

**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 EXCEPTIONS TO THE RECOMMENDED ORDER

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

1. The Respondent takes exception to the following paragraphs, or a portion thereof, of the ALJ’s Findings of Fact: 4, and 9-11.
2. The Respondent takes exception to the following paragraphs, or a portion thereof, of the ALJ’s Conclusions of Law: 26, 39, and 42.
3. The Respondent takes exception to the ALJ’s recommended penalty of the termination of the Respondent’s employment.

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. 5th DCA 2002); *Packer v. Orange County School Board*, 881 So. 2d 1204, 1206 (Fla. 5th 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.

The School Board may reject the Recommended Penalty of an ALJ and substitute a more reasonable penalty based upon a complete review of the record and stating the reasons therefore. *E.g.*, *Stokes v. State, Bd. of Professional Engineers*, 952 So. 2d 1224, 1225 (Fla. 1st DCA 2007).

II. 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 reasons for this action were spelled out in an Administrative Complaint that had been issued on June 6, 2014, in which Marshall was accused of willfully refusing to participate in utilizing the strategies outlined in the PDP plan or his own strategies in order to remediate alleged performance deficiencies.

Marshall timely requested a formal administrative hearing to contest Petitioner's action. On June 26, 2014, the matter was referred to the Division of Administrative Hearings ("DOAH") for further proceedings. The final hearing took place on September 9-10, 2015, with each party presenting documentary and testimonial evidence. The final hearing transcript was filed on December 15, 2015. Each party timely filed a Proposed Recommended Order on the deadline. The ALJ issued his Recommended Order on March 24, 2016, recommending that the Respondent be terminated from his employment based upon incompetence.

III. Brief Statement of Facts¹

At all times relevant to this case, Respondent Christopher Marshall was employed as a teacher in the Broward County public schools, a position which he had held for the preceding 19 years. During that period, Marshall taught math and debate to high school students. Marshall had been assigned to teach at MacArthur High School during the previous seven years. Marshall obtained an Associate Degree in Mathematics, a Bachelor's Degree in Mathematics, a Bachelor's Degree in Religious Studies and Bible Research, a Master's Degree in Pastoral Studies and Ministerial Activities, and a Master's Degree in Mathematics. At the time of the hearing, Marshall was working on his doctoral dissertation after completing the core classes for a Doctoral Degree.

Throughout Marshall's employment with the School Board, he received annual performance evaluations. During the 2002-2003 through the 2005-2006 school year, while assigned to Charles W. Flanagan High School, Marshall received annual performance evaluations from his administrators that indicated Marshall was competent in all areas.

¹ Citations to the record in this portion have been omitted for the sake of brevity. The Respondent incorporates the citations included in the Proposed Recommended Order as if fully rewritten herein.

Thereafter, Marshall was placed on a PDP. At the time, Marshall was assigned to teach six classes of lower level students, many of whom struggled to get A's or B's in Marshall's math class. Marshall grieved the issue and was transferred to MacArthur High School where he successfully completed the PDP.

After Marshall transferred to MacArthur High School, he received annual performance evaluations for the 2007-2008 and 2008-2009 school years that indicated he was competent in all areas. The administrator who completed the evaluations, Assistant Principal Julie Viancardi, felt that Marshall was an effective and satisfactory teacher based upon her personal observations of Marshall. Marshall continued to receive annual performance evaluations throughout the 2009-2010 and 2010-2011 school years. The evaluating administrator, Assistant Principal Julio Gonzalez, indicated that Marshall's performance was satisfactory in all categories. He also noted in the comments section that Marshall is very knowledgeable in his area.

The Principal at MacArthur High School, Todd LaPace, agreed with Marshall's evaluations from the 2010-2011 school year through 2012-2013, which each listed Marshall as satisfactory in all areas. Prior to February 2014, Marshall filed a complaint against Principal LaPace with the School Board's equal employment opportunity (EEO) office. Marshall felt LaPace treated him unfairly and discriminated against him.

On or around February 12, 2014, Marshall met with Assistant Principal Arnita Williams and other individuals purportedly to develop another PDP. Marshall was placed on a ninety-day probationary period at that time. Marshall denied that he should be placed on a PDP and stated his belief that the action was retaliatory for his having filed a grievance alleging unlawful discrimination and unfair practices against the administration. Marshall actually took no part in

developing the PDP as he felt it was unwarranted. Although he disagreed with the identified deficiencies, Marshall simply agreed to the stated terms of the PDP so that he would not be considered insubordinate.

Marshall studied the Marzano system after it was put in place by the district because he wanted to be efficient and felt his students were very important to him. Further, after being placed on a PDP, Marshall reviewed at least twenty-five training videos regarding the Marzano system. Marshall also read Art and Science of Teaching, a book authored by Marzano, and viewed a webinar on learning goals and scales from design questions. During the PDP process, administrators came to Marshall's classroom to conduct a formal observation or an informal walkthrough approximately once every three weeks.² One of the issues identified in the PDP was the number of Marshall's students who received a D or an F grade. The percentage of students who received D's and F's in Marshall's classes improved during the course of the PDP. Further, there were five or six other teachers in the Mathematics Department alone at MacArthur High School who had a high failure rate with their students.

Marshall was also informally observed by peer reviewers Jessica Beckford and Justin Jackson. After her observations, Beckford would sit with Marshall and provide suggestions, which Marshall considered. Jackson, on the other hand, merely forwarded emails to Marshall with suggestions after his observations, which Marshall also considered. Marshall exhibited improvement during the coaching sessions with Beckford, and he implemented many of the suggestions she gave to him. A large amount of the feedback included in the emails from

² The majority of the observations and walkthroughs were conducted by Assistant Principal Arnita Williams rather than Assistant Principal Mark Howard, who conducted such activities with all of the other math teachers at MacArthur.

