability; and (2) that the School Board members were personally required to report Respondent's alleged conduct to the Department of Children and Family Services ("DCF") pursuant to § 39.201, Fla. Stat. Respondent contends that the School Board has an interest in the outcome of this proceeding that justifies disqualification.

2. Respondent's Motion to Disqualify should be denied.

I. Factual Background:

3. On September 24, 2012, Petitioner recommended to the School Board that Respondent's employment be terminated. (Ex. A). The recommendation was based on multiple charges, but the charge most pertinent to Respondent's Motion is that "Respondent failed to protect student K.E. from conditions harmful to the learning environment and/or to the student's mental and physical health and safety." (Ex. A, p. 2, ¶¶3-4).

4. On October 2, 2012, Respondent gave written notice of his intent to request a hearing on the recommendation of termination. (Ex. B). Respondent's request did not make any allegations of bias, prejudice, or interest that would justify disqualification, despite the fact that Respondent had full knowledge of his purported reasons for disqualification. Specifically, Respondent knew that he was allegedly teaching "out of field;" Respondent knew about all the training he had or was offered; Respondent knew about the factual circumstances set forth in the charging letter; Respondent knew whether he had been reported pursuant to §39.201, Fla. Stat.; and Respondent knew that the School Board had the option to conduct Respondent's hearing itself or refer the matter to the Florida Division of Administration Hearings ("DOAH").

5. On October 9, 2012, the School Board considered Petitioner's recommendation of termination and Respondent's request for a hearing. During the public comment portion of the School Board's meeting, Respondent's counsel urged the School Board to reject Petitioner's recommendation of termination, but if not, to refer the matter to DOAH. Respondent's counsel did not make any claims of bias, prejudice, or self-interest, or otherwise suggest that the School Board should not hear the matter because of some disqualifying reason(s).

6. The School Board ultimately voted to suspend Respondent without pay pending a hearing to be held by the School Board under §1012.33(6)(a)(1), Fla. Stat. The hearing was scheduled for November 26, 2012.

7. On October 23, 2012, Respondent filed a motion to reschedule the hearing for December 18, 2012, without making any mention of bias, prejudice, or self-interest. (Ex. C).

8. Petitioner and Respondent have since engaged in extensive discovery, including interrogatories, production of documents, and depositions, yet none of this discovery has concerned any claims of bias, prejudice, or self-interest on the part of the School Board.

9. On December 11, 2012, Respondent filed a joint motion to reschedule the hearing for February 7, 2013, and did not make allegations of bias, prejudice, or interest. (Ex. D).

10. On January 22, 2013, Petitioner took Respondent's deposition. During the deposition, Respondent did not claim that he was teaching out-of-field. Additionally, Respondent denied the allegations in the charging letter and defended his actions as appropriate. Respondent did not testify that he had engaged in any conduct that would have required a report pursuant to § 39.201, Florida Statutes.

II. Legal Argument:

11. The hearing in this matter is governed by the procedures set forth in Chapter 120, Florida Statutes. The School Board is serving as the "agency" in this proceeding.

12. Section 120.665, Florida Statutes, provides in pertinent part that the agency may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding.

13. Respondent's Motion to Disqualify does not allege that the School Board should be disqualified on grounds of bias or prejudice, but rather claims the School Board has a "interest" in this proceeding that requires disqualification. (Note: Respondent's Motion at footnote 2 cites Section 120.665 and emphasizes the term "interest" in bold, italics, and underline).

14. In City of Tallahassee v. Florida Public Service Commission, 441 So. 2d 620, 624 (Fla. 1983), the Florida Supreme Court held that "for an interest in a proceeding to be a legitimate basis for disqualification, that interest must not be remote, uncertain, or speculative." In City of Tallahassee, the City sued the Public Service Commission ("PSC") over its decision to

order the City to eliminate a fifteen percent surcharge the City had imposed on non-resident utility customers. During the litigation, the City filed a motion to disqualify the commissioners of the PSC on the ground that they had an interest in the outcome of the proceeding because their decision could impact their own personal utility bills. The PSC denied the motion to disqualify itself and the case proceeded to final hearing. The City appealed.

