STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARGARET BENSON, REBA DAVIS,
DEBORAH ELLEARD, DEBORAH GREGORY,
IDA LANIER, PHYLLIS MALONE,
VICKI OUTZEN, AND JANET TAYLOR
Petitioners, **Case No.: 08-1202**

vs.

ESCAMBIA COUNTY SCHOOL BOARD,
Respondent.

FINAL ORDER DENYING PETITIONER'S CLAIMS FOR ADDITIONAL COMPENSATION

August 21, 2008, Administrative Law Judge Harry Hooper (ALJ) from the Division of Administrative Hearings (DOAH) submitted to the Escambia County School Board (School Board) and all parties his Recommended Order (RO), a copy of which is attached hereto, recommending that the Petitioners, all current and / or former teachers, receive compensation in the form of back pay and salary schedule placement subject, however, to the two year statute of limitations for wage claims. §95.11, Fla. Stat (2008). The matter is now before the School Board for final agency action.

Procedural Background

The initial proceeding commenced with the petition by eight current and former classroom teachers of the School Board for back pay and corrected placement on the instructional salary schedule under the authority of §1012.33(3)(g) Fla. Stat. Petitioners claimed that they did not receive credit for prior teaching experience when hired by the School Board and placed on the salary schedule. §1012.33(3)(g) provides, in part, " [F]or purposes of pay, a School Board must recognize and accept each year of full-time public school teaching service earned in the State of Florida or outside the state." Applying the statutory provision, Judge Hooper ruled the Petitioners were entitled

to have their pay recalculated as of April 2, 2005, giving them credit for each year of full time public school teaching service earned outside Florida. Judge Hooper ruled that the claims for back pay preceding April 2, 2005, were barred by the statute of limitations. The Petitioner filed exceptions to one (1) finding of fact and to paragraphs 47 and 49 of the Recommended Order conclusions of law. The Respondent filed exception to paragraph 7 of the findings of fact contending only that it was a conclusion of law and objected to the ALJ's conclusions of law in paragraphs 25, 27, 29, 32, 35, 37, 40, 41, 44, 51, and 52. All paragraphs subject to exceptions and objections other than 44, 51, and 52 deal with the proper application of §1012.33(3)(g), Fla. Stat.

Pursuant to §120.57(1)(l), Fla. Stat., the School Board hereby adopts Judge Hooper's findings of fact, with one exception: by stipulation of the parties the School Board accepts Petitioners' exception to paragraph 12 of the Recommended Order.[1]

The School Board rejects Judge Hooper's conclusions of law with respect to the application of §1012.33(3)(g) to the extent the recommended conclusions of law conflict with the Recommended Order in *Charles Keene v Escambia County School Board,* DOAH Case No. 07-2125, adopted as a Final Order by the School Board on January 22, 2008. The School Board finds the conclusions of law by Judge Cohen in the *Keene* case more persuasive and well-reasoned than those in the instant case. The reasons for this finding include, but are not limited to the following:

1) The plain language of the statute (§1012.33(3)(g) demonstrates the intent to require School Board to treat years of experience outside the school district the same as years of experience within the school district. (*Keene,* paragraph 38).

2) The statute is designed to ensure that teachers having prior service outside Florida are treated equally with teachers having prior service in Florida . . . (not) to confer a

[1]The parties have stipulated that Petitioner Gregory, contrary to the R.O., did request the Board recognize each of her sixteen years of prior teaching service, however, and that this request was denied as to the period of August, 2002, through May 31, 2006

benefit on teachers who retire outside of Florida while denying that same benefit to teachers who retire in Florida by using years of service earned in Florida. (*Keene,* paragraph 40).

3) Although the ALJ in the instant case stated that the evidence and law herein called for a conclusion opposite that of *Keene,* he did not identify what factors in the evidence called for such a conclusion. In actuality, the material facts are so similar that legally, the cases call for the same result. Otherwise, the district is bound by opposing requirements on the same questions, and has no ability to answer this question when it arises in future cases.

4) Although the ALJ in the instant case concluded that the facts required to establish the elements of equitable estoppel were not present, this conclusion is not reasonable in light of the evidence contained in the transcript of the July 8, 2008, hearing.

5) Under identical facts, the *Keene* ALJ concluded that the petitioner was estopped from completing the contractual periods of employment and then claiming that he must be paid a higher rate of compensation for the period already served, than that to which he agreed when the offer of employment was extended. (*Keene* at paragraph 44).

6) In light of this conclusion of law, issues of the applicable statute of limitations and attorney fees are moot.

Rulings on Petitioners' Exceptions

Petitioners Exception to Paragraph 12 of the RO

The Petitioners exception to paragraph 12 of the RO is resolved through stipulation of the parties as addressed above

Petitioners' Exception to Paragraph 47 of the RO

Paragraph 47 of the RO addresses the applicable statute of limitations, considering both

§95.11(4)(c) Fla. Stat., a two year period, and §95.11(3)(k) Fla. Stat., a four year period. This discussion, in part, is the predicate for the conclusion of law in paragraph 49 of the RO that the correct statute of limitations is a period of two years based on §95.11(4)(c). Petitioners' exception to paragraph 47 is rejected for those reasons more specifically set forth in response to Petitioners' exception to paragraph 49 below.

