BEFORE THE BROWARD COUNTY SCHOOL BOARD

ROBERT W. RUNCIE,
Superintendent of Schools,

Petitioner

vs. CASE NO. 15-004993TTS

BRUCE WEINBERG,

Respondent
_____/

PETITIONER'S RESPONSE TO RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED ORDER

The Petitioner, ROBERT W. RUNCIE, as Superintendent of Schools, by and through his undersigned attorney, hereby files this Response to Respondent's Exceptions to the Administrative Law Judge's Recommended Order, and states as follows:

Preliminary Statement

Procedural History

1. On or about April 13, 2016, the Honorable Darren A. Schwartz, the Administrative Law Judge hereinafter "ALJ" assigned to the instant case, issued his Recommended Order.

2. The Court found "just cause" existed to terminate the Respondent's employment with the Broward County School Board (hereinafter "School Board") and upheld the School Board's termination of Respondent's employment.

3. The following symbols and designations will be used in the following manner:

(PE.#/)	Petitioner's exhibit number/page number
(RO#/)	Recommended Order page number/paragraph number
(FOF)	Finding of Fact
(COL)	Conclusions of Law
(HT.#/)	Hearing Transcript page number/line number
(DT.#/)	Deposition Transcript page number/line number

Brief Statement of Facts

4. The focus of the Court's inquiry were the events that transpired on Monday, February 24, 2014, wherein the Respondent, angry and upset that his students had been disrespectful to his son, who was their substitute teacher the preceding Friday, February 21, 2014, "took the stage" in his Drama II class and proceeded to berate the class in a loud, angry, and profane tirade, stating:

> You disrespected my son. How dare you. How dare you. I will give every single person in this class an "F," and you all just go screw yourselves. You don't deserve me. You don't deserve me. What are you going to do?
>
> [STUDENT] I'm going to stay --
>
> Sit your ass down and shut up. Not a single sound. You laugh, you make a noise, you're out; you understand me? I am sick of this class and I am sick of this school. You want a play, show me a goddamn play.

(RO. #7/17; PE #2).

5. Prior to Respondent's outburst, he had given five students in his second-period Drama II class a pass to go to another class. (RO #7/16).

6. After reviewing the evidence in the case, the Court specifically found that "the persuasive and credible evidence" adduced at the hearing established that:

- "Respondent is guilty of misconduct in office." (RO #8/20).
- Through the verbal tirade directed at his students, Respondent violated the Principles of Professional Conduct for the Education Profession in Florida "by failing to make reasonable efforts to protect his students from conditions harmful to learning and intentionally exposing his students to unnecessary embarrassment or disparagement." (RO #8/21).
- Furthermore, the "Respondent also violated Rules 6A-5.056 (2)(d) and (e) by engaging in conduct which disrupted the students' learning environment and reduced the Respondent's ability to effectively perform his duties". (RO #8/21).
- "Respondent is guilty of incompetence" based on the verbal tirade Respondent directed at his students and Respondent's failure to discharge his duties as a teacher as a result of inefficiency. The Court found "Respondent was inefficient by failing to communicate appropriately with and relate to students." (RO #8-9/22-23).

- "Respondent violated School Board Policy 4008."
- "Through the verbal tirade of his students, Respondent failed to treat his students with kindness and consideration" and by violating the Principles of Professional Conduct of the Education Profession in Florida. (RO #9/24).
- "Respondent is guilty of gross insubordination" by intentionally refusing to obey a direct order, reasonable in nature, and given by and with the proper authority. Specifically, the Court relied on the written directive provided to Respondent during his first school year at Miramar High School (hereinafter "Miramar") instructing him "*to speak in a calm, respectful and professional tone at all times*". (RO. #9/25; PE #9/165).

7. The Respondent subsequently filed Exceptions on April 27, 2016, to the Court's Recommended Order.

Standard of Review for Exceptions

Findings of Fact

8. Section 120.57(1)(l) Fla. Stat. (2015) describes the very narrow lens upon which a reviewing agency may evaluate an ALJ's findings of fact. The language excerpted below is proscriptive rather than permissive:

> The agency may **not**[1] reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.

9. In essence, Section 120.57(1)(l) Fla. Stat. (2015) "mandates that an agency accept the factual determinations of a hearing officer unless those findings of fact are not based upon 'competent substantial evidence.'" Heifetz v. Department of Business Regulation, 475 So. 2d 1277, 1281 (1st DCA 1985).