15. The Florida Supreme Court upheld the PSC's decision to deny the City's motion to disqualify it from hearing the matter. The Supreme Court found that any interest the commissioners had was remote, uncertain and speculative since any decision they reached on the surcharge issue would not guarantee a financial benefit to the commissioners.

16. In Bay Bank & Trust Company v. Lewis, 634 So. 2d 672 (Fla. 1st DCA 1994), the Court upheld the denial of an attempt to disqualify an agency head from participating in a proceeding on the grounds of bias or prejudice.

17. In Lewis, the Florida Department of Banking and Finance ("Department") filed an administrative complaint against Bay Bank & Trust, Co. ("Bank"), seeking to recover a specially imposed bank examination fee and fines. The Bank served a motion to disqualify Gerald Lewis, the head of the Department. The Bank alleged that Lewis' claims were vindictive and political and that the Bank had sued Lewis in federal court over the very same allegations. The Bank alleged that Lewis was biased because the Bank supported efforts to impeach Lewis and withdrew financial support from him in previous years.

18. The Department denied the motion to disqualify Lewis and the order was appealed. On appeal, the Lewis Court upheld the denial of the motion to disqualify, finding the allegations to be legally insufficient to support disqualification. Specifically, the Court found that the Bank failed to show any connection between their allegations against Lewis and the

Department's reasons for bringing the complaint against the Bank, other than temporal circumstance, which, without more, is simply too tenuous and speculative to require disqualification. Id. at 679.

19. Here, Respondent's Motion to Disqualify is an attempt to circumvent the School Board's statutory authority under §1012.33(6)(a)(1) to hear this case. Specifically, all of the allegations in the Motion that supposedly support disqualification were known by Respondent before the October 9, 2012, School Board meeting, yet he voluntarily allowed the School Board to move forward on this matter without making any allegations of bias, prejudice, or self-interest. It was evident at the October 9, 2012, School Board meeting that Respondent did not want the School Board to hear this case, and since that effort failed, this Motion is another attempt to avoid having the School Board decide this case.

20. Petitioner respectfully contends that Respondent has waived any right to seek disqualification of the School Board by having knowledge of his purported reasons for disqualification, but voluntarily allowing the School Board to proceed in this matter and waiting until shortly before the hearing to make the motion. Additionally, Petitioner contends that Respondent's individual grounds for disqualification are individually, and collectively, insufficient to warrant disqualification.

1. First Allegation: that Respondent was teaching out-of-field.

21. Respondent alleges in paragraphs 2-7 of his Motion that he was teaching a student with Autism Spectrum Disorder ("ASD"), but did not have the ASD endorsement on his teaching certificate. Respondent contends that because he did not have the ASD endorsement, and he had a student with ASD, he was teaching "out-of-field" pursuant to § 1012.42, Fla. Stat. Respondent alleges that the School Board did not comply with the requirements of § 1012.42 for a teacher

who is teaching out-of-field. As a result, Respondent contends that the School Board has an interest in this case because it would be required to determine its own “culpability regarding this issue.”

22. Respondent’s allegation of teaching out-of-field is inaccurate, but even if true, is completely irrelevant to these proceedings.

23. First, Respondent was not teaching out-of-field. Dr. Michael Ferrentino, Executive Director of Exceptional Student Education (“ESE”) and Student Services, has given an affidavit that explains the issue in detail. (Exhibit E). The affidavit explains that § 1012.42, Fla. Stat. governs teaching “out-of-field.” For example, a teacher with a certification in mathematics who was assigned to teach English would be teaching out-of-field, and therefore the school district would be required to follow the requirements of § 1012.42. There is no certification for ASD in Florida, but rather there is an ASD “Academic Endorsement” that a person could obtain through completion of specified coursework.