Petitioners' Exception to Paragraph 49 of the RO

Paragraph 49 of the RO concludes §95.11(4)(c) is the correct limitation to use in this case. Petitioners' exception is rejected because applicable case law and adopted RO findings of fact demonstrate Petitioners' compensation within the definition of wages as distinguished from a true salary. (See RO para. 8).

Respondent's Exceptions

Respondent's Exceptions to Paragraph 25 of the RO

To the extent paragraph 25 of the RO conflicts with the opinion of Judge Cohen in *Keene v Escambia County School Board,* Case #07-2125, adopted by the School Board as a Final Order on January 22, 2008, the conclusion of law is rejected. The plain language of §1012.33(3)(g), Fla. Stat., demonstrates the intent to require School Boards to treat years of experience outside the School District the same as years of experience within the School District. (*Keene,* para. 38). The statute is designed to insure teachers having prior service outside Florida are treated equally with teachers having prior service in Florida and is not designed or intended to confer a benefit on teachers who retire outside of Florida while denying the same benefit to teachers who retire in Florida, by using years of service earned in Florida. (*Keene,* para. 40).

Respondent's Exceptions to Paragraph 27 of the RO

See response to Respondent's exceptions to paragraph 25 above, incorporated herewith.

Respondent's Exceptions to Paragraph 29 of the RO

To the extent the conclusion of law regarding the application of §121.091(9)(b)3, Fla. Stat., conflicts with the opinion of Judge Cohen in *Keene v Escambia County School Board*, supra, the conclusion is rejected. Additionally, the conclusion is rejected to the extent it supports or construes §1012.33(3)(g), Fla. Stat., as conferring benefit on teachers who retire outside the state of Florida while denying the same benefit to teachers who retire in Florida by using years of service earned in Florida.

Respondent's Exceptions to Paragraph 32 of the RO

To the extent the conclusion of law at paragraph 32 acknowledges that credit be given to teachers coming in to the Escambia County School District from other districts in Florida and outside the state be given equal treatment the conclusion is accepted. To the extent it supports any conclusion §1012.33(3)(g), Fla. Stat., confers a benefit on teachers who retire outside of Florida while denying the same benefit to teachers who retire in Florida by using years of service in Florida, it is rejected.

Respondent's Exceptions to Paragraph 35 of the RO

To the extent the conclusion of law interprets §§121.091(9)(b)3, Fla. Stat. (2003) as conferring a benefit on teachers who retired outside the state of Florida that is not available to teachers who retire under the Florida Retirement Service with years earned in Florida, the interpretation is rejected as inconsistent with the plain language of §1012.33(3)(g), Fla. Stat.,

demonstrating the intent to require school boards to treat years of experience outside the District the same as years of experience within the District.

Respondent's Exceptions to Paragraph 37 of the RO

To the extent the RO concludes the amendment to §1012.33(3)(g), Fla. Stat., effective January 7, 2003, had no effect on the pay status of Petitioners who had not retired, the conclusion is rejected. Petitioners who were hired prior to the amendment were governed, for purposes of salary schedule placement and credit, by the version of §1012.33(3)(g), Fla. Stat., in place at the time of hire.

Respondent's Exceptions to Paragraph 40 of the RO

To the extent the conclusion of law in paragraph 40 confers a benefit on teachers who retire outside the state of Florida while denying the same benefit to teachers who retire in the state of Florida by using years of service earned in Florida, the conclusion is rejected.

Respondent's Exceptions to Paragraph 41 of the RO

To the extent conclusions of law that the evidence law presented in this case distinguishes the application of §1012.33(3)(g), Fla. Stat., in the *Keene* case, adopted by this Board as a Final Order, the conclusion is rejected as there is insufficient basis for distinguishing the facts and application of law in *Keene* from that which is appropriate here.

Respondent's Exceptions to Paragraph 44 of the RO

To the extent the conclusion of law rejects the assertion of equitable estoppel and to the extent inconsistent with the application of that doctrine in the *Keene* case, the conclusion is rejected as there are insufficient facts of record to distinguish the application of this doctrine from that which was accepted by the Board in the *Keene*

Respondent's Exceptions to Paragraph 51 of the RO

To the extent the conclusion of law is that Petitioners' causes of action accrued no earlier than April 2, 2005, two years prior to the filing of the lawsuit, the conclusion is rejected. The period for filing suit runs from the time Petitioners claim their contract rights were breached pursuant to the application of §1012.33(3)(g), Fla. Stat. According to Petitioners' claims, this occurred when the Petitioners were hired and placed on the salary schedule without full credit for out of state years of experience previously used for retirement in another state. The cause of action accrues when the last element constituting the cause of action occurs The running of the statute of limitation is not postponed by the fact that substantial damages do not occur until a later date. *Yoder v Kuvin*, 782 So.2d 697 (Fla. 3rd DCA 2001); *Sandford v Manatee County*, 769 So.2d 1084 (Fla. 2nd DCA 2000).

