



5. On July 20, 2006, associate superintendent and District spokesperson Celso Martinez stated in a Dallas Morning News article<sup>3</sup> that the grievant was “suspended with pay” and that “there are questions of competence”.
6. On December 26, 2006, the grievant sent a letter to the Superintendent of Schools demanding a due process, name-clearing hearing.<sup>4</sup>
7. The District granted the name-clearing hearing to be conducted as part of the termination appeal hearing in accordance with Dallas Independent School District Board of Education Policy DGBA (Local).<sup>5</sup>
8. Fish and Richardson was contracted by the District to conduct the procurement card investigation.
9. Representatives from Fish & Richardson, P.C. interviewed the grievant on January 19, 2007.<sup>6</sup>
10. The grievant was served with a termination letter via facsimile machine on February 28, 2007.<sup>7</sup>
11. The appeal/name-clearing hearing was conducted by this Panel over four (4) days: June 11, 2007; July 16, 17, and 24, 2007.
12. The hearing was conducted as an open hearing, with access by the public allowed, in accordance with the grievant’s approved request for a due process, name-clearing hearing.
13. The grievant filed a motion in limine (to limit the scope of the hearing to the 2005 – 2006 contract year) which was denied by the Chief Hearing Officer.

### DISCUSSION

The scope of this hearing is broad with a complexity of facts and issues. This discussion will address separately the grievant’s appeal of her employment contract and the due process, name-clearing function of this hearing.

#### Termination Appeal

The burden of proof is on the administration to show that there is good cause to terminate the grievant’s employment contract. The administration was represented by Mr. David Rastellini, associate superintendent for financial services.

#### Testimony of Administration’s Representative

While Mr. Rastellini has been the grievant’s direct supervisor since his entry into the district, he stated under oath that he “did not participate in the termination decision”. Mr. Rastellini further testified that he was “notified but not consulted” about the decision and had “no conversations” with the ad hoc Legal Review committee comprised of the Superintendent of Schools and several Deputy Superintendents. The Panel finds the decision of administration to utilize a representative who had no knowledge of the termination decision significantly impairs the administration’s ability to bear the burden of proof in this matter.

<sup>3</sup> Dallas Morning News, July 20, 2006, T. Hobbs & K. Fischer (Employee Exhibit SB-32)

<sup>4</sup> J. Murphy Letter to M. Hinojosa, December 26, 2006 (Employee Exhibit SB-37)

<sup>5</sup> See Dallas ISD – DGBA (L): NON-CHAPTER 21 CONTRACTS

<sup>6</sup> Fish & Richardson Correspondence to B. Weaver from K. Mendrygal, P. Coggins, & M. Johnson, February 5, 2007 (Employer Exhibit 5)

<sup>7</sup> D. Coleman Termination Letter, February 28, 2007 (Employee Exhibit SB-37C)

Further, Mr. Rastellini, in his capacity as the grievant's direct supervisor, testified that he had "no concerns about (the grievant's) performance"; that, in fact, the "procurement card program was running smoothly when (he) took over". Mr. Rastellini was questioned as to whether he felt that each of the allegations of misconduct rose to the level of termination. Mr. Rastellini categorically responded to each question indicating that he did not believe that each allegation, taken alone, rose to the level of termination.

#### Failure of District Employees to Comply with Requests to Testify

Given the fact that the District's administrative representative had no knowledge of the decision to recommend termination, it is troublesome to this Panel that none of the district employees requested to testify by the grievant agreed to appear. Therefore, individuals who had direct knowledge of the grievant's work performance, as well as individuals from the ad hoc Legal Review committee who directly participated in the decision to recommend termination, were not available for this hearing.

#### Testimony of Administration Witnesses

The administration called several employees who had been direct reports to the grievant during her tenure as director - financial control and activity funds. Each of the employees spoke positively of the grievant. While each admitted to knowledge of questionable practices (e.g., use of another employee's procurement card number to purchase a refrigerator) all expressed that they felt that any such violations did not rise to the level of termination.

#### Testimony of Ms. Gloria Oraphello

Ms. Oraphello, at the time of the hearing facing sentencing for criminal charges in relation to her use of District procurement cards, was advised by the Chief Hearing Officer as well as both attorneys, that her appearance was voluntary. Ms. Oraphello was advised to ensure that she had consulted with her personal legal counsel as to ramifications in her criminal case resulting from testifying in this hearing. Ms. Oraphello stated that she was aware of the ramifications and volunteered to testify of her own accord. The Panel, however, questions the credibility of this witness and the motive for testifying. Therefore, Ms. Oraphello's testimony did not have significant bearing on the decision of this Panel.

#### Oracle Managerial Notifications

A great deal of discussion centered on the allegation that the grievant turned off managerial notifications. The administration attempted to prove a quid pro quo between Ms. Oraphello's illegal procurement card usage and the grievant's administrative access to control notifications. A central piece of evidence presented by the administration was an Oracle extract, "Pcard Oracle Profiles Not Requiring Manager Approval". This document details the status of *employee* notifications ("Emp\_Notification On\_Lookup Code"). It does not appear to report the status of *managerial notifications*. At best, the extract is ambiguous. Further, in relation to the allegation that the grievant turned off notifications for Ms. Oraphello, the last update listed as done by the grievant for Ms. Oraphello's profile indicates that the notifications were *turned on*. Witness testimony indicated that other District officials, including a chief of staff and an area superintendent had requested that their notifications be turned off.