24. Respondent’s certification is in “Emotionally Handicapped” and his School District endorsement is in “Any ESE.” Respondent was employed by the school district during the 2010-2011 and 2011-2012 school years as an ESE teacher at Storm Grove Middle School. During these two school years, Respondent taught classes with students of varying exceptionalities, including but not limited to autism students and students with other ESE recognized disabilities.

25. Respondent was not required to have the ASD endorsement for his 2010-2011 or 2011-2012 classroom assignment at Storm Grove Middle School. (Exhibit J). Respondent’s certification and school district endorsement was appropriate for his assignment; therefore he was not teaching out-of-field pursuant to §1012.42, Fla. Stat.

26. Second, Petitioner did not charge Respondent with the failure to obtain the ASD endorsement; therefore, the allegation is irrelevant to these proceedings.

27. Third, Petitioner did not charge Respondent with the failure to obtain certain training above and beyond what was required for his certification. The questions directed to Respondent in his deposition on training were for background purposes and to establish that Respondent either had sufficient training and/or was at least offered sufficient training to address the issues involved in during the October 13, 2011 incident at issue in this proceeding.

28. In sum, Respondent's first allegation for disqualification is inaccurate, irrelevant, and not a legally sufficient reason for disqualification.

2. **Second allegation: that the School Board should have reported Respondent for abuse.**

29. Respondent alleges in paragraphs 8-12 of his Motion that §39.201, Fla. Stat. required the *School Board* (which means the individual members of the School Board) to have reported Respondent to DCF for abuse, abandonment, or neglect.

30. Section 39.201 provides that "any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected...shall report such knowledge or suspicion" to DCF. According to Respondent, because the School Board members should have reported him for abuse, but did not, the School Board should disqualify itself from hearing this matter because it may put its own interest above Respondent's right to a fair hearing.

31. As explained below, Respondent's argument is invalid and does not constitute a legally sufficient ground for disqualification.

32. First, Respondent does not allege that any member of School Board "knows" that Respondent committed abuse, or that any member of the School Board "has reasonable cause to suspect" that Respondent committed child abuse. Furthermore, the charging letter does not

contain any allegations of “abuse,” as that term is defined in the above-referenced statute. Therefore, the School Board does not have any knowledge of, suspected knowledge of, actual abuse. At best, the School Board has knowledge that Petitioner has charged Respondent with conduct that, if proven, could constitute just cause for termination.

33. Respondent’s argument is based on Petitioner’s charge of Respondent’s “failure to protect K.E. from conditions harmful to the learning environment and/or to the student’s mental and physical health and safety.” (Ex. A, p. 2 ¶¶3-4). Respondent contends in paragraph 11 of his Motion that “the members of the School Board are ‘school officials’ and will be in the position to determine if they improperly failed to notify the property authorities when first presented with the Superintendent’s September 24, 2012, Letters.” Again, it is important to emphasize that Respondent’s argument is based solely on the School Board’s receipt of the Petitioner’s charging letter, and not on any evidence that any School Board member had independent knowledge of abuse or suspected abuse. (Motion, p. 3, ¶10).

34. Additionally, the School Board is the governing body of the School District of Indian River County. §§1001.40, 1001.41, 1001.42, and 1001.43, Fla. Stat. In the context of personnel matters, the School Board acts on the recommendations of the superintendent of schools. §1012.22, Fla. Stat. Section 1012.33(6)(a)(1), Fla. Stat. specifically authorizes the School Board to preside over a hearing based on the recommendation of the superintendent for termination of employment.

35. There is no evidence that any member of the School Board came into possession of facts (outside of this Chapter 120 administrative process) sufficient to require them to have reported Respondent to DCF for abuse. Again, as stated above, Respondent’s Motion alleges that the *School Board* (not the Petitioner or any other school official) was required to report

Respondent to DCF for abuse. Because the School Board is not in possession of any facts that constitute abuse, the members had no obligation to report Respondent to DCF.