Respondent's Exception to paragraph 52 of the RO

Paragraph 52 of the RO awards an attorney's fee pursuant to §440.08, Fla. Stat. In consideration of the Final Order of the Board as set forth above, there is no statutory basis to award attorney's fees to Petitioners.

ADOPTED by the School Board of Escambia County, at Pensacola, Florida, in open meeting, this 17th day of March, 2009.

_____

Patricia Hightower, Chair

Attest:

_____

Malcolm Thomas, Superintendent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this _____ day of March, 2009, to:

Clerk of the Division of Administrative Hearings, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060

Harry Hooper, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060

Joseph L. Hammons, Esquire, Hammons, Longoria & Whittaker, P A., 17 West Cervantes Street, Pensacola, FL 32501

H B. Stivers, 245 East Virginia Street, Tallahassee, Florida 3230

Malcolm Thomas, Superintendent, School Board of Escambia County, 215 West Garden Street, Pensacola, FL 32502

Honorable Eric Smith, Commissioner of Education, Turlington Building, Suite 1514, 325 West Gaines Street, Tallahassee, FL 32399-0400

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STATE OF FLORIDA
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Petitioners,	)	
vs.	)	Case No. 08-1202
ESCAMBIA COUNTY SCHOOL BOARD,	)	
Respondent.	)	

RECOMMENDED ORDER

This cause came on for final hearing before Harry L. Hooper, Administrative Law Judge with the Division of Administrative Hearings, on July 8, 2008, in Pensacola, Florida.

APPEARANCES

For Petitioners: H. B. Stivers, Esquire
Levine & Stivers
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Tallahassee, Florida 32301

For Respondent: Joseph L. Hammons, Esquire
Hammons, Longoria & Whittaker, P.A.
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Pensacola, Florida 32501-3125

STATEMENT OF THE ISSUE

The issue is whether Respondent properly considered prior teaching experience when calculating an appropriate salary for Petitioners.

PRELIMINARY STATEMENT

Petitioners filed a lawsuit in 2007, in the Circuit Court of Escambia County, Florida, under case number CA 000740, for back salary and proper placement on the salary schedule of the Escambia County School Board (Board). Nowhere in the evidence can be found the date when the suit was filed. Petitioners aver in their Petitioners' Recommended Order that the suit was filed on or about April 2, 2007. Respondent in its Recommended Order avers that the suit was filed on March 29, 2007. Petitioners are presumed to know best when the lawsuit was filed, since they filed it. Therefore, for purposes of this Recommended Order the suit is deemed to have been filed April 2, 2007.

On January 31, 2008, Judge Jan Shackelford entered an order staying the proceedings pending the outcome of this administrative proceeding.

On February 29, 2008, Petitioners filed a Petition for Formal Hearing. On March 7, 2008, counsel for the Board filed a response to the Petition for Formal Hearing. The Petition for Formal Hearing and Respondent's Response were forwarded to the Division of Administrative Hearings and filed on March 10, 2008.

The final hearing was originally scheduled for June 10 and 11, 2008, but the Petitioners filed a Notice of Scheduling Conflict and Request to Reset Hearing on April 1, 2008. The final hearing was rescheduled and held on July 8, 2008.

At the hearing, Petitioners presented the testimony of Reba Davis, Deborah Elleard, Ida Lanier, Phyllis Malone, Vicki Outzen, and Janet Taylor, and offered 22 exhibits into evidence, and they were admitted. Respondent presented the testimony of Keith Leonard and offered two exhibits into evidence, and they were admitted.

A Transcript was filed on July 24, 2008. After the hearing, Petitioners filed their proposed findings of fact, conclusions of law, and recommendations on August 13, 2008. Respondent filed its proposed findings of fact, conclusions of law, and recommendations on August 14, 2008.

FINDINGS OF FACT

1. All Petitioners were employed by the Board as full-time Florida certified public school teachers under a series of successive annual contracts.

2. The Board operates under a Collective Bargaining Agreement known as the "Master Contract." The Master Contract includes, among other things, a salary schedule that is the result of negotiations with the Escambia Educational Association (EEA), the collective bargaining agent that represents teachers. A negotiated salary schedule is then recommended by the superintendent of Escambia County Schools pursuant to Subsection 1012.27(2), Florida Statutes (2007), to the Board for approval and adoption.

3. The salary schedule adopted by the Board governs the compensation payable to instructional personnel. The salary schedule includes "steps" with corresponding "salary." Placement on the salary schedule step depends, in part, upon prior teaching experience. Generally, more prior teaching experience credited for placement on the schedule results in a higher level of compensation.

4. All Petitioners received an annual instructional contract under the authority of Subsection 231.36(3), Florida Statutes, or later, Subsection 1012.33(3), Florida Statutes.

