


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: October 18, 2019

SUBJECT: **Additional Information for Agenda Item 1, Broward County School Board v. Craig Dudley for the October 22, 2019 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; and
- (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
Douglas G. Griffin, Esq.
Robert F. McKee, Esq.
Noemi Gutierrez, Supervisor – Official School Board Records

BEFORE THE SCHOOL BOARD OF BROWARD COUNTY

ROBERT W. RUNCIE, Superintendent,

Petitioner,

vs.

DOAH CASE NO.: 18-6215TTS

CRAIG DUDLEY,

Respondent.

_____ /

PETITIONER’S PROPOSED RULINGS ON EXCEPTIONS

COMES NOW, PETITIONER, BROWARD COUNTY SCHOOL BOARD, FLORIDA’s, (“SCHOOL DISTRICT”) Superintendent, Robert W. Runcie, by and through his undersigned attorney, files this, his PROPOSED RULINGS ON EXCEPTIONS, as follows:

1. **Petitioner’s Exception No. 1 (R/O¹ ¶ 39).** Petitioner recommends that the School Board adopts **both** of the following motions:

A. I move that The School Board ACCEPT Petitioner’s exception #1 to the ALJ’s Finding of Fact ¶ 39 in the Recommended Order and reject the finding based upon a review of the entire record as it is not based upon competent substantial evidence because it is mislabeled and should be relabeled as a conclusion of law.

B. I move that The School Board ACCEPT Petitioner’s exception #1 to the ALJ’s ¶ 39 in the Recommended Order and modify the conclusion of law to read as follows: **“Whether the charged offenses constitute**

¹ R/O = Recommended Order.

violations of the applicable rules and policies is ordinarily a question of ultimate fact to be determined by the trier of fact in the context of each alleged violation; except where some element of the offense may be determined as a matter of law because the misconduct “speaks for itself,” or where the ultimate facts are increasingly matters of opinion infused by policy considerations for which the agency has special responsibility.”

The conclusion should be modified because it is incomplete and ignores established judicial precedent. The Board finds that its substituted conclusion of law or interpretation of the administrative rule is as or more reasonable than that which is being rejected.

2. **Petitioner’s Exception No. 2 (R/O ¶ 50).** Petitioner recommends that the School Board adopts **both** of the following motions:

A. I move that The School Board ACCEPT Petitioner’s exception #2 to the ALJ’s Finding of Fact ¶ 50 in the Recommended Order and reject the finding based upon a review of the entire record as it is not based upon competent substantial evidence because it is a mislabeled penalty recommendation, and move based upon a complete review of the record that the penalty be increased to termination based on a disagreement with the ALJ's assessment of the seriousness of the offenses for the following reasons:

1. **Severity of the misconduct.** On the morning of May 18, 2018, Respondent reported to work under the influence of cocaine and alcohol. (R.O. 6; PE. 9; HT. 163). Moreover, he had much more than a modest amount of alcohol in his system. The breath alcohol testing indicated that Respondent had blood alcohol levels of .101 and .095, both of which exceed the blood alcohol level of .04 that Petitioner has adopted as the threshold for being under the influence of alcohol. . . . (R.O. 15; HT. 129/25-130/15). In addition, results of Respondent's drug test indicated that Respondent tested positive for cocaine. (R.O. 18; H.T. 136/19-21; 137/2-14).

The danger posed by a teacher under the influence of drugs and alcohol is significant and it is readily apparent. An obvious and basic step necessary to ensure student safety is ensuring that the guardian in closest daily contact with students is able to respond, and to do so promptly and without any cognitive or physical impairment. Teachers

need to be able to identify and respond to emergencies (e.g. medical emergencies, threats of violence, fires, and other natural and man-made disasters) quickly, decisively, and with sound judgment. As a teacher who is responsible for the wellbeing and safety of a classroom of students, when Respondent was under the influence of alcohol and drugs on the job, he created a grave threat to the safety of students in the event of a serious situation requiring a swift and effective adult response. Friedenberg v. School Board of Palm Beach County, 911 F. 3d 1084, 1098-1100 (11th Cir.).