36. Second, Respondent's argument would require the School Board to disqualify itself from every proceeding because it is the School Board's statutory duty to receive information (a recommendation for termination, for example) from the Petitioner and then conduct a hearing on the matter and decide the facts and law. In essence, Respondent's argument would require the School Board to prejudge the evidence (accept as true Petitioner's charging letter) and report Respondent to DCF based solely on the charging letter. If the School Board had done as Respondent contends it should have, then that fact alone (reporting Respondent to DCF) would by itself likely require the School Board to disqualify itself, because the School Board would have prejudged the case before hearing the evidence.

37. Finally, Respondent's argument is inconsistent because he specifically denies that he engaged in any abuse that would have required him to be reported to DCF. It should be noted that Section 39.206 imposes administrative fines for the filing of a false report. By denying that he engaged in abuse, but contending the School Board was required to report him for abuse, Respondent is engaging in inconsistent, circular reasoning that does not support a sufficient basis for disqualification. Indeed, if in fact the School Board should have reported Respondent for abuse, and assuming there is any real potential for repercussions for failing to do so, it would conceivably be in the School Board's best interest to accept Respondent's defense of this case and not impose any discipline.

III. Conclusion:

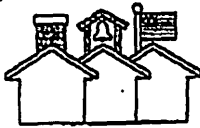
38. Respondent's allegations in support of disqualification are not based in fact, and they are remote, uncertain, and speculative. As a result, the Motion should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was sent via US Mail and E-Mail to Thomas Johnson, Esq., Johnson.thomas.l@verizon.net and Suzanne D'Agresta, P.O. Box 2873, Orlando, FL 32802, on this 31st day of January 2013.



JASON L. ODOM
Florida Bar No. 0476950
Email: jodom@gouldcooksey.com
E-Service: jlo-eservice@gouldcooksey.com
Gould Cooksey Fennell, P.A.
979 Beachland Boulevard
Vero Beach, FL 32963
(772) 231-1100-telephone
(772) 231-2020 facsimile
Attorney for Petitioner



School District of Indian River County

1890 25th Street • Vero Beach, Florida, 32960-3395 • Telephone: 772-564-3000 • Fax: 772-569-0424

Frances J. Adams, Ed.D. - Superintendent

CHARGING LETTER

September 24, 2012

Alan Seiden
7251 Gullotti Place
Port St. Lucie, FL 34952

VIA: Hand Delivery

Dear Mr. Seiden:

This letter charges you with acts or failure to act when you had a duty to act as an employee of the School District of Indian River County, Florida ("the District"). These acts or omissions constitute just cause for you to be terminated from your position with the District. This correspondence will give you notice of the procedures that will be followed to terminate your employment.

I will recommend at the School Board meeting on October 9, 2012, that your employment with the District be terminated. The school Board meeting will be held at the offices of the School Board of Indian River County, 1990 25th Street, Vero Beach, Florida, and the meeting commences at 6:00 p.m.

Due to the seriousness of this charge, you will be reassigned to the Purchasing Department pending the outcome. This reassignment will be effective September 25, 2012.

You have a right to a hearing as provided in School Board Policies and in Florida Statute Section 1012.33(6). If you want a hearing to challenge your recommended termination then you must make a written request for a hearing by delivering a copy of the written request to me before 4:00 p.m. on October 9, 2012. The Superintendent's office is located at 1990 25th Street, Vero Beach, Florida.

If you timely request a hearing prior to the deadline, then I will recommend that you be suspended without pay until the hearing process is completed. If you timely request a hearing in writing, a hearing will be held pursuant to the Florida Administrative Procedures Act, as set forth in Chapter 120, Florida Statutes, in Florida Statute Section 1012.33, and in School Board Policies. This hearing will either be before the School Board or an administrative law judge assigned by the Florida Division of Administrative Hearings, as provided in Florida Statute Section 1012.33. If you do not timely request a hearing the School Board will consider my recommendation for termination to take effect immediately.

