

No. 01-C-1878

Roy ARRIOLA

versus

ORLEANS PARISH SCHOOL BOARD

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL
FOURTH CIRCUIT, CIVIL DISTRICT COURT,
PARISH OF ORLEANS

CALOGERO, C.J. concurs and assigns reasons

I agree with the majority that the evidence presented at the school board proceeding was sufficient to show a violation of school board policy and that defendant's termination was warranted.

I only concur, however, on the issue of the lab report's admissibility. The majority goes to great lengths discussing chain of custody, foundation and consequential due process principles because the parties have postured the case in that manner. In my view, such a discussion is unnecessary. Pursuant to La. Code Civ. Proc. art. 2164, this court may render any judgment which is just, legal, and proper upon the record on appeal. In my view, the issue as to the lab report's admissibility can be simply resolved by Code of Evidence Art. 803(6)¹. The lab test results are

¹ La. Code Evid. art. 803(6) reads as follows:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

- (6) Records of regularly conducted business activity. A memorandum, report, record, or data compilation, in any form, including but not limited to that which is stored by the use of an optical disk imaging system, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if made and kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make and to keep the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. This exception is inapplicable unless the recorded information was furnished to the business either

records of regularly conducted business activity of SmithKline Beecham Clinical Laboratories and hence, admissible as an exception to the hearsay rule.

Furthermore, this court has previously held that La. Code Evid. 803(6) does not require a showing of chain of custody. This court has stated that “[w]hile ((803(6)) requires that a custodian or qualified witness testify that the requirements of the business records exception have been met, there is no requirement that the ‘qualified witness’ must have personally participated in or observed the creation of the document.” Judd v. State, Dept. of Transp. and Development, 95-1052 (La. 11/27/95), 663 So.2d 690, 696. Chain of custody goes to the weight of the evidence, not the admissibility of the document. *See Id.* Here, the Superintendent of the School Board introduced the lab report through Michael Feldman, the manager of the Smith Kline testing lab. Dr. Feldman, according to his position at Smith Kline, is qualified to testify as to the authenticity of the lab report and the document was properly introduced.

I note that there is authority for the proposition that the Louisiana Code of Evidence does not apply to School Board proceedings under the Tenure Act.² That rule, however, is meant to allow a more relaxed approach to evidence offerings in school board proceedings. Certainly, however, as in this case, if the evidence presented meets the more rigid requirements of the Code of Evidence and would be admissible under those rules, the evidence is admissible under the more relaxed standards of the School Board proceedings.

by a person who was routinely acting for the business in reporting the information or in circumstances under which the statement would not be excluded by the hearsay rule. The term "business" as used in this Paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. Public records and reports which are specifically excluded from the public records exception by

² *See Coleman v. Orleans Parish School Board*, 93-0916, 94-0737, p 13 (La. Ap. 4 Cir. 2/4/97).

Hence, I concur on the issue of admissibility of the lab reports, finding that Louisiana Code of Evidence art. 803(6) properly allows the introduction of such documentation.