

**BEFORE THE BOARD OF EDUCATION
LEE’S SUMMIT R-7 SCHOOL DISTRICT**

In re: Joe Oswald

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

On June 23, 2021, the Board of Education of the Lee’s Summit R-7 School District convened a hearing pursuant to Chapter 168.118 of the Missouri Revised Statutes and Chapter 536 of the Missouri Revised Statutes. The purpose of the hearing was to consider charges brought by the District’s Superintendent of Schools, Dr. David Buck, against Mr. Joe Oswald, a permanent teacher in the District. Mr. Oswald was present at the hearing. Mr. Michael McDorman and Ms. Danielle Drake served as legal counsel for Mr. Oswald. Ms. Michelle Basi served as legal counsel for the District’s Administration. A licensed court reporter was present and recorded the testimony.

At the beginning of the hearing, the members of the Board of Education took a sworn oath that they would decide this case based solely on the evidence that was presented to the Board of Education during the hearing. Before the hearing, the Administration and Mr. Oswald entered into a stipulation of facts that was admitted into evidence as District Exhibit 1. After considering the evidence presented in conjunction with the stipulation, and following five hours of careful deliberations, the Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Mr. Oswald is currently employed as a Permanent Teacher (as defined in the Missouri Teacher Tenure Act) of the District. [From stipulation]

2. During the 2020-2021 school year, Mr. Oswald served as a physical education teacher at Pleasant Lea Middle School. [From stipulation]

3. Additionally, during the 2020-2021 school year, Mr. Oswald had extra duty contracts for work as a football assistant coach at Lee's Summit High School, and Cafeteria Supervisor, Smart Head Sponsor, and boys' track and field head coach at Pleasant Lea Middle School. [From stipulation]

4. Mr. Oswald has been employed by the District since August 25, 1994. [From stipulation]

5. Mr. Oswald's personnel file does not reflect that he has been the subject of any disciplinary actions or reports since he has been employed by the District.

6. Dr. David Buck was Superintendent of the District during the 2020-21 school year.

7. Dr. David Sharp served as Principal of Pleasant Lea Middle School during the 2020-2021 school year.

8. Mr. Brian Linnquist was the Assistant Principal of Pleasant Lea Middle School during the 2020-21 school year.

9. Dr. David Carlson served as Executive Director of Human Resources during the 2020-2021 school years. Dr. Carlson's duties include conducting investigations and enforcing Board policies as they relate to the District's employees.

10. On May 6, 2021, while visiting with fellow teacher, Casey Guilfoyle, in the mezzanine, Mr. Oswald heard Student A yelling a racial slur across the mezzanine to other student(s). [From stipulation]

11. Mr. Oswald offered to escort Student A to the Student Administration (STAD) office. Once Student A and Mr. Oswald arrived at the STAD office, Mr. Oswald requested and received a green slip in order to process the potential discipline charge against the student. [From stipulation]

12. Mr. Oswald wrote down specifically what Student A said. Upon completing the written green slip, Mr. Oswald read to Student A what he believed to be Student A's exact words: "N***a why you staring at me!"¹ Student A began laughing when Mr. Oswald read what he had written. Student A requested that Mr. Oswald read again what he wrote in the "green slip," which he did. [From stipulation, and Exhibit 4]

13. Student J.H. was in the STAD office during the interaction between Student A and Mr. Oswald. [From stipulation]

14. After completing the "green slip," Mr. Oswald, at the request of Mary McDonough, escorted Student A to her next class. [From stipulation]

15. On May 6, 2021, Mr. Linqvist received an email from Student A requesting that someone other than Mr. Oswald escort her to her bus. Mr. Linqvist escorted Student A to her bus on May 6. During their walk to the bus, Student A reported to Mr. Linqvist that Mr. Oswald had used the N-word twice while reading back a green slip.

16. On May 10, 2021, Mr. H., parent of Pleasant Lea Middle School student J.H., sent an email to Pleasant Lea Principal Dr. David Sharp, Assistant Principal Kimberly Alonzo, Dr. Buck, and members of the Board of Education. [From stipulation]

¹ The green slip spelled the word out in its entirety. The Board elects not to do so in this document.