"Educate and inspire every student to be successful"

Karen Disney-Brombach
District 1

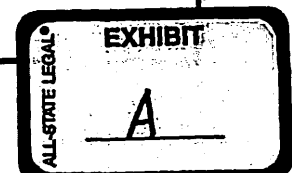
• Jeffrey Pegler
District 2

• Matthew McCain
District 3

• Carol Johnson
District 4

• Claudia Jiménez
District 5

"To serve all students with excellence"
Equal Opportunity Educator and Employer



My recommendation that you be discharged from employment is based on the fact that your acts or omissions disqualify you from being employed in the District and provide just cause for terminating your employment in that:

1. On October 13, 2011, you accompanied students from the autism program at Storm Grove Middle School to a field trip at LaPorte Farms. You were personally responsible for K.E., a student in the autism program. During the field trip, you inappropriately handled K.E.'s behavior, which caused a significant escalation of the matter, by engaging in improper and aggressive physical and verbal actions towards K.E. in violation of School Board Policy, State Board Rules, and the Code of Ethics of the Education Profession in Florida.

2. On October 13, 2011, you violated State Board of Education Rule 6B-1.001, FAC, by your lack of concern for the affected student and your failure to maintain the respect and confidence of your colleagues and students and by failing to maintain the highest degree of ethical conduct.

3. On October 13, 2011, you violated State Board of Education Rule 6B-1.006(3)(a), (b), and (e), FAC, by escalating a student situation and not protecting the student from conditions harmful to the learning environment and/or to the student's mental and physical health and safety; by unreasonably interfering with the student's pursuit of learning; and by exposing the student to unnecessary embarrassment or disparagement.

4. On October 13, 2011, you violated State Board of Education Rule 6B-1.006(3)(a), (b), and (e), FAC, by taking improper physical actions that did not protect the student from conditions harmful to the learning environment and/or to the student's mental and physical health and safety; by unreasonably interfering with the student's pursuit of learning; and by exposing the student to unnecessary embarrassment or disparagement.

5. On October 13, 2011, you violated Rule 6A-5.056, FAC, by committing acts which constitute misconduct in office.

6. On October 13, 2011, you violated School Board Policy 2.17, by your failure to abide by the Code of Ethics of the Education Profession in Florida and by the Principles of Professional Conduct for the Education Profession in Florida.

7. On October 13, 2011, you violated School Board Policy 2.19, by your failure to operate in accordance with the Code of Ethics of the Education Profession in Florida and by the Principles of Professional Conduct for the Education Profession in Florida.

8. On October 13, 2011, you violated School Board Policy 3.41 by your failure to provide proper supervision of students when you have the responsibility for their supervision in the performance of your duties.

9. Based on the above, and your disciplinary record, your conduct was unbecoming of a District employee and of a professional educator and constitutes just cause for your termination from employment.

You have the right to obtain legal representation of your choice to assist you if you should desire representation. If you take no action or fail to timely request a hearing in writing, then the School Board will act on my recommendation to terminate your employment at the October 9, 2012, School Board meeting.

If you have any questions concerning this matter or the procedures that are being followed regarding my recommendation that your employment be terminated, please contact School Board Attorney Suzanne D'Agresta at the Law Offices of Brown, Garganese, Weiss & D'Agresta, P.A. 111 North Orange Avenue, Suite 2000, P.O. Box 2873, Orlando, FL 32802, or call Mrs. D'Agresta at (407) 425-9566, or have your attorney or other representative contact Mrs. D'Agresta.

Sincerely,



Frances J. Adams, Ed.D.
Superintendent

JOHNSON & SIRMONS, LLP

ATTORNEYS AT LAW



THOMAS L. JOHNSON
JEFFREY S. SIRMONS

NANCY PROCTOR, *Case Manager*

510 VONDERBURG DRIVE, SUITE 309
BRANDON, FLORIDA 33511
(813) 654-7272
FAX (813) 662-7444

October 2, 2012

VIA FACSIMILE ONLY (772-564-3128)

Dr. Frances Adams
Superintendent
The School District of Indian River County
1990 25th Street
Vero Beach, Florida 32960

RE: **Alan Seiden**

Dear Superintendent Adams,

Please be advised that this law firm has been retained to represent Alan Seiden. Accordingly, all communications regarding this matter should be directed to attorney Thomas Johnson. Mr. Johnson's contact information follows.

