


THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
OFFICE OF THE GENERAL COUNSEL

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BARBARA J. MYRICK
GENERAL COUNSEL

MEMORANDUM

TO: School Board Members

FROM: Barbara J. Myrick, General Counsel 

DATE: August 8, 2016

SUBJECT: **Additional Information for Agenda Item 1, Broward County School Board v. Bruce Weinberg, for the August 9, 2016 Special School Board Meeting**

Counsels for the parties were asked to provide proposed rulings for each exception with the appropriate citations to the record and/or statements justifying the action as required by the statute to assist the Board in ruling upon the Exceptions. Attached please find:

- (1) Petitioner's Proposed Rulings on Exceptions.
- (2) Respondent's Proposed Rulings on Exceptions.

If you have any questions, please do not hesitate to contact me.

BJM:jcf
Enclosures

C: Robert W. Runcie, Superintendent of Schools
Tria Lawton-Russell, Administrative Counsel
Mark F. McKee, Esq.
Noemi Gutierrez, Supervisor –Official School Board Records

STATE OF FLORIDA
SCHOOL BOARD OF BROWARD COUNTY

ROBERT W. RUNCIE, Superintendent,

Petitioner,

vs.

DOAH CASE NO. 15-004993TTS

BRUCE WEINBERG,

Respondent.

PETITIONER'S PROPOSED RULINGS ON EXCEPTIONS

The Petitioner, ROBERT W. RUNCIE, as Superintendent of Schools, by and through his undersigned attorney, files the following Proposed Rulings on Exceptions to the Recommended Order (hereinafter "RO") issued by Administrative Law Judge (hereinafter "ALJ") Darren A. Schwartz on April 13, 2016, and states as follows:

A. Exceptions to Findings of Fact

1. R's Exception #1 to the ALJ'S Finding of Fact (FOF) #20

I move that The School Board REJECT Respondent's exception #1 to the ALJ's Finding of Fact (hereinafter "FOF") #20 based on Respondent's, Weinberg's, failure to show that the ALJ's finding is unsupported by competent substantial evidence.

2. R's Exception #2 to the ALJ'S FOF #21

I move that The School Board REJECT Respondent's exception #2 to the ALJ's FOF #21 based on Weinberg's, failure to show that the ALJ's finding is unsupported by competent substantial evidence.

3. R's Exception #3 to the ALJ'S FOF #22

I move that The School Board REJECT Respondent's exception #3 relating to the ALJ's FOF #22 based on Weinberg's, failure to show that the ALJ's finding is unsupported by competent substantial evidence.

4. R's Exception #4 to the ALJ'S FOF #23

I move that The School Board REJECT Respondent's exception #4 relating to the ALJ's FOF #23 based on Weinberg's, failure to show and allege that the ALJ's finding is unsupported by competent substantial evidence.

5. R's Exception #5 to the ALJ'S FOF #24

I move that The School Board REJECT Respondent's exception #5 relating to the ALJ's FOF #24 based on Weinberg's, failure to show that the ALJ's finding is unsupported by competent substantial evidence.

6. R's Exception #6 to the ALJ'S FOFs #25 and #26

I move that The School Board REJECT Respondent's exception #6 relating to the ALJ's FOFs #25 and #26 based on Weinberg's failure to show that the ALJ's finding is unsupported by competent substantial evidence.

B. Exceptions to Conclusions of Law

7. Rs Exception #7 to the ALJ'S Conclusion of Law (COL) #47

I move that The School Board REJECT Respondent's exception #7 relating to the ALJ's Conclusion of Law (hereinafter "COL") #47 in the RO.

8. R's Exception #8 to the ALJ'S COL #48

I move that The School Board REJECT Respondent's exception #8 relating to the ALJ's COL #48 in the RO.

9. R's Exception #9 to the ALJ'S COL #49

I move that The School Board REJECT Respondent's exception #9 relating to the ALJ's COL #49 in the RO.

10. R's Exception #10 to the ALJ'S COL #50

I move that The School Board REJECT Respondent's exception #10 relating to the ALJ's COL #50 in the RO.

Respectfully submitted,

BY: /s/ Tria Lawton-Russell

ADMINISTRATIVE COUNSEL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via email
this August 8, 2016, to:

School Board of Broward County, Florida
Barbara J. Myrick, General Counsel
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/s/ Tria Lawton-Russell

TRIA LAWTON-RUSSELL

BEFORE THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

v.

Case No. 15-4993TTS

BRUCE WEINBERG,

Respondent.

RESPONDENT'S PROPOSED RULINGS ON EXCEPTIONS

The Respondent, BRUCE WEINBERG, proposes that the attached motions be made by the School Board at its August 9, 2016 hearing with respect to the exceptions to the Administrative Law Judge's Recommended Order in DOAH Case Number 15-4993TTS.

