FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-3859

LINCOLN MEMORIAL ACADEMY, INC.,

Appellant,

v.

MANATEE COUNTY SCHOOL BOARD,

Appellee.

On appeal from the Division of Administrative Hearings.
Robert S. Cohen, Administrative Law Judge.

December 30, 2020

KELSEY, J.

The now-defunct Lincoln Memorial Academy appeals a final order revoking its status as a charter school and converting it back to a public middle school. Faced with the Administrative Law Judge's detailed 95-page order, Appellant raises three issues on appeal. We review the ALJ's findings of fact for competent, substantial evidence; and conclusions of law de novo. *See J.S. v. C.M.*, 135 So. 3d 312, 315 (Fla. 1st DCA 2012). We find the ALJ's ruling supported by competent, substantial evidence, and we find no merit in Appellant's arguments. We affirm.

I. Facts.

Under a statutory process, Lincoln Middle School in Palmetto, Manatee County, Florida,[1] converted to a free public charter school in 2018. *See* § 1002.33(5), Fla. Stat. (2018) (authorizing school boards to sponsor charter schools). Under its charter, Appellant was responsible for its own policies and operations, including financial management, oversight, hiring, and legal compliance.

Appellant received over $4 million in funding from federal, state, and local sources, which was sufficient to cover all expenses. Within a year, however, the school had a financial *deficit* of nearly $1.5 million, and was in violation of numerous legal requirements. The circumstances became so dire that the Florida Commissioner of Education demanded immediate action. *See* § 1002.345(1)(b), (2)(a)1., Fla. Stat. (requiring notice to Commissioner upon certain serious circumstances). The school board voted to terminate the charter immediately, and gave notice pursuant to statute. *See* § 1002.33(8)(c), Fla. Stat. (providing for immediate termination of a charter school contract upon written notice of "the particular facts and circumstances indicating that an immediate and serious danger to the health, safety, or welfare of the charter school's students exists").

In the single year of the charter school's existence, its principal-turned-Chief-Executive-Officer, Mr. Eddie Hundley, and its Chief Financial Officer, Ms. Cornelle Maxfield, doubled their own previous salaries and paid themselves from a thousand to over two thousand dollars a month more (each) in undocumented expenses. Mr. Hundley formed a separate company and signed a contract for his company to do business with the school over a five-year period in exchange for substantial yearly payments. This

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[1] Manatee County is not in our district, but parties to an administrative proceeding have the option to appeal to the district court in their home district or where the agency has its headquarters. *See* § 120.68(2)(a), Fla. Stat. (2019) ("Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.").

transaction was discovered belatedly, and there was no evidence the company actually provided goods or services, nor how much money, if any, went to that company.

In the spring near the end of that one school year, Mr. Hundley's education certificate was revoked for five years. He had improperly supported another school district's hiring of a teacher whom Mr. Hundley knew was under investigation for inappropriate contact with students. The ALJ presiding over the revocation proceeding concluded that Mr. Hundley "in fact" jeopardized the health, safety, and welfare of students. *Corcoran v. Hundley*, No. 18-0411-RA (Fla. Edu. Practices Comm'n May 13, 2019) (Final Order).[2] Revocation required that Mr. Hundley not teach or be employed in any capacity requiring direct contact with students. Despite revocation of his certificate, Mr. Hundley continued to go to the school and interact with students.

Under the leadership of Mr. Hundley and Ms. Maxfield, the school withheld state retirement contributions, health insurance premiums, and taxes from employees' pay checks, but failed to remit all required payments to the appropriate entities. It failed to account for public funding received, including federal Title I funding. The school received specific funding for employee bonuses and awards, including state Best and Brightest bonuses, but failed to give the money to the intended recipients. The school fell behind on employee payroll, owing nearly $260,000 in unpaid salaries.