Thomas Johnson
Johnson & Simons, LLP
510 Vonderburg Drive, Suite 309
Brandon, FL 33511
Tel. 813-654-7272
Fax 813-662-7444

In response to your letter dated September 24, 2012 to, Mr. Seiden requests a hearing before an administrative law judge appointed by the Division of Administrative Hearings pursuant to §§ 120.569 and 120.57, Fla. Stat. to contest his termination.

Sincerely,

Michael Martino
Paralegal

cc: Pam Cooper, Esq.
Alan Seiden
Suzanne D'Agresta (407-425-9596)



THE SCHOOL BOARD OF INDIAN RIVER COUNTY, FLORIDA

FRANCES J. ADAMS, as Superintendent,
the SCHOOL DISTRICT OF INDIAN RIVER
COUNTY, FLORIDA,

Petitioner,

v.

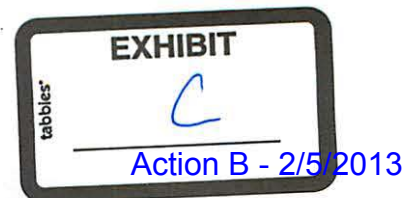
ALAN SEIDEN,

Respondent.

REVISED MOTION TO RESCHEDULE HEARING

Respondent, ALAN SEIDEN, hereby moves the School Board for a continuance of the hearing in this matter, and further states as follows:

1. A final hearing in this matter has been scheduled for Monday, November 26, 2012.
2. With the hearing 34 days out, there is insufficient time to properly conduct discovery and take depositions.
3. The inability to conduct proper discovery will hinder both parties in this matter.
4. Counsel for Respondent's office will be short staffed in the days leading up to the hearing due to the Thanksgiving holidays, as the time off was approved well before this matter came to light.
5. Counsel for Respondent's paralegal inserted the incorrect dates of December 10, 11, 12, 13, or 14, that Counsel for Petitioner is available in the original Motion to Reschedule the Hearing.
6. The actual dates both parties are available is December 17, 18, 19, or 20.



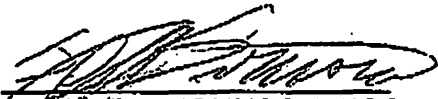
7. Therefore, the Respondent request that the final hearing in this matter be rescheduled for December 17, 18, 19, or 20.

8. Counsel for Petitioner has informed Counsel for the Respondent that he is available on the dates recited above.

9. This motion is made in a timely manner and in good faith and not for the mere purpose of delay. The parties will not be prejudiced by the requested continuance.

Wherefore, the Respondent moves the School Board to reschedule the final hearing in this matter to December 17, 18, 19, or 20, 2012.

Respectfully Submitted this 23rd day of October, 2012.



THOMAS L. JOHNSON, ESQ.
Johnson & Sirmons, LLP
510 Vonderburg Drive, Suite 309
Brandon, FL 33511-5981
813-654-7272
813-662-7444 Facsimile
Florida Bar No. 997447

Attorney for Respondent

CERTIFICATE OF SERVICE

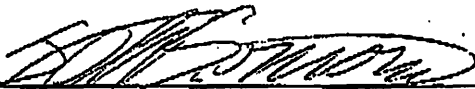
I certify that a true and correct copy of the foregoing has been served via U.S. Mail and email on:

Suzanne D'Agresta
School Board Attorney
Brown, Garganese, Weiss, & D'Agresta, P.A.
P.O. Box 2873
Orlando, FL 32802
(sdagresta@orlandolaw.net)

and

Jason L. Odom
Gould Cooksey Fennell, P.A.
979 Beachland Boulevard
Vero Beach, FL 32963
(jodom@gouldcooksey.com)
Fax: 772-231-2020

this 23rd day of October, 2012.