2. Willful Neglect of Duty. As a consequence of being under the influence of cocaine and alcohol, Respondent did not fully cover his early morning cafeteria duty, did not fully attend his assigned homeroom (PE. 10; HT. 15/19-22; 16/3-5, 163), and did not attend his first period class (P. 12; PE. 10; HT. 24; HT. 163/15-25). A fellow physical education teacher, Cindi Ancona, was forced to cover Respondent's first period class. During the portions of the periods in which Respondent was not present in his classroom and in which Ancona was not covering his class, his students were left unsupervised. (R.O. 7; HT. 24/19-24).

As stated above, RESPONDENT created a grave risk to his students. He also willfully neglected his safety and teaching responsibilities, thereby depriving his students of educational opportunities. These acts, when viewed individually or together are most egregious, and warrant termination of employment.

B. I move in the alternative that, in the event that a court later determines that this paragraph is not an inseparable part of the ALJ's penalty recommendation, the paragraph shall be deemed a conclusion of law, and that the School Board modify such conclusion of law to read as follows: **“Even considering the progressive discipline policy set forth in Policy 4.9, and the mitigating factors identified in the recommended order, due to the severity of the misconduct, the appropriate penalty that should be imposed on Respondent in this case is termination.”**

The conclusion should be modified for the reasons set forth in Section 2(A) of these Proposed Rulings on Exceptions. The Board finds that its substituted conclusion of law or interpretation of the administrative rule is as or more reasonable than that which is being rejected.

3. **Petitioner’s Exception No. 3 (R/O ¶ 51).** Petitioner recommends that the

School Board adopts **both** of the following motions:

A. I move that The School Board ACCEPT Petitioner’s exception #3 to the ALJ’s Finding of Fact ¶ 51 in the Recommended Order and reject the finding based upon a review of the entire record as it is not based upon competent substantial evidence because it is a mislabeled penalty recommendation, and move based upon a complete review of the record that the penalty be increased to termination based on a disagreement with the ALJ's assessment of the seriousness of the offenses for the reasons set forth in Section 2(A) of these Proposed Rulings on Exceptions.

B. I move in the alternative that, in the event that a court later determines that this paragraph is not an inseparable part of the ALJ’s penalty recommendation, the paragraph shall be deemed a conclusion of law, and that the School Board modify such conclusion of law to read as follows: **“Even considering the progressive discipline policy set forth in Policy 4.9, and the mitigating factors identified in the recommended order, due to the severity of the misconduct, the appropriate penalty that should be imposed on Respondent in this case is termination.”**

The conclusion should be modified for the reasons set forth in Section 2(A) of these Proposed Rulings on Exceptions. The Board finds that its substituted conclusion of law or interpretation of the administrative rule is as or more reasonable than that which is being rejected.

4. **Petitioner’s Exception No. 4 (R/O ¶ 52).** Petitioner recommends that the

School Board adopts **both** of the following motions:

A. I move that The School Board ACCEPT Petitioner’s exception #4 to the ALJ’s Finding of Fact ¶ 52 in the Recommended Order and reject the finding based upon a review of the entire record as it is not based upon competent substantial evidence because it is a mislabeled penalty recommendation, and move based upon a complete review of the record that the penalty be increased to termination based on a disagreement with the ALJ's assessment of the seriousness of the offenses for the reasons set forth in Section 2(A) of these Proposed Rulings on Exceptions.

B. I move in the alternative that, in the event that a court later determines that this paragraph is not an inseparable part of the ALJ's penalty recommendation, the paragraph shall be deemed a conclusion of law, and that the School Board modify such conclusion of law to read as follows: **“Even considering the progressive discipline policy set forth in Policy 4.9, and the mitigating factors identified in the recommended order, due to the severity of the misconduct, the appropriate penalty that should be imposed on Respondent in this case is termination.”**

The conclusion should be modified for the reasons set forth in Section 2(A) of these Proposed Rulings on Exceptions. The Board finds that its substituted conclusion of law or interpretation of the administrative rule is as or more reasonable than that which is being rejected.