The school failed to pay technology vendors and speech therapists. It allowed insurance coverage on student athletes to lapse. It failed to screen student meals for allergens. It even failed to pay the water bills for over four months, risking a shut-off. It failed to pay its food and dairy suppliers, which stopped making deliveries. It then resorted to purchasing food at local grocery stores, and those foods did not bear federally-mandated child nutrition labels. It did not comply with federal requirements for the National Food Service Program. The school ended up with a substantial deficit in this cost item. When the school board took over operations at the beginning of the summer, the cafeteria

[2] Apparently Mr. Hundley did not appeal.

manager expressed relief because she did not know how they were going to feed summer-school students otherwise.

The school hired thirteen employees without properly performing mandatory background screening. Among these hires was a security officer who had a felony grand theft conviction, followed by violation of probation just two weeks before he was hired.

As the school's financial circumstances got worse, it borrowed money from employees and third parties, and sold receivables. It authorized several third-party holders of receivables to debit the school's bank account every day, totaling over $18,000 a week. It ended up owing nearly half a million dollars to note holders.

During discovery below and in response to a state-ordered outside auditing firm's investigation, the officers failed repeatedly to produce requested evidence of income and expenses. They claimed that computer files had crashed, and that records could not be located. As the ALJ noted, these witnesses asserted their Fifth Amendment privileges in response to numerous inquiries (as was their right, just as it was the ALJ's right to draw an adverse inference from these assertions, although the evidence was overwhelming anyway).[3] They are under federal investigation.

Ultimately the ALJ held that the charter school, through its officers and governing board, endangered the health, safety, and welfare of students. This danger resulted from Mr. Hundley's improper presence at the school and interactions with students after revocation of his certificate; from failure to satisfy state and federal requirements for food safety, nutrition, and allergen screening; and from failure to complete required employee

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[3] *See Omulepu v. Dep't of Health, Bd. of Med.*, 249 So. 3d 1278, 1280 (Fla. 1st DCA 2018) (following *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976), which held that "the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them").

background screening and hiring a convicted felon for a position of trust.

II. Analysis.

Against this substantial record, Appellant raises three issues. First is the claim that the county school board's "precipitous" termination of the charter violated due process. Second, Appellant argues that the school board contributed to the problem by failing to provide needed services and support. The third argument is that issues related to non-instructional personnel and the school's failure to obtain clearance letters should not have been a factor in terminating the charter. We reject all three issues as contrary to the record and without legal merit.

A. "Precipitous" Termination.

As Appellant acknowledges, a school board can terminate a charter school contract upon certain conditions:

> The sponsor may also choose not to renew or may terminate the charter if the sponsor finds that one of the grounds set forth below exists by clear and convincing evidence:
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> 1. Failure to participate in the state's education accountability system created in s. 1008.31, as required in this section, or failure to meet the requirements for student performance stated in the charter.
>
> 2. Failure to meet generally accepted standards of fiscal management.
>
> 3. Material violation of law.
>
> 4. Other good cause shown.

§ 1002.33(8)(a), Fla. Stat. The statute also provides that termination can be "immediate" under some circumstances:

> A charter may be terminated immediately if the sponsor sets forth in writing the particular facts and circumstances indicating that an immediate and serious danger to the health, safety, or welfare of the charter school's students exists.

§ 1002.33(8)(c), Fla. Stat. This section requires the sponsor (the school board) to give notice of immediate termination, and to "clearly identify the specific issues that resulted in the immediate termination and provide evidence of prior notification of issues resulting in the immediate termination when appropriate." *Id.* The statute expressly allows termination to precede a hearing. *Id.* The statute does not require that the charter school be given any chance to cure deficiencies. *See Sch. Bd. of Palm Beach Cnty. v. Survivors Charter Schs., Inc.*, 3 So. 3d 1220, 1233 (Fla. 2009) (interpreting "immediately" in this context as meaning "without interval of time"). We find that the school board's notice complied with the statute and afforded Appellant due process.

Appellant nevertheless argues that the school board's immediate termination of the charter violated due process. Appellant lists numerous alleged omissions in the notices given and actions taken. We note first that many details of Appellant's mismanagement were unknown to the school board but known to Appellant at the point of termination (and that additional evidence is known only to Appellant to this day). The record reflects that the school board actively and repeatedly notified Appellant of deficiencies and attempted to obtain relevant information from the school, but without success. We find that the school board's notice and amended notice afforded due process and stated grounds for termination that satisfied the statute.