THOMAS L. JOHNSON, ESQ.
Johnson & Sirmons, LLP
510 Vonderburg Drive, Suite 309
Brandon, FL 33511-5981
813-654-7272
813-662-7444 Facsimile
Florida Bar No. 997447

Attorney for Respondent

THE SCHOOL BOARD OF INDIAN RIVER COUNTY, FLORIDA

**FRANCES J. ADAMS, as Superintendent,
the SCHOOL DISTRICT OF INDIAN RIVER
COUNTY, FLORIDA,**

Petitioner,

v.

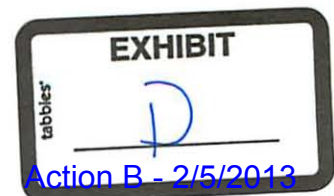
ALAN SEIDEN,

Respondent.

JOINT MOTION TO RESCHEDULE HEARING

The Parties, hereby move the School Board for a continuance of the hearing in this matter, and further states as follows:

1. A final hearing in this matter has been scheduled for Tuesday, December 18, 2012.
2. Counsel for Respondent received Petitioner's discovery responses on Friday, November 30, 2012.
3. Initial review of Petitioner's discovery responses has brought to light additional issues Respondent did not anticipate, which will require additional discovery requests.
4. Respondent's discovery responses to Petitioner are not due to Petitioner until December 14, 2012
5. The December 14, 2012 due date would leave Petitioner just 4 days to review Respondent's discovery responses.
6. Therefore, the Petitioner & Respondent request that the final hearing in this

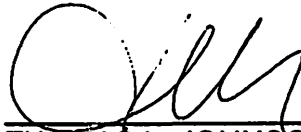


matter be rescheduled to February 7, 2013.

7. This motion is made in a timely manner and in good faith and not for the mere purpose of delay. The parties will not be prejudiced by the requested continuance.

Wherefore, the Parties move the School Board to reschedule the final hearing in this matter to February 7, 2013.

Respectfully Submitted this 5th day of December, 2012.



THOMAS L. JOHNSON, ESQ.
Johnson & Simons, LLP
510 Vonderburg Drive, Suite 309
Brandon, FL 33511-5981
813-654-7272
813-662-7444 Facsimile
Florida Bar No. 997447

Attorney for Respondent

CERTIFICATE OF SERVICE

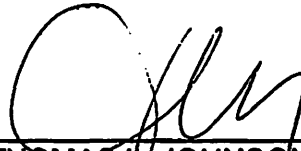
I certify that a true and correct copy of the foregoing has been served via U.S. Mail and email on:

Suzanne D'Agresta
School Board Attorney
Brown, Garganese, Weiss, & D'Agresta, P.A.
P.O. Box 2873
Orlando, FL 32802
(sdagresta@oriandolaw.net)

and

Jason L. Odom
Gould Cooksey Fennell, P.A.
979 Beachland Boulevard
Vero Beach, FL 32963
(jodom@gouldcooksey.com)

this 5th day of December, 2012.



THOMAS L. JOHNSON, ESQ.
Johnson & Sirmons, LLP
510 Vonderburg Drive, Suite 309
Brandon, FL 33511-5981
813-654-7272
813-662-7444 Facsimile
Florida Bar No. 997447

Attorney for Respondent

THE SCHOOL BOARD OF INDIAN RIVER COUNTY, FLORIDA

FRANCES J. ADAMS, as Superintendent,
the SCHOOL DISTRICT OF INDIAN RIVER
COUNTY, FLORIDA,

Petitioner,

v.

ALAN SEIDEN,

Respondent.