17. In the email, Mr. H., reported that “on May 6, 2021, Student J.H., and another student were sitting in an office on school grounds when Mr. Oswald turned and looked into Student J.H.’s eyes and aggressively stated ‘N**ger what you looking at.’” [From stipulation]

18. As a result of this email, the District initiated an investigation under Board of Education Policy AC, Prohibition Against Discrimination, Harassment and Retaliation. [From stipulation]

19. The investigation was conducted by Dr. Carlson, Dr. Sharp, and Mr. Linquist, [From stipulation]

20. When interviewed by Dr. Carlson, Mr. Oswald said that he read what was written on the discipline referral, or “green slip,” to ensure the accuracy of what he had heard. [From stipulation]

21. Mr. Oswald reported that this is how he had been trained to process green slips. [From stipulation]

22. Dr. Carlson did not speak with Student J.H. as part of this investigation, because Mr. H would not allow J.H. to be interviewed, but Dr. Carlson did speak with Mr. H. [From stipulation and Exhibit 4.]

23. Dr. Sharp and Mr. Linquist interviewed Student A on May 10, 2021. [From stipulation]

24. Student A confirmed to Dr. Sharp and Mr. Linquist that Mr. Oswald did not speak to student J.H. or call him a racial slur, but that J.H. “just heard it too.” [From stipulation and Exhibit 4]

25. Student A confirmed that Mr. Oswald's said the N-word twice, reading from the "green slip." [From stipulation]

26. Student A did not claim Mr. Oswald called her a racial slur. [From stipulation]

27. During the meeting with Dr. Sharp and Mr. Linquist on May 10, 2021, Student A reported that she was in shock and laughing. She reported that she asked Mr. Oswald to repeat what he said because she was in shock because the word was offensive and she thought he would just use the term "N-word."

28. Student A's conduct in the mezzanine on May 6, 2021, was confirmed by Mr. Linquist resulting in one day of in-school suspension for Student A. [From stipulation]

29. The recommendation for termination as stated in the Notice of Charges is solely based on Mr. Oswald's use of the N-word twice, as he repeated what Student A had said in the mezzanine and what he reported on the "green slip." Mr. Oswald did not engage in the conduct alleged in the May 10 email from Mr. H. [From stipulation]

30. Dr. Carlson's investigation did not result in a finding that Mr. Oswald violated Board Policy AC, which is the District's general nondiscrimination policy. Rather, Dr. Carlson's investigation concluded that Mr. Oswald violated Board Policies GBCB and GCPD-AP Dr. Carlson recommended that Mr. Oswald be disciplined in accordance with Board Policy GCPD-AP, and that Mr. Oswald receive additional training. Policy GCPD-AP calls for progressive discipline, although in cases of "serious misconduct," progressive discipline may be skipped and an employee may be terminated once the employee has received whatever due process is required.

31. The notice of charges issued by Dr. Buck (Exhibit 2) alleged that Mr. Oswald violated Policy GBH (Staff/Student Relations) and Policy GBCB (Staff Conduct).

32. Policy GBH requires that “Staff members are expected to maintain courteous and professional relationships with students.”

33. Sections 2 and 10 of Board Policy GBCB require staff to:

2. Maintain courteous and professional relationships with student, parents/guardians, other district employees and the public. Transmit constructive criticism to the particular school administrator or supervisor who has the administrative responsibility to address the concern. Employees will not be disciplined for speech that is protected by law and are encouraged to share concerns with their supervisors.

10. Communicate clearly and professionally. Employees will not use profanity and will not raise their voices unless necessary. Written communication should be grammatically correct. Employees will not be disciplined for speech that is protected by law and are encouraged to share concerns with their supervisors.

34. When he read the green slip back to the student, Mr. Oswald did not believe that he was in violation of Board policy GBCB sections 2 and 10 or GBH. He believed he was acting in accordance with the training he had previously received, i.e., that he was to write down exactly what a student said, and that he was to read back to a student those exact words, so that there would be no later dispute over what the student said. When he was interviewed by Dr. Carlson, Mr. Oswald said “Those were not my words, I was reading off what was said out loud.”

35. While Dr. Sharp testified that he had not trained any of his staff to handle disciplinary referrals in this way, he has been the principal at Pleasant Lea for only the past two years.

36. There was no evidence that Mr. Oswald had been instructed *not* to handle disciplinary referrals as Mr. Oswald did in this case.

37. There is no specific documented process or formal training directing staff whether or not to write profanity or racial slurs on disciplinary green slips or whether those should be read back word for word including the use of profanity and racial slurs.

38. Although Mr. Oswald did not identify any particular administrator who had provided him this training, nor could he specify the context in which he had been trained, other teachers from his school testified that they had essentially been trained in the same way. While they also did not identify who had trained them or when they received that training, they testified that they had been told on an *ad hoc* basis to write and repeat students' words back to them when discussing with their building principal how to handle cases where students used profanity or racial slurs.

