

STATE OF FLORIDA  
SCHOOL BOARD OF BROWARD COUNTY

BROWARD COUNTY SCHOOL BOARD

DOAH CASE NO: 14-3011TTS

Petitioner,

v.

CHRISTOPHER MARSHALL,

Respondent.

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

The Petitioner, ROBERT W. RUNCIE, as Superintendent of Schools, by and through his undersigned attorney, Charles T. Whitelock, P.A. files the following response to the Respondent's Exceptions as follows:

**FINDING OF FACT 4**

Respondent's exception to this Finding of Fact should be denied. The finding is only partially recited by the Respondent, who selects the first sentence noting his students' consistent high failure rate "year in and year out." Respondent claims that testimony and evidence at hearing does not support the finding and addresses and uses the testimony of DeRose, who among several other witnesses described Respondent's "chronic pattern of failing grades" over the years. Respondent erroneously cites the 2012-2013 school year as his last year. The change in his chronic pattern of D's and F's during this school year occurred when the Respondent allowed his students to change their grades. He was disciplined for his breach of the system. Respondent's last year was the 2013-2014 school year. During this period, forty-one (41%) percent of Respondent's Liberal Arts Math II class earned a failing grade compared to lower rate of the

District; while his Math College Readiness students had a forty-three (43%) percent failure rate compared to the district rate of eighteen (18%) percent (Px. #12-6; Px. #17, 21, & 23; T. #343; T. #357/1-22). The Respondent's chronic pattern of failing grades over the nine year period was supported by competent substantial evidence (Px. #12-6; Px. #17, 21 & 23).

#### **FINDING OF FACT 9**

This exception, which again selects only one sentence in the finding, recites his refusal to adopt new and different techniques and strategies. Respondent's exception does not recite any testimony or evidence to refute the finding. Furthermore, every administrator, coach and colleague testified to his refusal to adapt or try new methods.

#### **FINDING OF FACT 10**

This exception leaves one scratching their head. Respondent excepts to the Judge's characterization of Respondent's behavior as "passive-aggressive," but not to the remainder of the finding, which factually describes his "passive-aggressive" behavior. The record demonstrated the number of disciplinary actions for his refusal to re-teach or otherwise remediate his students' failing grades. He received a three (3) day and seven (7) day suspension, which was upheld after a formal hearing (See: DOAH Case #12-2083).

#### **FINDING OF FACT 11**

Once again, Respondent erroneously cites the "evidence" to support his exception. There is an abundance of evidence of Respondent's incompetency as an educator commencing with the 2001-2002 school year (Px. #17; T. #16-20), which resulted in an unsatisfactory evaluation. His performance and high failure rate continued unabated through the 2013-2014 school year. Respondent cites his testimony where he forgot to give his attorney documents to support his

contention that grades got better in 2013-2014. But then he admits the high failure rates in his classes (T. #538-539). The test is whether there is competent substantial evidence to support the finding. The record is replete with evidence to support the Judge's finding.

**CONCLUSION OF LAW 26**

This is an ultimate fact, which relies upon the greater weight of the evidence, and is not a conclusion of law. The Respondent relies upon his argument in the exceptions to FOF 4, 9-11. Once again, Petitioner would point out that the record is replete with evidence in the form of testimony and exhibits to support the Judge's findings of fact and the greater weight of the evidence.

**CONCLUSION OF LAW 39**

Respondent's chronic failures have been clearly demonstrated. The exception should be rejected.

**CONCLUSION OF LAW 42**

Respondent excepts to this conclusion, but failed to except to the same statement cited in paragraphs 28 and 29. The exception should be denied.

**RECOMMENDED PENALTY**

This teacher has received numerous disciplinary actions for his high failure rates and refusal to re-teach or remediate his student's failure. He was found guilty of gross insubordination by another Judge, who upheld the three (3) and seven (7) day suspensions (See: School Board of Broward County v. Marshall, DOAH Case No: 12-2083). On October 23, 2013, this School Board upheld the Judge's Recommended Order issued on August 28, 2013 finding Respondent guilty of gross insubordination and upholding the two suspensions. Just two

(2) weeks earlier, Respondent continued his insubordinate actions. First, he was given a written reprimand for **intentional failure to attend parent conferences** (T. #435). The following day, Respondent showed up for work an hour late and **provided no explanation for his tardiness**. Later that morning, **Respondent refused to attend a previously-scheduled parent conference** (Px. #19/T. #429-438). As one administrator remarked: “My litmus test is always would I want my child in that particular classroom” (T. #472/3-25). She described the Respondent as ‘incompetent, inefficient and insubordinate’ (T. #473/3-4; T. #476/1-6), a sentiment shared by many. This exception should be denied.

Respectfully Submitted,

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/s/Charles T. Whitelock

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Florida Bar No.: 166020

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via e-mail to: Melissa C. Mihok, Esq., Melissa C. Mihok, P.A., 1718 E. 7<sup>th</sup> Avenue, #301, Tampa, FL 33605, e-mail: [melissa@melissacmihokpa.com](mailto:melissa@melissacmihokpa.com) and [bdjarnagin@gmail.com](mailto:bdjarnagin@gmail.com), Robert W. Runcie, Superintendent of the School Board of Broward County, 600 S.E. 3<sup>rd</sup> Ave., Ft. Lauderdale, FL 33301, e-mail [supt\\_Runcie@browardschools.com](mailto:supt_Runcie@browardschools.com), Barbara Myrick, General Counsel, School Board of Broward County, 600 S.E. 3<sup>rd</sup> Ave., Ft. Lauderdale, FL 33301, e-mail: [barbara.myrick@browardschools.com](mailto:barbara.myrick@browardschools.com), Doug Griffin, Assistant General Counsel, School Board Of Broward County, 600 S.E. 3<sup>rd</sup> Ave., Ft. Lauderdale, FL 33301, e-mail [doug.griffin@browardschools.com](mailto:doug.griffin@browardschools.com) and Joanne C. Fritz, School Board of Broward County, 600 S.E. 3<sup>rd</sup> Ave., Ft. Lauderdale, FL 33301, e-mail: [joanne.fritz@browardschools.com](mailto:joanne.fritz@browardschools.com), this 11th day of May, 2016.

/s/Charles T. Whitelock \_\_\_\_\_  
CHARLES T. WHITELOCK