The Oracle system sent notifications, according to witness testimony, anywhere from thirty to ninety days after the actual procurement card transaction. Therefore, in any event, the notification system was ineffectual in providing supervisors with "real time" information on subordinates' procurement card transactions.

Finally, the administration failed to provide any evidence that disabling Oracle procurement card notifications violated any written District policies, procedures, directives, and/or guidelines.

Internal Correspondence – KPMG

Much discussion occurred regarding an email sent by the grievant to her direct reports after site visits from KPMG auditors. The grievant refers to her conversations with the auditors as having "bs'ed" them. The Panel finds that the use of this verbiage in a professional correspondence is based upon the exercise of extremely poor judgment by the grievant. The term "bs'ed" can be construed in numerous ways. However, while the grievant gave a reasonable explanation as to her meaning of the phrase, the administration failed to present evidence or witnesses to rebut her explanation.

Purchase of Refrigerator

The unauthorized use of is another employee's procurement card number by the grievant to purchase a refrigerator is a clear violation of District procurement card guidelines. The grievant exercised extremely poor judgment by this action.

Budget Transfers

A large amount of discussion centered on the failure of the grievant to seek approval to move funds from Ms. Oraphello's department to the grievant's department when supplies for the grievant's department were needed. While budget transfers are the normal practice of the District, the administration presented no evidence citing specific District policy requiring the use of budget transfers. The practice is made even more unclear by the statement of the executive director – budget development in the February 5, 2007 Fish & Richardson report<sup>8</sup> that "as a practical matter small dollar purchases were occasionally made by one department for another without going through the budget office", and, that he "would not consider all such purchases to be inappropriate".

Interview Protocols

The grievant was required to sign a substantially different interview protocol than other employees prior to an interview with Fish and Richardson investigators. Testimony indicated that the grievant was the only person required to sign said agreement. The panel finds this procedure and lack of clarification for the use of the separate protocol troublesome.

Failure to Appear at Interview

The grievant did fail to appear as requested for a Fish and Richardson interview. However, testimony that communication was not clear among all parties.

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<sup>8</sup> Fish & Richardson Correspondence to B. Weaver from K. Mendrygal, P. Coggins, & M. Johnson, February 5, 2007 (Employer Exhibit 5)

### Summary

The scope of this hearing is broad and complex. After extensive review of all documents and testimony presented at this hearing, the Panel finds that:

1. The District fails to bear the burden of proof to support a recommendation for termination for: "1. Failure to discharge (your) duties and responsibilities related to the P-card program".
2. The District fails to bear the burden of proof to support a recommendation for termination for: "2. Failure to follow procedures, policies, guidelines and/or directives related to the district P-card program".
3. The District fails to bear the burden of proof to support a recommendation for termination for: "3. Failure to exercise good judgment in discharging your duty to account for district resources".
4. The District fails to bear the burden of proof to support a recommendation for termination for: "4. Failure to comply with district policy procedures and directives to cooperate during a district investigation".

The administration has failed to specifically support each of the allegations used as reasons for termination and therefore fails to sufficiently bear the burden of proof to support termination of the grievant. However, the Panel finds that violations as well as incidents of the exercise of poor judgment did occur during the grievant's tenure as director - director - Financial Control and Activity Funds. It is the expectation of the District that employees in supervisory positions be held to a high but equitable standard of accountability. Therefore, this Panel finds that disciplinary action, less than termination, is appropriate in this matter.

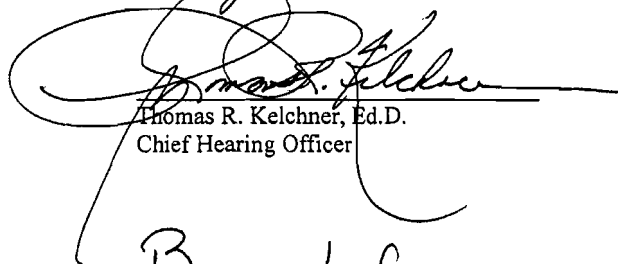
### Name Clearing Hearing

The hearing was conducted as an open hearing, with access by the public allowed, in accordance with the grievant's approved request for a due process, name-clearing hearing. The appeal/name-clearing hearing was conducted by this Panel over four (4) days: June 11, 2007; July 16, 17, and 24, 2007.

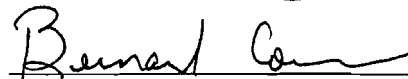
**JUDGMENT**

After due consideration of the evidence presented, the matters officially noted, governing law, and foregoing Findings of Fact and Discussion, in my capacity as chief hearing officer and with the concurrence of the Judicial Panel, and in accordance with the authority granted to me by the General Superintendent, it is hereby **RECOMMENDED** that the Grievance is **GRANTED** and the recommendation for termination **DENIED**. It is further **RECOMMENDED** that the Grievant be **DEMOTED** in rank to a position of lesser scope and responsibility with a commensurate reduction in salary.


Signed and Entered this 28<sup>th</sup> day of August, 2004.



Thomas R. Kelchner, Ed.D.  
Chief Hearing Officer



Bernard Cousin  
Hearing Officer



Rene Ronquillo  
Hearing Officer