39. Casey Guilfoyle has been employed by the District for 22 years, and is a teacher at Pleasant Lea. He has been told by administration to write everything out exactly as it is heard when completing disciplinary referrals, that he would have read the green slip exactly the way Mr. Oswald did if he had processed Student A, and that he does not believe it would be disrespectful to read the exact words on the green slip in that situation.

40. Dr. Dustin Conard has been employed by the District for 10 years, and is a teacher at Pleasant Lea. He writes down exactly what is said on green slips and says verbatim what is on the green slip to students to confirm accuracy. Dr. Conard has processed profanity and slurs before the same way as Mr. Oswald did with Student A, and Dr. Conard has repeated the profanity or slur back to that student. Dr. Conard testified that he had not been disciplined for the way he processed disciplinary referrals.

41. Kim Berkstresser has been employed by the District for 25 years, and is a teacher at Pleasant Lea. When filling out a green slip she communicates with the student and reads back to them the words she put down.

42. Jason Wright has been employed by the District for 1 year, and is a teacher at Pleasant Lea. He has not received any specific training on how to fill out green slips, and testified that he would have written down exactly what was said and read back what was written as Mr. Oswald did when processing Student A. He would do this even if it required him to repeat the racial slur Mr. Oswald used, even though Mr. Wright is Black.

43. Niki Stanley has been employed by the District for 19 years, and is a teacher at Pleasant Lea. She believes building level's "best practice" has been to write the infraction with as much detail as possible, and testified that staff have been told by building administration that clarity and accuracy are paramount. She typically reads back quotes to students, and she has said the R-word (referring to a person with disabilities) and N-word back to a student out loud using the full words when talking to a student about what happened.

44. Matt Sisk has been employed by the District for 8 years, and is a teacher at Pleasant Lea. He has been instructed to fill out green slips word-for-word just as he hears it, "even the nasty stuff," and when acting as an assistant principal, he has instructed staff to do the same. He has never encountered a racial slur situation but would handle it the same as Mr. Oswald. The only training he received as either an administrator or staff member was when he did not write out the F-word on a green slip and was instructed to write out the entire word.

45. Leslie Kendall has been employed by the District for 22 years, and is a teacher at Pleasant Lea. Ms. Kendall has been instructed to write exactly what students said on green slips

word for word, even where the words are offensive or inappropriate, and has been told to repeat the words back to the student.

46. Lemuel Parks has been employed by the District for 17 years. He has been told by his building administrators to write exactly what a student said, and to tell the student exactly why he is writing them up.

47. The Board has adopted JFCF-AF1 as a form for reporting incidents of bullying. (Exhibit L).

48. Paragraph 6 of Exhibit L instructs the staff member reporting the incident “to include as much detail as possible. Do not ‘clean up’ anything that was said or done. If inappropriate language or gestures were used, include the exact language and describe the exact gesture used.” (Exhibit L, Page 3). The form does not require that the words be read back to the student.

49. There was no evidence that Mr. Oswald has used racially insensitive language in the past. Several witnesses, including Logan Cheadle, Austin Dismond, Anthony McGee, who played football for Mr. Oswald and who are Black, testified that he had never used racially insensitive language around them, and that doing so would not have been consistent with his character.

CONCLUSIONS OF LAW

50. The Board is authorized to terminate or otherwise alter the terms and conditions of employment of a permanent teacher in accordance with the Missouri Teacher Tenure Act, Section 168.102 et seq., of the Missouri Revised Statutes.

51. Mr. Oswald is a permanent teacher as defined by Mo. Rev. Stat. §168.116.

52. Mr. Oswald is charged with (1) immoral conduct, and (2) willful violation of, or failure to obey, the published regulations of the board of education of the school district employing him.

53. The Board rejects Mr. Oswald's argument that he was not given proper notice of the charges against him. The notice of charges served on him (Exhibit 2) specified the precise conduct giving rise to the charges, and the legal basis for the charges.

54. Under Missouri law, immoral conduct requires that a teacher know that what he was doing was wrong. It requires more than the exercise of bad judgment, such that the teacher may properly be presumed to have prior notice of its wrongful character and thus may be properly held responsible for his conscious disregard of established moral standards. Immoral conduct is conduct which is always wrong. *See, e.g., Youngman v. Doerhoff*, 890 S.W.2d 330 (Mo. Ct. App. 1994).

