

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

v.

Case No. 18-5791TTS

LATUNYA GIBBS,

Respondent.

RESPONDENT'S EXCEPTIONS TO RECOMMENDED ORDER

Respondent, LATUNYA GIBBS, takes exception as follows to the Recommended Order entered by Administrative Law Judge Mary Li Creasy (ALJ) on March 6, 2020:

1. The Respondent takes exception to Finding of Fact 13 inasmuch as the ALJ found that on May 12, 2017, the Respondent advised her principal, Marlen Valez, that the Respondent had completed the BAS assessments for two of the Respondent's 18 students. The Record reflects that the Respondent advised Ms. Valez that the Respondent had entered the BAS assessments for two of her 18 students into the computerized tracking system, BASIS, on that date and not that she had completed the assessments on that date. (Tr. III, pp. 22-23).¹
2. The Respondent takes exception to Finding of Fact 17 to the extent that the ALJ found that the Respondent completed BAS assessments for 16 of her students on May 15, 2017. Such finding is not supported by competent record evidence. The Respondent's undisputed testimony reveals that she completed the assessments for the 16 students in

¹ References to the transcript of the evidentiary hearing before Judge Creasy are designated "Tr.____," followed by the volume and page number(s) at which the referenced testimony appears.

question prior to May 15, 2017, but did not enter the assessment scores into the BASIS system until May 15, 2017. (*Id.*)

3. The Respondent takes exception to Finding of Fact 39. The ALJ, in making this finding, relies upon statements allegedly made by unidentified students who did not testify at the hearing. Such hearsay evidence does not constitute competent evidence sufficient to support a finding of fact. *See Fla. Stat. § 120.57(1)(c).*
4. Respondent takes exception to Finding of Fact 40 to the extent that such finding is based upon the alleged statement by AIR help desk employee Anthony Nenbhard to establish that the Respondent logged into the test administrators tutorial (hereinafter “TA”) on February 6, 2017. Such hearsay evidence does not constitute competent evidence sufficient to support a finding of fact. *See Fla. Stat. § 120.57(1)(c).*
5. The Respondent takes exception to Finding of Fact 41. The ALJ found that it was likely that the Respondent merely scrolled through the test administrator tutorial, without actually reviewing the tutorial, in order to get to the “Congratulations!” page of the tutorial in order for the Respondent to screenshot and print that page as proof that the Respondent completed the tutorial. This finding is not supported by competent record evidence and, in fact, is wholly inconsistent with the ALJ’s suggestion, in Finding of Fact 37, that the Respondent somehow feigned her participation and completion of the TA tutorial in March 2017. If the Respondent had, in fact, logged into the test administrator tutorial only once, i.e., on February 6, 2017, her perusal of the tutorial in March 2017 should have been documented by AIR.
6. The Respondent takes exception to Finding of Fact 43 to the extent that the ALJ found that the Respondent “offered no explanation for failing to provide instruction to her

students on how to utilize computers so they would be ready to take the FSA.” The Respondent testified that she did not receive computers for her students until a few days before the FSA test was to be administered. (Tr. III, p. 50)

7. The Respondent takes exception to Finding of Fact 52. There is no evidence in the record that a summary memo constitutes a disciplinary action, as was found by the ALJ.
8. The Respondent takes exception to Finding of Fact 53. There is no competent evidence in the record to establish that placing a teacher such as the Respondent on administrative reassignment constitutes prior discipline.
9. The Respondent takes exception to Finding of Fact 54. While the ALJ characterizes the questioned conduct that occurred during the 2014-2015, 2015-2016 school years as “allegations,” she nevertheless considers such allegations “prior misconduct.” There is no competent evidence in the record to establish that allegations of past misconduct constitute discipline.
10. The Respondent takes exception to Finding of Fact 55. The letter of reprimand referred to was not issued by the School Board of Broward County, and was based upon a settlement agreement entered into by the Respondent and the Department of Education in which the Respondent disputes that she engaged in any of the conduct that formed the basis of the letter of reprimand.
11. The Respondent takes exception to Conclusion of Law 66. Paragraph 66 of the Recommended Order is, in fact, a mixed Finding of Fact and Conclusion of Law. To the extent that the ALJ found that the Respondent failed correctly to complete BAS assessments for her students, such finding is not based on competent record evidence.