5. Petitioners' annual instructional contracts set forth the contract salary on an annual basis payable through 12 monthly installments. The contracts specify the number of days to be worked and the daily rate of compensation.

6. The Board's standard form contract provides that "[t]his annual contract shall be deemed amended to comply with all laws, all lawful rules of the State Board of Education, all lawful rules and actions of the School Board and all terms of an applicable ratified collective-bargaining agreement."

7. All Petitioners performed the agreed-upon instructional services and, individually, were paid the agreed-upon contractual amount, as provided in the "Master Contract 1999-2002" or "Master Contract 2004-2007," as appropriate. This included the amount paid for years of service or "steps" as

provided in the Master Contracts. Petitioners Davis, Elleard, Lanier, Malone, Outzen, and Taylor, however, protested the steps they were assigned. As shall be addressed below, the Master Contract allowance for steps was less than that required by Florida law subsequent to July 1, 2001.

8. Petitioners' annual instructional contracts specify the salary paid through 12 monthly installments with a daily rate of compensation identified. The amount of compensation can be further broken down into an hourly rate based upon 7.5 hours per day, and provides for annual leave and sick leave. As is customary, if the employee takes leave and has no accrued leave balance, her pay will be reduced to compensate for the hours of leave without pay taken. The Board maintains ledgers with all the compensation information for its employees, including Petitioners.

9. Petitioner Margaret Benson has been employed by the Board as a full-time public school teacher since August of 2002. Prior to her employment with the Board, Ms. Benson was a full-time public school teacher in New Jersey and Tennessee for 17 years. For each of those 17 years, Ms. Benson received satisfactory performance evaluations. Upon being hired by the Board, Ms. Benson was given credit for 15 of the 17 years of her prior teaching experience. Ms. Benson has requested that the Board recognize each of her 17 years of teaching service. In

March or April 2007, the Board recognized one additional year of Ms. Benson's experience effective June 1, 2006. The Board has denied the request for the period of August 2002 through May 31, 2006. There is no evidence in the record as to whether Ms. Benson requested recognition of her entire teaching service, prior to the filing of this lawsuit.

10. Petitioner Reba Davis was employed by the Board as a full-time public school teacher for the 2003-2004 and 2004-2005 school years. Prior to her employment with the Board, Ms. Davis was a full-time public school teacher in Florida, Oklahoma, Alabama, and Kentucky for 25 years. For each of those 25 years as a full-time public school teacher, Ms. Davis received satisfactory performance evaluations. Upon being hired by the Board, Ms. Davis was given credit for all but five years of her prior teaching experience. Ms. Davis has requested that the Board recognize each of her 25 years of teaching service. The Board has denied the request for the period of 2003-2005 school years. Ms. Davis retired from teaching in 2005, but is not using the five years of teaching credit toward her retirement benefit, which was earned outside the State of Florida. At the time she began her service with the Board Ms. Davis made inquiry with Mary Helen Fryman of the Board's Human Resources Office as to why she was not given credit for all of her prior experience. She was informed by Ms. Fryman that the matter was, "Still under

negotiation and that she knew I would be given . . . my experience for my years in Florida." She made additional inquiries of the teachers union and the Board and was told that, "They were still in the bargaining stages and they were still not clear."

11. Petitioner Deborah Elleard has been employed by the Board as a full-time public school teacher since August 2003. Prior to her employment with the Board, Ms. Elleard was a full-time public school teacher in Alabama for 29 years. For each of those 29 years as a full-time public school teacher, Ms. Elleard received satisfactory performance evaluations. Ms. Elleard retired from the State of Alabama and when hired by the Board, Ms. Elleard was not given credit for her 29 years of prior teaching experience. Ms. Elleard has requested that the Board recognize each of her 29 years of teaching service. In March or April 2007, the Board recognized her 29 years of experience effective June 1, 2006. The Board has denied the request for the period of August 2003 through May 31, 2006. When Ms. Elleard was hired she made inquiry as to why she was not receiving credit for her 29 years of teaching service. She was informed then and several times thereafter that the Board was working on the matter and that it would be resolved.

12. Petitioner Deborah Gregory was employed by the Board as a full-time public school teacher beginning August 2002 until

her resignation following the conclusion of the 2005-2006 school year. Prior to her employment with the Board during the relevant time, Ms. Gregory was a full-time public school teacher in Alabama, Escambia County, and Orange County for 16 years. For each of those 16 years as a full-time public school teacher, Ms. Gregory received satisfactory performance evaluations. Upon being hired by the Board in 2002, Ms. Gregory was given credit for 15 of her 16 years of prior teaching experience. Ms. Gregory has requested that the Board recognize each of her 16 years of teaching service. The Board has denied the request for the period of August 2002 through May 31, 2006. There is no evidence in the record as to when or if Ms. Gregory requested recognition of her entire teaching service.