55. The Board unanimously believes Mr. Oswald exercised poor judgment in the way he handled the disciplinary referral for Student A, and that he thereby did not maintain a courteous and professional relationship with Student A as required by Policies GBCB and GBH. While the Board heard Mr. Oswald's testimony, and the testimony of other teachers, that they had been instructed to read back a student's exact words when processing a disciplinary referral, none of the teachers, including Mr. Oswald, could say when they received those instructions, or who gave them those instructions. Whatever they may have been told years ago, they should all know today that using certain words can be harmful. There were other ways Mr. Oswald could have verified with Student A what she said other than saying a word that even he acknowledged is "probably the worst word we have in our language." (Transcript, p. 330). Further, he should

have been more aware of his surroundings, specifically that another student was within earshot and could hear what he said.²

56. But a violation of Board policy does not, standing alone, suffice for the termination of a tenured teacher's contract, based on Missouri courts' interpretation of the Teacher Tenure Act. The standard for "immoral conduct" under Missouri law is a high one, requiring proof that a teacher knew his conduct to be wrong when he engaged in it. This does not mean that a teacher can avoid a charge of "immoral conduct" merely by pleading ignorance; any teacher would know that stealing school property or inappropriately touching a student is wrong, and could not legitimately claim he did not know it to be wrong. But given the unique circumstances shown by the evidence in this case--substantial evidence of an allegedly sanctioned practice to read back a student's exact words when processing disciplinary referrals—the Board cannot conclude that Mr. Oswald in fact knew his use of the word in this particular situation was wrong. For that reason, the Board does not find that Mr. Oswald engaged in immoral conduct.³

57. Willful violation of, or failure to obey, the school laws of the state or the published regulations of the board of education of the school district requires reasonable notice that conduct is prohibited by board policy, and an intent to violate or disobey that board policy.

² Mr. Oswald's violation of Board policy may be appropriately addressed by the District's administration under Policy GCPD-AP through actions short of termination, or by reassigning Mr. Oswald to a different school to limit further contact between him and the students involved in this matter.

³ The Board does not want to imply from this decision that the practice described in the evidence should continue. While the Board will undertake a comprehensive review of the District's written policies to bring them into alignment with Dr. Buck's vision for the District, the Board will welcome the expedited adoption of a regulation or administrative directive to address the issues brought to light in this case.

See, e.g., Thompson v. Southwest School Dist., 483 F. Supp. 1170 (W.D. Mo. 1980); *Carter Co. School Dist. v. Palmer*, 582 S.W.2d 347 (Mo. Ct. App. 1979).

58. For many of the same reasons that the Board does not believe Mr. Oswald engaged in immoral conduct, the Board cannot conclude that he willfully violated Board Policies GBCB or GBH. While District administrators testified that the use of the N-word in any context would be a willful violation of Board policy, the teachers' testimony suggests that this interpretation of policy had not made its way to the building level in relation to practices around student discipline. In fairness to the District's administrators, they were likely unaware, until this incident came to light, that teachers were operating under different interpretations. Because Mr. Oswald had not been given reasonable notice that the utterance of a racial slur under the specific circumstances presented here—confirming with a student the words for which disciplinary action was to be taken, and with no evidence from which the Board could otherwise infer a racial animus—the Board cannot conclude that he willfully violated Board policies, given how Missouri's courts have interpreted the Teacher Tenure Act. *See Youngman v. Doerhoff*, 890 S.W.2d 330, 343 (Mo. Ct. App. 1994) (“[T]he teacher termination process is not the appropriate vehicle for establishing school policy. Under the Teacher Tenure Act, teacher termination is justified as a means of enforcing *existing* policy or established moral standards that, by their nature, do not require codification.”) (Emphasis in original.)

59. The Board's decision should not be interpreted as an admonishment of Dr. Buck or any other District administrators, or of their ongoing efforts to promote an equitable environment in which all students can be free from harassment or discrimination. Dr. Buck was putting the interests of students first, as he should. And even though the Board has concluded

that Missouri's protections for tenured teachers require it not to terminate Mr. Oswald's contract, this situation has brought to light additional ways the District must improve its policies, processes and procedures to make progress toward all three board priorities. The Board is committed to that task, and this decision should not be construed in any way as a retreat from those priorities. If anything, the facts that came to light in this hearing make the Board more determined than ever to address those goals.

60. For these reasons, the Board will not terminate the teaching contract of Joe Oswald.

LEE'S SUMMIT R-7 BOARD OF
EDUCATION



Ryan Murdock, Board President

Dated: 7/16/21