

BEFORE THE SCHOOL BOARD OF SARASOTA COUNTY, FLORIDA

In re: The Request for Reimbursement of Attorneys' Fees Case No. 1012.26-2014-001
by Diana O'Neill

FINAL ORDER

This matter is before the School Board of Sarasota County, Florida ("School Board") on the request of Diana O'Neill, pursuant to Section 1012.26, Florida Statutes, for reimbursement of attorneys' fees in connection with her defense of the case of Hatfield v. The School District of Sarasota County, Florida and Diana O'Neill, Case No. 8:10-cv-1893-SDM-TBM (Hatfield suit) which had been pending in the United States District Court for the Middle District of Florida. Upon review of the information in the record, the School Board finds and concludes as follows:

1. Ms. O'Neill has been employed by the School Board as a teacher since 1990. From 1990 until early 2008, she taught severely disabled Exceptional Education students at Venice Elementary School.
2. In February 2008, Ms. O'Neill was arrested on the charge of aggravated child abuse. Subsequently, the State Attorney formally charged Ms. O'Neill with four counts of child abuse pursuant to Section 827.03(1)(b), Florida Statutes. The four counts related to behavior involving four different students in Ms. O'Neill's class. It was alleged that Ms. O'Neill committed child abuse against these students between October 1, 2007 and February 1, 2008. The activities forming the bases of these charges all occurred on the Venice Elementary School campus during school hours.
3. Following a jury trial in February 2009, Ms. O'Neill was found not guilty on all four counts of child abuse.

4. After the conclusion of the criminal proceedings, the Superintendent of Schools sought to terminate Ms. O'Neill's employment as a School Board employee. Ms. O'Neill filed a grievance to contest the Superintendent's decision which culminated in an arbitration proceeding which was held in July 2009 before Arbitrator Mark I. Lurie.

5. On August 30, 2009, Arbitrator Lurie entered a 38 page award determining that Ms. O'Neill's employment should not be terminated but that she committed a variety of wrongful actions justifying a four week suspension without pay. In his award, Arbitrator Lurie made a number of factual findings involving the student (Tara) whose parents brought the Hatfield suit. Among the findings made by the Arbitrator are:

- a) "Tara a child who had undergone a hemispherectomy, was non-ambulatory, incontinent, cortically blind and non-verbal."
- b) "Both Ms. Anderson and Ms. Cooke testified that they saw Ms. O'Neill, in exasperation, forcefully strike the side of Tara's head with the back of her hand. The Arbitrator finds their testimony to have been credible. . . . The Arbitrator finds Ms. O'Neill's account to have not been credible.

Normally, hitting a student in this manner would be grounds for termination of a teacher's employment, because it would normally constitute misconduct in office so serious as to impair the teacher's effectiveness in the school system. In this case, the mitigating factor of Ms. O'Neill's 18 years of service to the District, in a job that would grind most educators down, must be taken into account. ...

* * *

It is true that Ms. O'Neill committed insubordination because she hit, hurt and treated students - especially Tara - roughly in ways unrelated to the learning process."

- c) Ms. O'Neill caused Tara's gums to bleed during feeding. "The Arbitrator finds Ms. O'Neill's indifference to the bleeding constituted a callous disregard of Tara's welfare, and warranted discipline."

6. The Hatfield suit was instituted in August 2010 when James and Deborah Hatfield filed suit in the United States District Court against the School Board and Ms. O'Neill on behalf of their daughter. The School Board settled the Hatfields' claim against it in January 2011. The Hatfields' claims against Ms. O'Neill continued. Over the next 3 years, these claims were litigated between the Hatfields and Ms. O'Neill, including an unsuccessful appeal taken by Ms. O'Neill to the Eleventh Circuit Court of Appeals on the issue of qualified immunity. O'Neill v. Hatfield, 534 Fed.Appx. 838 (11th Cir. 2013). Ultimately, the case against Ms. O'Neill was set for trial in federal court to commence on April 7, 2014. The week before trial, on April 1, 2014, the Hatfields dismissed their case with prejudice.

7. Following the dismissal, Ms. O'Neill filed a motion in the federal court asking the Court to award her attorneys' fees and costs in the amount of \$477,463.71 against the School Board pursuant to Section 1012.26, Florida Statutes. By Order dated April 18, 2014, the Court found it was without jurisdiction to consider the motion.

8. Ms. O'Neill has now submitted her request for an award of attorneys' fees to the School Board pursuant to Section 1012.26, Florida Statutes. Section 1012.26, Florida Statutes, provides in relevant part:

Each district school board may provide legal services for officers and employees of the school board who are charged with civil or criminal actions arising out of and in the course of the performance of assigned duties and responsibilities. The district school board shall provide for reimbursement of reasonable expenses for legal services for officers and employees of school boards who are charged with civil or criminal actions arising out of and in the course of the performance of assigned duties and responsibilities upon successful defense by the employee or officer.

9. Thus, as relevant to this request, the statute requires the School Board to reimburse an employee for reasonable expenses, upon successful defense, when the employee is charged with civil actions "arising out of and in the course of the performance of assigned duties and responsibilities."

10. Even if the School Board assumes, without deciding, that the dismissal filed by the Hatfields constitutes a "successful defense" by Ms. O'Neill, the School Board concludes that Ms. O'Neill is not entitled to be reimbursed by the School Board for attorneys' fees incurred by her in the defense of the civil claim brought against her by the Hatfields. Arbitrator Lurie found that Ms. O'Neill committed numerous bad acts against the Hatfields' daughter, including forcefully striking her in the side of the head, causing her pain and to bleed by ripping skin off her lip, and causing her gums to bleed in a manner which the Arbitrator found constituted a callous disregard of Tara's welfare. These are the same acts upon which the Hatfields based their civil claim. Based upon these factual findings, the School Board concludes that the actions of Ms. O'Neill toward the Hatfields' daughter did not arise out, and was not in the course of, her assigned duties as a teacher. A teacher has no authority to strike a student¹ or to callously disregard a student's welfare causing that student to be sufficiently injured to bleed. Because Ms.

¹ School Board Policy 5.30(II)(C) provides: "Corporal punishment shall not be administered in the Sarasota County School System."

O'Neill's actions were outside the course of the performance of her duties, the reimbursement obligation in Section 1012.26, Florida Statutes, does not apply.

For the reasons stated above, the request for reimbursement of attorneys' fees made by Diana O'Neill is denied.

Done and Ordered this 2nd day of September, 2014, at Sarasota County, Florida.

Jane Goodwin
Chair

NOTE: This is a Final Order appealable to the Second District Court of Appeal. Any appeal must be filed within thirty (30) days of rendition of this Final Order in accordance with Rule 9.110(c) of the Florida Rules of Appellate Procedure.

cc: John M. Bringardner, Esq.
Arthur S. Hardy, Esq.