The initial notice identified two grounds for immediate termination: Mr. Hundley's continued presence on campus and interactions with students following revocation of his educator's certificate; and fiscal mismanagement that prevented proper operation of the school and made it unable to ensure the health, safety, and welfare of students. Once the school board obtained more information, it prepared an amended notice of immediate termination that identified eleven additional grounds for immediate termination, including grounds we have detailed above.

The school board also kept Appellant apprised of proceedings through published agenda items and public discussions. It cannot claim either surprise or prejudice.

After the school board's action, Appellant requested and received an expedited evidentiary hearing. These issues were tried at length. The ALJ issued a 95-page final order that addressed all of Appellant's arguments. Where evidence conflicted, the ALJ properly determined credibility of witnesses and weight of evidence. Appellant received full due process. We reject this argument.

B. The School Board's Involvement.

Appellant blames the school board for not preventing what Appellant's officers and board caused or allowed to happen. This argument is contrary to the law and the evidence. By statute, Appellant's officers and governing board were solely responsible for operating the school and managing its finances. The evidence showed that the school board complied with its obligations. It issued all funds owed to Appellant, monitored operations, requested periodic reports, identified remedial action needed, and attempted to get more information as it became clearer that Appellant's circumstances were dire and getting worse. Appellant failed to cooperate or accept assistance.

Although Appellant emphasizes that an unexpected reduction in projected Title I (federal) funds caused its insolvency, the record is to the contrary. First, these funds are not supposed to be used to balance a school's budget; they are supplemental and dependent on federal funding. Further, while it is true that the school received less than anticipated, the school board gave Appellant the maximum permitted by law. The difference between projected and actual Title I funding was a tiny fraction of the overall deficit that resulted. This one line item did not cause the school's failure. We agree with the ALJ's conclusion that the school board adequately discharged its limited duties toward Appellant. We reject this argument as well.

C. Background Screening Issues.

Finally, Appellant argues that its failure to obtain clearance letters for thirteen employees created no actual harm and should not have been a factor in the termination analysis. Appellant sidesteps the issue, which is that Appellant was responsible for obtaining background screening, including fingerprints, and submitting those reports to the school district for approval. *See* § 1012.465(l), Fla. Stat. (applying level 2 screening requirements to all employees who are to be permitted access to school grounds when students are present, or who can access or control school funds); § 1012.32(2)(b), Fla. Stat. (requiring charter school to file with the school district fingerprints for all proposed hires).

Appellant outsourced background checks and screening, and paid its vendor for these services. The owner of that company, however, admitted that she never got *any* school district clearance letters for Appellant's hires. She improperly routed fingerprint results to the Department of Education, so the school district did not get them, and thus could not issue clearance letters. As a result, all of these hires were statutorily unqualified. It came out later that one of these hires was a convicted felon who had just violated his probation, yet ended up in a role involving direct student contact—which was illegal. *See* § 435.04(2)(cc), Fla. Stat. (making felony robbery, theft, and related crimes disqualifying offenses in level 2 screenings).

Appellant argues that the screening and clearance issues fall short of showing a danger to student health, safety, and welfare. True, nothing bad happened, as far as we know; but that is not the point. This legal requirement exists to prevent against the very possibility of a bad outcome. Appellant's failure to ensure appropriate and adequate background screening and clearance adds to the enormous weight of evidence that Appellant failed to appreciate and adequately perform its duties to protect its students. This is but one among many failures justifying the immediate termination of Appellant's charter. The ALJ had more than enough competent and substantial evidence to reject this argument, and we likewise reject it.

III. Conclusion.

Appellant has failed to demonstrate any reason to reverse the final order. The evidence fully supports the result. We affirm.

AFFIRMED.

ROBERTS and ROWE, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Annabel C. Majewski of Wasson & Associates, Chartered, Miami, for Appellant.

Erin G. Jackson and Ashley T. Gallagher of Johnson Jackson PLLC, Tampa, for Appellee.