5. **Petitioner's Exception No. 5 (R/O ¶ 53).** Petitioner recommends that the School Board adopts **both** of the following motions:

A. I move that The School Board ACCEPT Petitioner's exception #5 to the ALJ's Finding of Fact ¶ 53 in the Recommended Order and reject the finding based upon a review of the entire record as it is not based upon competent substantial evidence and because it is a mislabeled penalty recommendation; and move based upon a complete review of the record that the penalty be increased to termination based on a disagreement with the ALJ's assessment of the seriousness of the offenses for the reasons set forth in Section 2(A) of these Proposed Rulings on Exceptions.

B. I move in the alternative that, in the event that a court later determines that this paragraph is not an inseparable part of the ALJ's penalty recommendation, the paragraph shall be deemed a conclusion of law, and that the School Board modify such conclusion of law to read as follows: **“Even considering the progressive discipline policy set forth in Policy 4.9, and the mitigating factors identified in the recommended order, due to the severity of the misconduct, the appropriate penalty that should be imposed on Respondent in this case is termination.”**

The conclusion should be modified for the reasons set forth in Section 2(A) of these Proposed Rulings on Exceptions. The Board finds that its

substituted conclusion of law or interpretation of the administrative rule is as or more reasonable than that which is being rejected.

6. **Petitioner's Exception No. 6 (R/O ¶ 76).** Petitioner recommends that the School Board adopts **both** of the following motions:

A. I move that The School Board ACCEPT Petitioner's exception #6 to the ALJ's Conclusion of Law ¶ 76 in the Recommended Order and reject the conclusion of law based upon a review of the entire record because it is a mislabeled penalty recommendation; and move based upon a complete review of the record that the penalty be increased to termination based on a disagreement with the ALJ's assessment of the seriousness of the offenses for the reasons set forth in Section 2(A) of these Proposed Rulings on Exceptions.

B. I move in the alternative that, in the event that a court later determines that this paragraph is not an inseparable part of the ALJ's penalty recommendation, the School Board modify such conclusion of law to read as follows: **"Even considering the progressive discipline policy set forth in Policy 4.9, and the mitigating factors identified in the recommended order, due to the severity of the misconduct, the appropriate penalty that should be imposed on Respondent in this case is termination."**

The conclusion should be modified for the reasons set forth in Section 2(A) of these Proposed Rulings on Exceptions. The Board finds that its substituted conclusion of law or interpretation of the administrative rule is as or more reasonable than that which is being rejected.

7. **Petitioner's Exception No. 7 (R/O ¶ 77).** Petitioner recommends that the School Board adopts **both** of the following motions:

A. I move that The School Board ACCEPT Petitioner's exception #7 to the ALJ's Conclusion of Law ¶ 77 in the Recommended Order and reject the conclusion of law based upon a review of the entire record because it is a mislabeled penalty recommendation; and move based upon a complete review of the record that the penalty be increased to termination based on a disagreement with the ALJ's assessment of the seriousness of the offenses for the reasons set forth in Section 2(A) of these Proposed Rulings on Exceptions.

B. I move in the alternative that, in the event that a court later determines that this paragraph is not an inseparable part of the ALJ's penalty recommendation, the School Board modify such conclusion of law to read as follows: **“Even considering the progressive discipline policy set forth in Policy 4.9, and the mitigating factors identified in the recommended order, due to the severity of the misconduct, the appropriate penalty that should be imposed on Respondent in this case is termination.”**

The conclusion should be modified for the reasons set forth in Section 2(A) of these Proposed Rulings on Exceptions. The Board finds that its substituted conclusion of law or interpretation of the administrative rule is as or more reasonable than that which is being rejected.