10. The Court in Heifetz highlights that "[i]t is the hearing officer's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence and reach ultimate findings of fact based upon competent, substantial evidence." Id. at 1281(*citing* State Beverage Department v. Ernal, Inc., 115 So.2d 566 (Fla. 3d DCA 1959)).

11. The seminal Florida Supreme Court case defining "competent substantial evidence" described it as "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred" or evidence that is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached."

[1] Emphasis added.

Heifetz at 1281 (*quoting* De Groot v. Sheffield, 95 So.2d 912 (Fla. 1957).

12. The Heifetz opinion further stipulates that where, "as is often the case, the evidence presented supports two inconsistent findings, it is the hearing officer's role to decide the issue one way or the other." Id.

13. Accordingly, the Court in Heifetz cautions agencies to resist the temptation to change findings made by a hearing officer simply because the agency does not agree with them, since the agency is "not the trier of ordinary factual issues not requiring agency expertise." Heifetz at 1282.

Conclusions of Law

14. Section 120.57(1)(l) Fla. Stat. (2015) also explains the agency's parameters when reviewing conclusions of law as follows: "[t]he agency . . . may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction."

15. Florida law further dictates:

> When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of

> administrative rule is as or more reasonable than that which was rejected.
>
> Section 120.57(1)(l) Fla. Stat. (2015).

16. Finally, in its guidance to reviewing agencies, the law cautions that "[r]ejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact." §120.57(1)(l) Fla. Stat.

17. Essentially, the reviewing agency may not modify the ALJ's conclusions of law in order to be able to impermissibly modify the findings of fact where it would not normally be allowed to do so.

18. In his exceptions, the Respondent takes issue with the following findings of fact and conclusions of law rendered by the Court.

Exceptions

19. Since pursuant to §120.57(1)(k) Fla. Stat. (2015), reviewing agencies are required to "include an explicit ruling on each exception," the statue also delineates the following:

> [A]n agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis of the exception, or that does not include appropriate and specific citations to the record.
>
> §120.57(1)(k) Fla. Stat. (2015)

EXCEPTIONS NUMBERS 1,2, AND 7
(FOF #20-21; COL #47)

Misconduct

20. The Respondent excepts to the Court's findings of fact and subsequent conclusion of law that the Respondent is guilty of misconduct based on his verbal tirade directed at his students, and that the School Board proved by a preponderance of the evidence that the Respondent violated the Principles of Professional Conduct for the Education Profession in Florida by failing to make reasonable efforts to protect his students from conditions harmful to learning and intentionally exposed his students to unnecessary embarrassment or disparagement.

21. Furthermore, the Respondent also violated Rule 6A-5.056 (2)(d) and (e) by engaging in conduct which disrupted the students' learning environment and reduced the Respondent's ability to effectively perform his duties.

22. However, since the Respondent does not include "appropriate and specific citations to the record", save for the reference to the paragraph number in the RO and some blanket denials of the court's findings and conclusions of law, the School Board need not rule on the exceptions in paragraphs one and two of the Respondent's exceptions. §120.57(1)(k) Fla. Stat. (2015).

23. Similarly, Respondent's exception to COL 47 in paragraph 7 of his pleading lacks any substantive citation to the record or any legal authority, except for the paragraph number and standard of review.

24. In his blanket denials regarding evidence of misconduct, the Respondent does not reference any specific citation or evidence in the record.

25. Since the Respondent does not provide sufficient substantive evidence, in compliance with Florida law, the School Board need not rule on the above-mentioned exceptions.

26. In addition to the defects mentioned above, Respondent, Weinberg (hereinafter "Weinberg"), completely omits the ALJ's unambiguous finding that "Respondent's verbal tirade directed at the class was inappropriate, verbally abusive, and disparaging." (RO #8/19).

27. Weinberg also bypasses his own admission, relied upon by the Court in its Order, that his language and use of profanity toward his students in the classroom on February 24, 2014, was inappropriate under any circumstance. (RO #9/27); (HT. #236/16-22).

28. Furthermore, the record is replete with student/witness testimony of the manner, in which, the class sat in stunned silence while witnessing Weinberg's outrageous conduct. (HT. #101/12-15; HT. #120/1-2; HT. #80/9-12).