13. Petitioner Ida Lanier has been employed by the Board as a full-time public school teacher since August 2001. Prior to her employment with the Board, Ms. Lanier was a full-time public school teacher in Alabama for 25 years. For each of those 25 years as a full-time public school teacher, Ms. Lanier received satisfactory performance evaluations. Ms. Lanier retired from the State of Alabama, and upon being hired by the Board, Ms. Lanier was denied credit for her 25 years of prior teaching experience. Ms. Lanier has requested that the Board recognize each of her 25 years of teaching service. In March or April 2007, the Board recognized Ms. Lanier's 25 years of

experience effective June 1, 2006. The Board has denied the request for the period of August 2002 through May 31, 2006. When she was hired, Ms. Lanier inquired as to why she did not get credit for prior service and she was told it was because she was retired from another state. She was informed that the collective bargaining agreement prevented the credit but that the situation might change. She continued over time to make inquiry to both her union and the Board.

14. Petitioner Phyllis Malone has been employed by the Board as a full-time public school teacher since August 2003. Prior to her employment with the Board, Ms. Malone was a full-time public school teacher in Alabama for 25 years. For each of those 25 years, Ms. Malone received satisfactory performance evaluations. Ms. Malone retired from the State of Alabama and upon being hired by the Board, Ms. Malone was given credit for 15 of her 25 years of prior teaching experience. Ms. Malone requested that the Board recognize each of her 25 years of teaching service. In August 2006, the Board recognized each of her 25 years of experience effective June 1, 2006. The Board has denied the request for the period of August 2002 through May 31, 2006. Ms. Malone had conversations with the Board's Human Resources Office and wrote a letter to Dr. Scott of the Board and talked to Judy Fung of the Board, inquiring as

to why she was not receiving credit for past experience. During the time she taught, she continued to make inquiries.

15. Petitioner Vicki Outzen has been employed by the Board as a full-time public school teacher since August 2002. Prior to her employment with the Board, Ms. Outzen was a full-time public school teacher in Alabama for 25 years. For each of those 25 years, Ms. Outzen received satisfactory performance evaluations. Ms. Outzen retired from the State of Alabama and upon being hired by the Board, Ms. Outzen was not given credit for her 25 years of prior teaching experience. Ms. Outzen has requested that the Board recognize each of her 25 years of teaching service. In March or April 2007, the Board recognized Ms. Outzen's 25 years of experience effective June 1, 2006. The Board has denied the request for the period of August 2002 through May 31, 2006. Ms. Outzen made inquiries of the Board at the time she was hired and continuously during her employment with regard to the Board's refusal to give her the requested credit. She was informed that negotiations with the union were in progress and that she should continue to "check back" with the Board. She continually checked back with Ms. Fryman, Director of Human Resources at the Board, and was told in a letter that because she was retired from another state she must start teaching at step zero.

16. Petitioner Janet Taylor has been employed by the Board as a full-time public school teacher since September 11, 2002. Prior to her employment with the Board, Ms. Taylor was a full-time public school teacher in Alabama for 30 years. For each of those 30 years, Ms. Taylor received satisfactory performance evaluations. Ms. Taylor retired from the State of Alabama and upon being hired by the Board, Ms. Taylor was not given credit for her 30 years of prior teaching experience. Ms. Taylor has requested that the Board recognize each of her 30 years of teaching service. Respondent has failed to recognize any of Ms. Taylor's prior years of teaching experience. The Board led Ms. Taylor to believe that she would be notified by the Board when she would be eligible to receive credit for prior teaching experience.

17. For the years Petitioners are seeking credit, those years were not earned under the Florida Retirement System (FRS) as codified in Chapter 121, Florida Statutes (2007).

18. If the Petitioners had been paid as they assert, the Board would be required to pay Petitioners as follows:

(a) Margaret Benson for an additional step for school years 2002-2003, 2003-2004, 2004-2005, and 2005-2006. This amount totals $3,308.

(b) Reba Davis for five steps for school years 2003-2004 and 2004-2005. This amount totals $11,423.

(c) Deborah Elleard for 29 steps for school years 2003-2004, 2004-2005, and 2005-2006. This amount totals $52,895.

(d) Deborah Gregory for one step for school years 2002-2003, 2003-2004, 2004-2005, and 2005-2006. This amount totals $3,308.

(e) Ida Lanier for 25 steps for school years 2001-2002, 2002-2003, 2003-2004, 2004-2005, and 2005-2006. This amount totals $83,561.

(f) Phyllis Malone for 10 steps for school years 2003-2004, 2004-2005, and 2005-2006. This amount totals $28,692.

(g) Vicki Outzen for 26 steps for school years 2002-2003, 2003-2004, 2004-2005, and 2005-2006. This amount totals $66,338.

(h) Janet Taylor for 30 steps for school years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, and 2007-2008. This amount totals $101,427.

CONCLUSIONS OF LAW

19. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. § 120.57(1), Fla. Stat. (2007).