I HEREBY CERTIFY that on August 5, 2016, I forwarded this document, via email transmission, to Tria Lawton-Russell, Esquire (tria.lawton-russell@browardschools.com), Administrative Counsel, Broward County School District, 600 SE Third Avenue, 14th Floor, Ft. Lauderdale, FL 33301.

/s/ Robert F. McKee
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1. As to Exception No. 1 to Finding of Fact No. 20:

I move that the School Board ACCEPT the Respondent's Exception No. 1 to the ALJ's Finding of Fact No. 20 in the Recommended Order, inasmuch as the finding of fact is not based upon competent substantial evidence.

2. As to Exception No. 2 on Finding of Fact No. 21:

I move that the School Board ACCEPT the Respondent's Exception No. 2 to the ALJ's Finding of Fact No. 21 in the Recommended Order, insofar as there is no competent substantial evidence in the record to support a finding that the Respondent's students were subjected by the Respondent to "conditions harmful to learning" and that they were intentionally exposed to unnecessary embarrassment or disparagement. The Respondent further excepts to the finding that his conduct disrupted his students' learning environment and reduced the Respondent's ability effectively to perform his duties. No substantial evidence in the record supports any of these findings. Indeed, none of the seven students who were called to testify by the Petitioner testified that he/she was embarrassed, disparaged or had his/her learning environment disrupted by the Respondent. Nor did any witness testify that the Respondent's ability to perform his duties effectively was reduced in any way as a result of the Respondent's conduct on February 24, 2014.

3. As to Exception 3 to Finding of Fact No. 22:

I move that the School Board ACCEPT the Respondent's Exception No. 3 to the ALJ's Finding of Fact No. 22 in the Recommended Order, insofar as such finding is not supported by competent substantial evidence.

4. As to Exception No. 4 to Finding of Fact No. 23:

I move that the School Board ACCEPT the Respondent's Exception No. 4 to the ALJ's Finding of Fact No. 23 in the Recommended Order, insofar as the Administrative Law Judge determined that the Respondent failed to relate to his students. Such finding is not supported by any record evidence. Indeed, the students who were called to testify by the Petitioner related that the Respondent was a passionate, effective teacher. (Tr. 32, 54, 86, 102, and 124) Student MH took the Respondent's Drama I class and considered it a "very positive" experience. (Tr. 102) She had a "close" relationship with the Respondent and considered him a role model. (Tr. 106) Another of the Respondent's alleged victims, student SD, was a student in the Respondent's Drama I and English classes and considered both positive experiences. (Tr. 104) The Respondent was, in her view, one of the few teachers at Miramar High School who cared about his students. (Tr. 125-126) Student MJ testified that the Respondent was challenging his students to put on the best play possible and that the Respondent's passion for excellence was the reason she enrolled in the Respondent's Drama II class. (Tr. 71) Student RH testified that she enrolled in the Respondent Drama II class because the Respondent was a good teacher who was passionate about teaching drama. (Tr. 86)

5. As to Exception No. 5 to Finding of Fact No. 25:

I move that the School Board ACCEPT the Respondent's Exception No. 5 to the ALJ's Finding of Fact No. 25 in the Recommended Order, as such finding is not supported by competent substantial evidence.

6. As to Exception No. 6 to Finding of Fact Nos. 25 and 26:

I move that the School Board ACCEPT the Respondent's Exception No. 6 to the ALJ's Finding of Fact Nos. 25 and 26 in the Recommended Order, as such findings are not support by competent substantial evidence. Thus, no evidence was presented by the Petitioner 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.

7. As to Exception No. 7 to Conclusion of Law 47:

I move that the School Board ACCEPT the Respondent's Exception No. 7 to the ALJ's Conclusion of Law No. 47 in the Recommended Order, for the reasons set forth in paragraphs 1 and 2, above.

8. As to Exception No. 8 to Conclusion of Law 48:

I move that the School Board ACCEPT the Respondent's Exception No. 8 to the ALJ's Conclusion of Law No. 48 in the Recommended Order, for the reasons set forth in paragraphs 3 and 4, above.

9. As to Exception No. 9 to Conclusion of Law No. 49

I move that the School Board ACCEPT the Respondent's Exception No. 9 to the ALJ's Conclusion of Law No. 49 in the Recommended Order, for the reasons set forth in paragraph 5, above.

10. As to Exception No. 10 to Conclusion of Law No. 50:

I move that the School Board ACCEPT the Respondent's Exception No. 9 to the ALJ's Conclusion of Law No. 50 in the Recommended Order, for the reasons set forth in paragraph 6, above.