12. The Respondent takes exception to Conclusion of Law 68. Paragraph 68 of the Recommended Order is, in fact, a mixed finding of fact and conclusion of law. To the extent that the ALJ finds that the Respondent submitted “fraudulent grading” of her students’ BAS assessments, such finding is not supported by competent record evidence.
13. The Respondent takes exception to Conclusion of Law 69. Although the paragraph purports to contain a conclusion of law, it is, in fact, replete with findings of fact. The ALJ’s finding that the BAS assessments/scores that were logged into BASIS by the Respondent “were false” is not supported by competent record evidence.
14. The Respondent takes exception to Conclusion of Law 70. The ALJ’s finding that the Respondent’s grading of one of her student’s BAS assessments did not square with that student’s FSA score, nor with a reassessment of that student’s score by a school board administrator, somehow constitutes proof that all of the Respondent’s assessments were incorrect is not supported by competent evidence in the record.
15. The Respondent takes exception to Conclusion of Law 72, which contains a finding that the Respondent’s portfolio scores were “false.” Such finding is not supported by competent record evidence.
16. The Respondent takes exception to Conclusion of Law 74. The ALJ’s finding, subsumed within Conclusion of Law 74, that the Respondent “failed to complete the TA certification course” is not supported by competent record evidence.
17. The Respondent takes exception to Conclusion of Law 75 to the extent that it includes a finding that the Respondent submitted a “false completion certificate” for the TA certification course, as such finding is not supported by competent record evidence.

18. The Respondent takes exception to Conclusion of Law 78 to the extent it includes findings of fact that the Respondent failed to complete BAS assessments; that the Respondent failed to maintain portfolios; and that the Respondent failed to complete the TA certification course as such findings are not supported by competent record evidence.
19. The Respondent takes exception to Conclusion of Law 79 to the extent that it contains a finding that the Respondent failed to maintain portfolios as such finding is not supported by competent record evidence.
20. The Respondent takes exception to Conclusion of Law 83 inasmuch as the Respondent's alleged failure to comply with the BAS reporting deadline and/or to produce BAS folders, even if true, does not constitute gross insubordination as that term is defined in the statute.
21. The Respondent takes exception to Conclusion of Law 84 inasmuch as the Respondent's failure to submit multiple choice assessment data constitutes gross insubordination as that term is defined in the statute.
22. The Respondent takes exception to Conclusion of Law 85 inasmuch as the Respondent's alleged failure to attend BAS training, even if supported by competent record evidence, does not amount to gross insubordination as that term is defined in the statute.
23. The Respondent takes exception to Conclusion of Law 88 to the extent that such conclusion contains findings of fact that the Respondent either intentionally or recklessly failed to adhere to (1) timelines to complete school BAS assessments, (2) the deadlines for BAS assessments, (3) the deadline for portfolio submissions, (4) that she failed to complete the TA certificate course, and (5) that she failed to attend BAS related training were not supported by competent record evidence.

24. The Respondent takes exception to Conclusion of Law 90 to the extent that it includes findings that the Respondent failed to complete BAS assessments; that the Respondent submitted false BAS assessments; that the Respondent failed to document her students' completion of portfolio work; that the Respondent submitted false student portfolio scores; that the Respondent failed to allow her students to practice for the FSA on their assigned computers, that the Respondent failed successfully to complete the TA certificate course; that the Respondent submitted a false TA certificate; and that the Respondent did not maintain accurate student records, as such findings are not supported by competent record evidence.
25. The Respondent takes exception to Conclusion of Law 93 to the extent that such conclusion of law contains findings that the Respondent failed to assess her students' reading levels; that the Respondent falsified BAS scores; and that the Respondent falsified portfolio scores and the results of multiple choice tests, as such findings are not supported by competent record evidence.
26. The Respondent takes exception to Conclusion of Law 97 inasmuch as the ALJ incorrectly considered the issuance to the Respondent of summary memoranda as prior discipline.
27. The Respondents takes exception to the ALJ's recommendation that the Respondent's employment with the School Board be terminated. In view of the exceptions to the ALJ's Findings of Fact and Conclusions of Law set forth herein, disciplinary action to be imposed by the School Board, if any, should be less than the termination of the Respondent's employment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 18, 2020, I forwarded this document, via email transmission, to Denise Heekin, Esquire (dheekin@bmolaw.com) and Ranjiv Sondhi, Esquire (rsondhi@bmolaw.com), Bryant Miller Olive, 1 SE 3rd Avenue, Suite 2200, Miami, FL 33131.

/s/ Robert F. McKee

ROBERT F. McKEE
Florida Bar Number 295132
yborlaw@gmail.com
ROBERT F. McKEE, P.A.
1718 E. 7th Ave., Suite 301
Tampa, FL 33605
(813) 248-6400
(813) 248-4020 (Facsimile)
Secondary Email: bdjarnagin@gmail.com