8. **Petitioner's Exception No. 8 (R/O ¶ 78).** Petitioner recommends that the School Board adopts **both** of the following motions:

A. I move that The School Board ACCEPT Petitioner's exception #8 to the ALJ's Conclusion of Law ¶ 78 in the Recommended Order and reject the conclusion of law based upon a review of the entire record because it is a mislabeled penalty recommendation; and move based upon a complete review of the record that the penalty be increased to termination based on a disagreement with the ALJ's assessment of the seriousness of the offenses for the reasons set forth in Section 2(A) of these Proposed Rulings on Exceptions.

B. I move in the alternative that, in the event that a court later determines that this paragraph is not an inseparable part of the ALJ's penalty recommendation, the School Board modify such conclusion of law to read as follows: **“Even considering the progressive discipline policy set forth in Policy 4.9, and the mitigating factors identified in the recommended order, due to the severity of the misconduct, the appropriate penalty that should be imposed on Respondent in this case is termination.”**

The conclusion should be modified for the reasons set forth in Section 2(A) of these Proposed Rulings on Exceptions. The Board finds that its substituted conclusion of law or interpretation of the administrative rule is as or more reasonable than that which is being rejected.

9. **Petitioner's Exception No. 9 (R/O Recommendation).** Petitioner recommends that the School Board adopts the following motion:

I move that The School Board ACCEPT Petitioner's exception #9 to the ALJ's Recommendation in the Recommended Order and move based upon a complete review of the record that the penalty be increased to termination based on a disagreement with the ALJ's assessment of the seriousness of the offenses for the reasons set forth in Section 2(A) of these Proposed Rulings on Exceptions.

Conclusion

Wherefore, the Superintendent respectfully requests that the SCHOOL BOARD reject and modify the findings of fact and conclusions of law as stated in Exceptions 1-8; and increase the penalty to termination of employment for the reasons set forth in Exception No. 9.

Respectfully submitted,

By: /s/ Douglas G. Griffin

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served
via email this October 15, 2019, to the persons named below:

School Board of Broward County, Florida
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/s/ Douglas G. Griffin
DOUGLAS G. GRIFFIN

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

v.

Case No. 18-6215TTS

CRAIG DUDLEY,

Respondent.

RESPONDENT'S PROPOSED RULINGS ON EXCEPTIONS

1. I move that the School Board reject Petitioner's Exception 1 to the ALJ Finding of Fact 39 in the Recommended Order.
2. I move that the School Board reject the Petitioner's Exception 2 to the ALJ's Finding of Fact 50 in the Recommended Order.
3. I move that the School Board reject the Petitioner's Exception 3 to the ALJ's Finding of Fact 51 in the Recommended Order.
4. I move that the School Board reject the Petitioner's Exception 4 to the ALJ's Finding of Fact 52 in the Recommended Order.
5. I move that the School Board reject the Petitioner's Exception 5 to the ALJ's Finding of Fact 53 in the Recommended Order.
6. I move that the School Board reject the Petitioner's Exception 6 to the ALJ's Conclusion of Law 76 in the Recommended Order.
7. I move that the School Board reject the Petitioner's Exception 7 to the ALJ's Conclusion of Law 77 in the Recommended Order.

8. I move that the School Board reject the Petitioner's Exception 8 to the ALJ's Conclusion of Law 78 in the Recommended Order.
9. I move that the School Board reject the Petitioner's Exception 9 to the ALJ's Recommended Penalty suspending the Respondent from his teaching position without pay commencing on the day he was reassigned from the classroom; reinstating the Respondent to his teaching position; and requiring the Respondent to submit to random drug and alcohol testing at the Respondent's personal expense as a condition of the Respondent's continued employment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 15, 2019, I forwarded this document to the School Board, via email transmission, and to Douglas Griffin (doug.griffin@browardschools.com), Assistant General Counsel, 600 S.E. 3rd Avenue, Fort Lauderdale, FL 33301.

/s/ Robert F. McKee

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