29. Students describing the Respondent’s vitriolic tirade detailed him cursing them out, “yelling”, and “screaming”. (HT. #42/1-3; HT. #43/8-12; HT. #59/15-23; HT. #66/1-4); HT. #91/25; HT. #92/1; HT. #93/7-9).

30. Witnesses indicated that the Respondent was so loud he could be heard outside the classroom. (HT. #67/12-15).

31. Additionally, the students testified that they did not “appreciate” the manner in which Weinberg addressed the class and felt that he went “overboard” by swearing at them. (HT. #57/1-19); (HT. #58/3-4).

32. Witnesses further testified that during Respondent’s verbal onslaught to the class, some students tried to leave the classroom. (HT. #78/15-25; HT. #79/1-4, 8-16).

33. Students testified at the hearing that the approximately one minute video of Respondent’s tirade captured by a student in the class did not reflect Respondent’s entire outburst, rather witnesses estimate that Respondent ranted and raved for a period lasting from two to just under ten minutes. (HT. #100/19-25); (HT. #101/1-4); (HT. #120/12-19); (HT. #122/16-20).

EXCEPTIONS NUMBERS 3,4, AND 8
(FOF #22-23; COL #48)

Incompetence

34. The Respondent excepts to the Court's FOFs and COLs that WEINBERG is guilty of incompetence in violation of Rule 6A-5.056(3), through the "verbal tirade Respondent directed at his students and Respondent's failure to discharge his duties as a teacher as a result of inefficiency." (RO. #8-9/22-23).

35. The Court also found "Respondent was inefficient by failing to communicate appropriately with and relate to students." (RO. #9/23).

36. While the Respondent cites to several accolades regarding Weinberg's past relationship with some of his students in previous classes during previous years, as fodder for his argument that the Respondent is not guilty of incompetence, he overlooks several factors, including that none of the comments cited speak to the inquiry at hand, Respondent's tirade on a classroom full of unsuspecting high school students on the morning of February 24, 2014, and their thoughts and reactions to his barrage of insults and profanity.

37. Paradoxically, Respondent ignores the obvious inference that a teacher with such a great rapport and relationship with his students would not have to resort to vulgarity and profanity

to the extent of being “verbally abusive”, as Weinberg did in order to communicate with them. (RO. #8/19).

38. Furthermore, the ALJ heard this evidence at the trial and was unpersuaded by it.

39. It is not the School Board’s role at this juncture to reweigh the evidence from witnesses it has not seen or heard.

40. In fact, the legal authority, statutory language and case law, regarding the School Board’s review of the facts of a case expressly prohibits this second bite of the apple the Respondent is seeking. §120.57(1)(l) Fla. Stat. (2015); *See* Hiefetz.

41. Weinberg also omits all testimony provided at trial by the students kicked out of his class regarding their bewilderment regarding the reason they were being sent out.

42. Students testified, and Weinberg confirmed, that up to a dozen of the thirty-one (31) students that comprised Weinberg’s second-period Drama II class were sent out of class on February 24, 2014, without any explanation. (HT. #25/22-25); (HT.26/1-7, 16-21); (HT.27/5-8); (HT.31/1-4); (PE. #4; DT. #36/13-20).

43. Students, such as DJ, who were in the play the class was supposed to be rehearsing that day were kicked out, despite a rumor that the students sent out of class were not in the play. (HT. #28/3-12); (PE. #1/72); (HT. #36/19-21).

44. Witnesses were also confused as to reason for Weinberg’s tirade.

45. One student, MH, testified that he thought Weinberg was upset because he had been late to class that day. (HT. #99/17-20).

EXCEPTIONS NUMBERS 5 AND 9
(FOF #24; COL 49)

School Board Policy 4008

46. The Respondent excepts to the Court's FOFs and COLs that WEINBERG violated School Board Policy 4008 through the "verbal tirade of his students, Respondent failed to treat his students with kindness and consideration." (RO. #9/24).

47. In addition, Respondent violated the Principles of Professional Conduct for the Education Profession in Florida, and in so doing, again violated School Board Policy 4008. (RO. 9/24).

48. Respondent again provides no argument, nor any "appropriate and specific citations to the record" as statutorily required regarding why the ALJ's findings were not based on "competent substantial evidence". §120.57(1)(k) Fla. Stat. (2015).

