

**BEFORE THE SCHOOL BOARD  
OF BROWARD COUNTY, FLORIDA**

**BROWARD COUNTY SCHOOL  
BOARD,**

**CASE NO. 14-3011TTS**

**Petitioner/Employer,**

**vs.**

**CHRISTOPHER MARSHALL,**

**Respondent/Employee.**

\_\_\_\_\_ /

**RESPONDENT'S RESPONSE TO PETITIONER'S  
EXCEPTIONS TO THE RECOMMENDED ORDER**

The Respondent, CHRISTOPHER MARSHALL, hereby submits the following Response to the Petitioner's Exceptions to the Recommended Order of Administrative Law Judge John G. Van Laningham dated March 24, 2016:

I. Standard of Review

The School Board may adopt the ALJ's Findings of Fact or reject one or more of the findings if it is determined that the finding(s) were not based upon competent substantial evidence. *E.g., Gross v. Dept. of Health*, 819 So. 2d 997, 1000 (Fla. 5<sup>th</sup> DCA 2002); *Packer v. Orange County School Board*, 881 So. 2d 1204, 1206 (Fla. 5<sup>th</sup> DCA 2004); Fla. Stat. §120.57(1)(l). "Substantial evidence" has been defined as "evidence as will establish a substantial basis of fact from which the fact at issue can be inferred" and "relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957), *citing, Becker v. Merrill*, 155 Fla. 379 (1945), *Laney v. Board of Public Instruction*, 153 Fla. 728 (1943). Further, "evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as

adequate to support the conclusion reached. To this extent, the substantial evidence should also be competent.” *Id.* (internal citations omitted).

An agency may reject an ALJ’s conclusions of law and substitute its conclusions as long as the substituted conclusions are as or more reasonable than those of the ALJ. *E.g., Wise v. Dept. of Management Servs.*, 930 So. 2d 867, 871 (Fla. 2d DCA 2006). An agency’s determination is given greater deference when it is regarding a matter “infused with overriding policy considerations.” *E.g., Gross v. Dept. of Health*, 819 So. 2d at 1002.

## II. Relevant Procedural History

At its regular meeting on June 24, 2014, Petitioner Broward County School Board voted to approve the superintendent’s recommendation that Respondent Christopher Marshall (“Marshall”) be immediately suspended without pay pending termination of his employment as a teacher. The ALJ issued his Recommended Order on March 24, 2016, recommending that the Respondent be terminated from his employment based upon incompetence.

## III. Petitioner’s Exceptions

### A. Findings of Fact 16-24 and 27 and Conclusion of Law 41

The Petitioner takes exception to the ALJ’s “rounding” of the Respondent’s IPS score to two decimal places rather than three, based upon the ALJ’s determination that the score was based on false precision. Regardless of the number of decimal points used in the computation, Marshall was very, very close to receiving a score of 2.5, which would have caused him to be considered effective and thus not incompetent. (Tr. 596-597) The final evaluation included scores in Domain 2 based upon one observation, in Domain 3 based upon two walkthroughs (very brief three to five minute informal observations) and an “unknown” observation, and in Domain 4 without any observations or walkthroughs. (Tr. 297-299; Pet. Ex. 3) The individual

who conducts the observation or walkthrough has great discretion in determining which elements to mark and rate. (Tr. 303-311)

Further, the evaluators admitted to not considering the performance of Marshall's students when they developed his IPS score, which is required by Florida Statute 1012.34(3)(a)(1). And, as the ALJ correctly pointed out in his Recommended Order, Marshall's overall IPS rating of 2.492 was "needs improvement," rather than "unsatisfactory," which is required to establish a failure to improve upon performance deficiencies. Fla. Stat. 1012.34(4)(a).

The ALJ's findings of fact were based upon competent substantial evidence. The School Board may not reject or alter findings of the ALJ that are based upon competent substantial evidence and substitute its own findings, even if the alternate findings are supported by the evidence. Based upon those facts, the ALJ's conclusion of law that the Petitioner failed to establish the charge of unsatisfactory performance was not proved is reasonable. Therefore, the Petitioner's exception number one should be rejected and the ALJ's Findings of Fact 16-24 and 27 and Conclusion of Law 41 should be adopted by the School Board.

B. Findings of Fact 28 and 29 and Conclusion of Law 42

The Petitioner takes exception to Findings of Fact 28 and Conclusion of Law 42 regarding the ALJ's determination that the Petitioner did not establish that Marshall is incompetent and/or that he violated Rule 6A-5.056 or Florida Statute 1012.53 regarding the duties of instructional personnel. Florida Statute 1012.53 states, in its entirety:

- (1) The primary duty of instructional personnel is to work diligently and faithfully to help students meet or exceed annual learning goals, to meet state and local achievement requirements, and to master the skills required to graduate from high school prepared for

postsecondary education and work. This duty applies to instructional personnel whether they teach or function in a support role.

(2) Members of the instructional staff of the public schools shall perform duties prescribed by rules of the district school board. The rules shall include, but are not limited to, rules relating to a teacher's duty to help students master challenging standards and meet all state and local requirements for achievement; teaching efficiently and faithfully, using prescribed materials and methods, including technology-based instruction; recordkeeping; and fulfilling the terms of any contract, unless released from the contract by the district school board.

There is no competent substantial evidence in the record that Marshall violated Rule 6A-5.056 or Florida Statute 1012.53. The ALJ's finding that the rule and statute were not violated are based upon competent substantial evidence and therefore cannot be rejected or modified by the School Board. Likewise, the ALJ's conclusion of law is reasonable and should not be rejected or modified by the School Board.

#### IV. Conclusion

WHEREFORE, based upon the foregoing, the Respondent respectfully requests that the School Board REJECT the Petitioner's exceptions.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that this document has been forwarded, via email transmission, to Charles Whitelock, Charles T. Whitelock, P.A., 300 S.E. 13<sup>th</sup> St., Ste. E, Fort Lauderdale, FL 33316 ([charles@ctwpalaw.com](mailto:charles@ctwpalaw.com), [ark@whitelocklegal.com](mailto:ark@whitelocklegal.com)), on this 11<sup>th</sup> day of May, 2016.

/s/ Melissa C. Mihok  
MELISSA C. MIHOK  
MELISSA C. MIHOK, P.A.  
Florida Bar Number 555851  
[melissa@melissacmihokpa.com](mailto:melissa@melissacmihokpa.com)  
Secondary email: [bdjarnagin@gmail.com](mailto:bdjarnagin@gmail.com)  
1718 E. 7<sup>th</sup> Ave., Suite 301  
Tampa, FL 33605  
(813) 248-6400/(813) 248-4020 (Fax)