AFFIDAVIT OF DR. MICHAEL FERRENTINO

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

Before me, personally appeared the undersigned, Dr. Michael Ferrentino, who after being duly sworn deposes and states as follows:

1. I am over the age of eighteen and am giving this affidavit freely and voluntarily.
2. I am the Executive Director of Exceptional Student Education ("ESE") and Student Services.
3. In this capacity, I have responsibility in the process that results in the assignment of instructional personnel in ESE classrooms, including but not limited to, classrooms with students on the autism spectrum, also known as Autism Spectrum Disorder ("ASD").
4. I have reviewed the Motion to Disqualify that was filed by Alan Seiden's attorney, in which he alleges that Mr. Seiden was teaching out-of-field during the 2010-2011 and 2011-2012 school years at Storm Grove Middle School.



5. I am familiar with § 1012.42, Fla. Stat. and specifically with respect to teaching “out-of-field,” as that term is used therein. The referenced statute does not prohibit a teacher from teaching out-of-field, but rather imposes certain requirements upon a district school board when a teacher is in fact teaching out-of-field. In general terms, teaching out-of-field means a teacher is teaching a subject for which his/her certification is not recognized as appropriate for the assignment. For example, a teacher with a certification in mathematics who was assigned to teach English would be teaching out-of-field, and therefore the school district would be required to follow the requirements of Section 1012.42.

6. There is no certification for ASD in Florida, but rather there is an ASD “Academic Endorsement” that a person could obtain through completion of specified coursework.

7. Mr. Seiden’s certification is in Emotionally Handicapped and his School District endorsement is in “Any ESE.” (Exhibit A: copy of Mr. Seiden’s certification/license).

8. Mr. Seiden was employed by the school district during the 2010-2011 and 2011-2012 school years as an ESE teacher at Storm Grove Middle School.

9. During the above-referenced school years, the classes Mr. Seiden taught were classified as “varying exceptionalities,” which means the classes were composed of students with varying disabilities, including ASD, emotional or behavioral disability, and other disabilities. Mr. Seiden was not assigned to a class that consisted solely of ASD students.

10. Mr. Seiden was not required to have the above-referenced ASD endorsement for his 2010-2011 or 2011-2012 classroom assignment at Storm Grove Middle School.

11. Mr. Seiden’s certification and school district endorsement was appropriate for his assignment; therefore Mr. Seiden was not teaching out-of-field pursuant to § 1012.42, Fla. Stat.

FURTHER AFFIANT SAYETH NAUGHT

By: *Dr. Michael Ferrentino*
Dr. Michael Ferrentino

Before me personally appeared Dr. Michael Ferrentino who is personally known to me, and having, been duly sworn under oath, stated that to his personal knowledge the matters herein are true and correct.

Dated this 29th day of January 2013

Susan D. Martin
Notary Public, State of Florida
My Commission Expires:



Panel: _____

H598. Certification/License

Year: 2013

Employee: 1100769 SEIDEN, ALAN

St: EP

Crt: 01

Summary:	Number	Type	Lvl
	<u>0000698174</u>	<u>04</u> PROFESSIONAL	<u>001</u> BACHELOR'S

Misc:	Dist	Crt	FY	Issued	Expires	Nat	Reading
				<u>07012008</u>	<u>06302013</u>	-	- - -
				ESOL Pts			- - -

Detail:	Note?	A	Subj/Endorsement	Issued	Expires	Typ	F-G-T	A/E	P	T	Yrs
	-		<u>S1016</u> DstESOL60*S016			<u>I</u>	<u>PK 12</u>	-	-	-	.
	-		<u>11009</u> Earth-Spa*1310			<u>I</u>	<u>06 12</u>	-	-	-	.
	-		<u>61014</u> Emt1 Hndc*6301			<u>I</u>	<u>KG 12</u>	-	-	<u>Y</u>	.
	-		<u>9999E</u> Any ESE *999E			<u>I</u>	<u>KG 12</u>	-	-	-	.
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1=Hlp 2=Nte 3=Exit 4=Prpt 5=Refr 6=Nrcd 7=Bwd 8=Fwd 9=Npg 10=Del 11=View 12=Esc
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