Jackson were positive in nature.

Marshall completed all of the strategies for improvement identified by the district, with the exception of completing a video due to the lack of technology to be able to create it. In Marshall's opinion, he successfully completed the PDP. In his final evaluation administered as a part of the PDP, Marshall received a score of 2.492 based upon the Marzano model. If he would have scored .008 points higher (a 2.5), he would have been considered effective and thus not deemed incompetent. 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. The individual who conducts the observation or walkthrough has great discretion in determining which elements to mark and rate.

Principal LaPace notified Marshall of his intent to recommend the termination of his employment via letter dated June 3, 2014. LaPace observed Marshall's performance only three times throughout the ninety-day probationary period, and only completed *one* observation form during that time. LaPace based the recommendation to terminate Marshall on information that he received from Williams rather than his own personal observations; however, LaPace never discussed the recommendation with Williams prior to the day he provided notice to Marshall that he would make the recommendation.

IV. Exceptions

A. Findings of Fact

i. Finding of Fact 4

Marshall takes exception to the ALJ's Finding of Fact No. 4, to the extent which it states "One of Marshall's defining characteristics has been the remarkably high percentage of Fs and

Ds that his students consistently have earned, year in and year out.” The testimony and evidence at the hearing does not support this finding. Rather, the evidence demonstrates that during the last year of the Respondent’s employment with the district, the number of students who received Ds and Fs in his math classes had substantially declined. (Tr. 343, 357, 533-540)

Based upon the foregoing, there is no competent substantial evidence to support the ALJ’s Finding of Fact 4, and we ask that the School Board reject the finding and replace it with a finding that the number of students who received Ds and Fs in Marshall’s class during the 2013/2014 school year substantially declined.

ii. Finding of Fact 9

Marshall takes exception to the ALJ’s Finding of Fact No. 9, to the extent which it states “Marshall, however, has ignored these importunings and directives [to reduce the number of students receiving Fs and Ds in his classes], and nothing has changed.” This determination is not based upon competent substantial evidence and must be rejected. As stated above, the evidence demonstrates that during the last year of the Respondent’s employment with the district, the number of students who received Ds and Fs in his math classes had substantially declined. (Tr. 343, 357, 533-540)

Based upon the foregoing, there is no competent substantial evidence to support the ALJ’s Finding of Fact 9, and we ask that the School Board reject the finding and replace it with a finding that the number of students who received Ds and Fs in Marshall’s class during the 2013/2014 school year substantially declined.

iii. Finding of Fact 10

Marshall takes exception to the ALJ’s Finding of Fact No. 10, to the extent which it states “Rather, Marshall engages in passive-aggressive behavior.” The ALJ’s finding should be

rejected because it is not based upon competent, substantial evidence. No evidence was presented that Marshall's behavior was considered "passive-aggressive."

iv. Finding of Fact 11

Marshall takes exception to the ALJ's Finding of Fact No. 11, to the extent which it states "The greater weight of the evidence persuades the undersigned to find that the bad grades Marshall's students consistently have received are a symptom of Marshall's inability to teach. Although he knows the subject, Marshall lacks the skills necessary to impart his knowledge to his students, who consequently do not learn math in his classes... He is simply not suited to the job of teaching high school math." As stated above, the evidence demonstrates that during the last year of the Respondent's employment with the district, the number of students who received Ds and Fs in his math classes had substantially declined. (Tr. 343, 357, 533-540) Further, no evidence was presented to demonstrate the students' knowledge of math, such as standardized test scores. Marshall's previous performance evaluations and experience demonstrate that he was qualified and competent to teach high school math.

B. Conclusions of Law

i. Conclusion of Law 26

Marshall takes exception to the ALJ's Conclusion of Law No. 26, which states, "The greater weight of the evidence establishes that Marshall is guilty of incompetency, which is just cause for dismissal from employment."

Marshall reiterates the arguments above, regarding Findings of Fact 4 and 9-11 in support of rejecting Conclusion of Law 26. The ALJ appears to base the conclusion of law primarily, if not solely, on the grades of Marshall's students. As stated above, the grades were improving. Further, the ALJ did not appear to consider other relevant indicators of Marshall's teaching

ability, including but not limited to the students' standardized test scores or Marshall's previous performance evaluations.

Based upon the foregoing, the ALJ's Conclusion of Law 26 should be rejected and replaced with a finding that Marshall is competent in his role as a teacher.

ii. Conclusion of Law 39

Marshall takes exception to the ALJ's Conclusion of Law No. 39, which states "Although Marshall's diligence, per se, has not been questioned, the greater weight of the evidence establishes that he is unable to help students meet learning goals due to inefficiency in the form of his chronic failures to communicate appropriately with and relate to students, colleagues, and administrators. Thus, the undersigned has determined that Marshall is guilty of incompetency, as charged."

Marshall reiterates the arguments above, regarding Finding of Fact Nos. 4 and 9-11 and Conclusion of Law 26 in support of rejecting Conclusion of Law No. 39. It is more reasonable to find that Marshall was able to help his students meet their learning goals and thus the conclusion should be rejected.

iii. Conclusion of Law 42

Marshall takes exception to the ALJ's Conclusion of Law No. 42, which states, in relevant part: "There is no independent basis, besides incompetency, for terminating Marshall's employment contract." Marshall reiterates the arguments above, regarding Finding of Fact Nos. 4 and 9-11 and Conclusion of Law Nos. 26 and 39 in support of rejecting Conclusion of Law No. 42. It is more reasonable to find that Marshall was competent in his role as a teacher and thus the conclusion should be rejected.