20. All Petitioners are instructional personnel as described in Subsection 1012.01(2)(a), Florida Statutes (2007).

21. Section 231.001, Florida Statutes (2000), provided, "Except as otherwise provided by law or the State constitution,

district school boards may prescribe rules governing personnel matters, including the assignment of duties and responsibilities for all district employees." Chapter 231, in 2000, did not address credit for teaching service in other districts or other states. Therefore district school boards could give as much or as little credit for teaching service (or steps) in other districts or other states as they, in consonance with any union input, deemed proper.

22. Subsection 231.36(3)(g), Florida Statutes (2001), became effective July 1, 2001, as the result of the passage of Committee Substitute for Committee Substitute for House Bill 1193 (HB 1193), which was approved by the Governor on May 16, 2001, with an effective date of July 1, 2001. This became Chapter 2001-47, Section 11, Laws of Florida, which was subsequently codified as noted above.

23. The reasons for this new policy of equal credit for teaching experience is contained in the legislative history of HB 1193, found inter alia at Florida House of Representatives Storage Names h1193s1a.sa.doc, h1193s2.1lc.doc, and h1193s2z.ge.doc, dated April 12, April 18, 2001, and May 25, 2001, respectively. This history demonstrates that among the goals sought by passage of the bill was to address a perceived teacher shortage, to end the practice of having credit for prior service applied differently in different districts, and to

facilitate the movement of teachers from an area having a surplus of teachers, to a district needing teachers.

24. Section 7 of the analysis of Committee Substitute for HB 1193 by the staff of House of Representatives Committee on State Administration, states: "Section 7. Amends s. 231.36, F.S. Current Situation. Currently, some districts limit the use of teaching experience from other districts or states. That is to say, when a teacher comes from outside of a school district the district may limit the number of years it will 'credit' the new employee with, in terms of salary and other benefits. This limit varies from district to district." This may be found at Florida House of Representatives Storage Names h1193sla.sa.doc.

25. Section 10 of the analysis of Committee Substitute for Committee Substitute for HB 1193 by the staff of House of Representatives Council for Lifelong Learning, also indicates that giving credit equally to teachers from without the state will ameliorate a perceived teacher shortage. This may be found at Florida House of Representatives Storage Names h1193s2.llc.doc. The language indicating the need to attract teachers from without the state is repeated in the House of Representatives General Education Final Analysis for Committee Substitute for Committee Substitute for HB 1193, 2d Engrossed,

found at Florida House of Representatives Storage Names h1193s2z.ge.doc.

26. Subsection 231.36(3)(g), Florida Statutes (2001), reads as follows:

> Beginning July 1, 2001, for each employee who enters into a written contract, pursuant to this section, in a school district in which the employee was not employed as of June 30, 2001, for purposes of pay a school board must recognize and accept each year of full-time teaching service for which the employee received a satisfactory performance evaluation. This provision is not intended to interfere with the operation of a collective bargaining agreement except to the extent it requires the agreement to treat years of teaching experience out of the district the same as years of teaching experience within the district. Instructional personnel employed pursuant to s. 121.091(9)(b)3. are exempt from the provisions of this paragraph.

27. Upon consideration of the language of the statute as well as the staff analyses, it is concluded that what this change meant (except for those falling into the category set forth in the last sentence), is that if a school teacher who was not employed by the Board prior to June 30, 2001, became employed with the Board after that date, that person must receive credit for teaching experience outside of the Escambia County School District for each year the person received a satisfactory performance evaluation. The credit is required

whether the person acquired the experience in another state or whether it was acquired in another Florida school district.

28. The language further provided that the credit was to be given even if a collective bargaining agreement stated otherwise. The right to collective bargaining in Florida is addressed in the Florida Constitution at Article I, Section 6. However, as was stated in United Teachers of Dade, FEA/United, AFT, Local 1974, AFL/CIO v. Dade County School Board, 500 So. 2d 508 (Fla. 1986), "The legislature has the authority and duty to enact guidelines implementing the rights guaranteed by Fla. Const. art. I, § 6." A collective bargaining agreement may not be made that contravenes a statute. Thus, to the extent that the Master Contract 1999-2002 conflicted with Subsection 231.36(3)(g), Florida Statutes (2001), the statute governed.

29. Chapter 121, Florida Statutes, is entitled The Florida Retirement System (FRS). Subsection 121.091(9)(b)3., Florida Statutes (2001), provided for the employment of a retired member of the FRS as a substitute or hourly teacher, education paraprofessional, transportation assistant, bus driver, or food service worker on a noncontractual basis after he or she has been retired for 1 calendar month, in accordance with s. 121.021(39). This clause simply meant that for persons in that class, the mandatory credit required by Subsection 121.091(9)(b)3., Florida Statutes (2001), did not apply to them.

30. Petitioner Lanier, the only petitioner who began working in the 2001-2002 school year, was in the instructional personnel category and was not a retired member of the FRS. Absent the effect of the appropriate statute of limitations, Petitioner Lanier should be paid for 25 years of experience from inception of employment, as a result of the passage of Subsection 231.36(3)(g), Florida Statutes (2001).