49. Rather, Respondent merely denies that competent substantial evidence exists for the ALJ's FOF and subsequent COL that Weinberg violated the School Board's Rule 4008.

50. Further, the Respondent fails to "clearly identify the disputed portion of the recommended order", instead, merely citing to the paragraphs in which the court indicates its

ultimate FOFs and COLs as its evidence for exception. §120.57(1)(k) Fla. Stat. (2015).

EXCEPTIONS NUMBERS 6 AND 10
FOF #25-26; COL 50)

Gross Insubordination

51. The Respondent excepts to the Court's findings of fact and subsequent conclusion of law that the "Respondent is guilty of gross insubordination . . . by intentionally refusing to obey a direct order, reasonable in nature, and given by and with the proper authority." (RO. #9/25; 16/50).

52. In addition to the Court's ultimate finding of guilt, Respondent also excepts to the Court's specific reasoning that Weinberg failed to comply with the specific directive "to speak in a calm, respectful and professional tone at all times". (RO. #9/26); (PE. #9/165).

53. Without adhering to the statutory requirement of citing to specific evidence in the record, Respondent recites the convoluted argument that no "competent substantial evidence" for this finding exists as "no evidence was presented . . . of any prior directive being given to the Respondent, as relates to the Respondent's interactions with students, that the Respondent failed to abide by."

54. Respondent discounts the plain language of the directive which covers all of Respondent's professional interactions at Miramar.

55. The specific directive referenced and relied upon by the Court included the all inclusive language which mandated that the Respondent ***"always speak in a calm, respectful and professional tone at all times"***[2] as well as *"always represent Miramar High School in a positive and professional manner"* among other things. (HT. #189/11-18; PE. #9/165).

56. The words "always" and "at all times" on its face encompassed all of the Respondent's verbal communications at Miramar.

57. Besides the literal preamble "always" and the concluding phrase "at all times", the context of the directives make it apparent that there is no exception when addressing students. HT. #189/11-18; PE. #9/165).

58. The directive speaks to Weinberg's professional interactions and uses the phrase "professional tone" in conjunction with "at all times" as well as directing him to act and represent the school in a "professional manner". HT. #189/11-18; PE. #9/165).

[2] Emphasis added.

59. Lastly, besides the plain meaning of the words in the directive, the testimony elicited at trial also provide context that clarify there is no exception to the directive regarding Weinberg's interactions with students.

60. In testifying about circumstances that precipitated this directive being issued, Assistant Principal (hereinafter "AP") Stephanik indicated that Weinberg had another outburst at school with a colleague, during the outburst he was yelling and disparaging students once again.

61. AP Stephanik testified that the students would have been able to "easily overhear" Weinberg disparaging them as well as their teacher, and would have seen him in an agitated state in front of the Debate sponsor from another school. (HT. #185/20-25); (HT. #186/1-16); (HT. #187/20-22).

62. Not only would Weinberg's tirade on February 24, 2014, undoubtedly violate this directive, but his subsequent outburst with another supervisor the next school year after the directive was initially issued, in which he received a written reprimand for conduct "unbecoming of a professional" also violated the written directive he received on February 10, 2012. (RO. #5/5); (PE. #10/163-164); (HT. #204/20-25); (HT. #205/1-4).

CONCLUSION

63. In conclusion, while the Respondent does not address or request a reduction in the penalty imposed by the Court of

termination, it is important to note the statutory language regarding an agency's review of an ALJ's determination of discipline.

64. As with the legal authority governing an agency's review of the Court's finding of facts in a case, the language is again proscriptive.

65. The agency "may not reduce or increase it [penalty] without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action."

66. Since the Respondent did not request a review of the discipline of termination and the Court's FOFs are supported by ample examples of competent substantial evidence in the record, the ALJ's findings and subsequent conclusions of law should be upheld.

67. The School Board proved by a preponderance of the evidence that Weinberg is guilty of misconduct, incompetence, gross insubordination, and in violation of School Board Rule 4008.

68. Just cause exists to terminate the Respondent, Bruce Weinberg.

69. The ALJ's FOFs are supported by competent substantial evidence in the record, and should not be disturbed.

70. Accordingly, the subsequent COL should also be upheld by this School Board along with the Respondent's termination.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by email transmission this 9th day of May, 2016, upon:

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