31. The Florida Legislature in 2002, amended Subsection 231.36(3)(g), Florida Statutes (2001), with changes underlined and deletions struck through, to read as follows:

> 1012.33 Contracts with instructional staff, supervisors, and school principals.-
>
> * * *
>
> (3)(g) Beginning July 1, 2001, for each employee who enters into a written contract, pursuant to this section, in a school district in which the employee was not employed as of June 30, 2001, for purposes of pay, a district school board must recognize and accept each year of full-time public school teaching service earned in the State of Florida or outside the state and for which the employee received a satisfactory performance evaluation. ~~This provision is not intended to interfere with the operation of a collective bargaining agreement except to the extent it requires the agreement to treat years of teaching experience out of the district the same as years of teaching experience within the district.~~ Instructional personnel employed pursuant to s. 121.091(9)(b)3. are exempt from the provisions of this paragraph.

32. The effective date of this amendment was January 7, 2003. This amendment reinforced the notion that full credit was to be given to teachers coming into the district from other districts in Florida or from out of state. The language addressing collective bargaining agreements, which as noted above, had no effect on the operation of the statute, was struck. The language further provided that credit was mandatory only for public school teaching.

33. Absent the effect of the appropriate statute of limitations, Petitioners Lanier, Benson, Gregory, Outzen, and Taylor, should be paid for all years of experience requested, beginning with the inception of school year 2002-2003.

34. Subsection 1012.33(3)(g), Florida Statutes (2002), was not amended by the Florida Legislature in 2003. However, a significant amendment was made to Subsection 121.091(9)(b)3. that impacted the operation of Subsection 1012.33(3)(g), Florida Statutes (2003), by including instructional personnel within its ambit. The result of this amendment was to deny the mandatory benefits of Subsection 1012.33(3)(g), Florida Statutes (2003), to persons retired under the FRS.

35. The amendment that became Subsection 121.091(9)(b)3., Florida Statutes (2003), gave a benefit to someone retired from a state other than Florida that was not available to someone

retired under the FRS. The policy reasons for this are not clear, but the language is.

36. In Florida State Racing Com. v. McLaughlin, 102 So. 2d 574, 575 (Fla. 1958), the Florida Supreme Court stated that, "It is elementary that the function of the Court is to ascertain and give effect to the Legislative intent in enacting a statute. In applying this principle certain rules have been adopted to guide the process of judicial thinking. The first of these is that the Legislature is conclusively presumed to have a working knowledge of the English language and when a statute has been drafted in such manner as to clearly convey a specific meaning the only proper function of the Court is to effectuate this legislative intent." See also Vocelle v. Knight Bros. Paper Co., 118 So. 2d 664 (Fla. 1st DCA 1960).

37. The amendment had no effect on the pay status of the Petitioners because none of them were retired under the FRS. Thus, absent the effect of the appropriate statute of limitations, Petitioners Davis, Elleard, and Malone, beginning with the inception of school year 2003-2004, joined the class of Petitioners who were entitled to recognition for all of their years of teaching experience.

38. The Florida Legislature in 2004, amended Subsection 1012.33(3)(g), Florida Statutes (2003), with changes underlined, to read as follows:

> Beginning July 1, 2001, for each employee who enters into a written contract, pursuant to this section, in a school district in which the employee was not employed as of June 30, 2001, or was employed as of June 30, 2001, but has since broken employment with that district for 1 school year or more, for purposes of pay, a district school board must recognize and accept each year of full-time public school teaching service earned in the State of Florida or outside the state and for which the employee received a satisfactory performance evaluation. Instructional personnel employed pursuant to s. 121.091(9)(b)3. are exempt from the provisions of this paragraph.

39. This new language brought persons with "broken service" into the zone of recognition for purposes of mandatory step pay. This language is inapplicable to any of the Petitioners.

40. Unless there is some impediment to be found outside of Subsection 1012.33(3)(g), Florida Statutes (2007), the Board must pay Petitioners in accordance with the statute, including Petitioners Elleard, Lanier, Malone, Outzen, and Taylor, who retired from teaching in Alabama.

41. It is noted that in a similar case, Charles V. Keene v. Escambia County, Case No. 07-2125 (DOAH December 21, 2007), approved in the Final Order Adopting the Findings of Fact and Conclusions of Law of the Administrative Law Judge, Escambia County School Board, January 22, 2008, it was found that the Florida Legislature would not have provided for one standard for

teachers retired in another state and another standard for teachers retired under the FRS, and therefore teachers retired from a state other than Florida could not benefit from Subsection 1012.33(3)(g), Florida Statutes (2007). However, the evidence and law presented in this case require an opposite conclusion.

42. The Board has asserted, as an impediment, that the parties entered into individual contracts that were derived from the appropriate Master Contract, that the teachers were paid in accordance with the contract to which they agreed, and that the Board is only obligated to pay Petitioners in accordance with that contract. Therefore, the Board argues, Petitioners may not now obtain back pay in accordance with Subsection 1012.33(3)(g), Florida Statutes (2007).

43. However, Subsection 1012.33(3)(g), Florida Statutes (2007), overrides the provisions of the Master Contracts of the individual Petitioners to the extent they conflict with it. The subsection is of the sort discussed in United Teachers, supra, and has supremacy over the terms of the Master Contracts, which provides the bases for the contracts into which Petitioners entered. Moreover, Petitioners were unable to waive the application of the law requiring credit. The operative law is what is provided by Subsection 1012.33(3)(g), Florida Statutes (2007), not what the Board or

the Petitioners agree. It is further noted, that Petitioners Elleard, Malone, Outzen, Lanier, Davis, and Taylor, continually asserted their rights under the statute.

44. Respondent asserts that the application of equitable estoppel and Section 215.425, Florida Statutes (2007), prevents Respondent from adjusting the Petitioners' pay. The facts required to establish the elements of equitable estoppel are not present in this case.

45. Section 215.425, Florida Statutes (2007), provides in part, "No extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made; nor shall any money be appropriated or paid on any claim the subject matter of which has not been provided for by preexisting laws, unless such compensation or claim is allowed by a law enacted by two-thirds of the members elected to each house of the Legislature."

46. The meaning of Section 215.425, Florida Statutes (2007), is illuminated primarily by Attorney General Opinions. The opinions address situations where a person receives compensation from a governmental entity and thereafter is awarded additional compensation. In this case, Petitioners did not receive the amount to which they were lawfully entitled ab initio. Therefore, Section 215.425, Florida Statutes (2007), does not prohibit the Board from paying Petitioners the amounts

to which they were entitled from the beginning of their employment. This was not a case of extra compensation. It is a case of compensation that was unlawfully denied.

47. Respondent further asserts that Petitioners' claims are barred by Subsection 95.11(4)(c), Florida Statutes (2007). That subsection provides a two-year statute of limitations based on, "An action to recover wages or overtime or damages or penalties concerning payment of wages and overtime. Petitioners assert that if Chapter 95, Florida Statutes (2007), applies at all, then the proper subsection is a four-year limitation pursuant to Subsection 95.11(3)(k), Florida Statutes (2007).

48. Generally, determinations that actions may not be brought because of the time limitations provided Chapter 95, Florida Statutes, are not made by administrative law judges. However, in a case that is an administrative substitute for a civil action, it is within the province of the administrative law judge to provide a recommendation when the statute of limitations is in issue. See Winter Haven Hospital v. Agency for Health Care Administration, Case No. 04-1887MPI (DOAH December 28, 2004).

49. Subsection 95.11(4)(c), Florida Statutes (2007), is the correct limitation to use in this case. It provides for a two-year limitation on actions for wages. A number of cases have addressed limitations on payments made to teachers

including McWilliams v. Escambia County School Bd., 658 F.2d 326 (5th Circuit 1981). In McWilliams, the plaintiff, a teacher in the Escambia County School District, asserted civil rights violations and demanded back pay. The court, interpreting Florida Law, held that the two-year statute of limitations for wages was applicable to his claim. In Burney v. Polk Community College, 728 F.2d 1374 (11th Cir. 1984), the court, interpreting Florida Law, found that in a case involving a tenured guidance counselor, the two-year statute of limitations for wages was applicable. It is apparent that in this case Subsection 95.11(4)(c), Florida Statutes (2007), provides the appropriate limitation.

50. Section 95.031, Florida Statutes (2007), provides in part:

> § 95.031. Computation of time
>
> Except as provided in subsection (2) and in s. 95.051 and elsewhere in these statutes, the time within which an action shall be begun under any statute of limitations runs from the time the cause of action accrues.
>
> (1) A cause of action accrues when the last element constituting the cause of action occurs.
>
> * * *

51. The issue in this case is the correct amount of pay to which each Petitioner was entitled. Petitioners were paid based

on a series of successive annual contracts that were broken down into daily units. Every day that Petitioners were paid based on an incorrect determination of credit for experience was an accrual of a cause of action. Therefore, the period for filing suit runs from the time of filing the lawsuit, April 2, 2007, back to April 2, 2005.

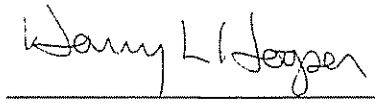
52. Pursuant to Section 448.08, Florida Statutes (2007), Petitioners are entitled to a reasonable attorney's fee.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Escambia County School Board recalculate Petitioners' salary as of April 2, 2005, so that their salaries reflect the amount each should have earned if Petitioners had been given credit for each year of full-time public school teaching service earned in the State of Florida or outside the state, and pay them that amount. It is further recommended that Petitioners receive pay at all future times as provided by Subsection 1012.33(3)(g), Florida Statutes (2007), and this Recommended Order. It is further recommended that the Escambia County School Board remit to Petitioners a reasonable attorney's fee.

DONE AND ENTERED this 21st day of August, 2008, in Tallahassee, Leon County, Florida.



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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.