

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

CASE NO. 18-5791TTS

Petitioner,

v.

LATUNYA GIBBS,

Respondent.

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

Petitioner, Broward County School Board (the "Board"), by and through BRYANT MILLER OLIVE P.A., its undersigned counsel, pursuant to Section 120.57(1)(k), Florida Statutes, and Rule 28-106.217, Florida Administrative Code, hereby submits the following Response to Respondent's Exceptions to Recommended Order filed on March 18, 2020.

1. Section 120.57(1)(k), Florida Statutes, sets forth the standards by which an agency shall consider exceptions filed to a recommended Order issued thereunder, stating in pertinent part:

The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number and paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

Rule 28.106.217(1), Florida Administrative Code, also provides:

Exceptions shall identify the disputed portion of the recommended order by page number and paragraph, shall identify the legal basis for the exception, and shall include any appropriate and specific citations to the record.

Standards for Exceptions to Findings of Fact

2. Section 120.57(1)(l), Florida Statutes, provides, in pertinent part:

The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

3. Petitioner makes no allegation in its Exceptions that the proceedings on which the findings were based did not comply with the essential requirements of law. The Board must decide whether the challenged Findings of Fact are based on competent substantial evidence.

4. The role of the Administrative Law Judge (“ALJ”) in the administrative adjudication process must be taken into account when considering exceptions to findings of fact:

Factual issues susceptible of ordinary methods of proof that are not infused with policy considerations are the prerogative of the hearing officer¹ as the finder of fact. It is the hearing officer's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. If, as is often the case, the evidence presented supports two inconsistent findings, it is the hearing officer's role to decide the issue one way or the other. The agency may not reject the hearing officer's finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred. The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.

Walker v. Board of Professional Engineers, 946 So.2d 604 (Fla. 1st DCA 2006), quoting *Heifetz v. Department of Business Regulation*, 475 So.2d 1277 (Fla. 1st DCA 1985). Where there is conflicting or differing evidence, and reasonable people can differ about the facts, an agency is bound by the hearing officer's reasonable inference based on the conflicting inferences arising from the evidence. *Greseth v. Department of Health and Rehabilitative Services*, 573 So.2d 1004,

¹ DOAH “hearing officers,” were reclassified as “administrative law judges,” in 1996. Ch. 96-159, s. 31, Florida Statutes.

1006–1007 (Fla. 4th DCA 1991).

5. It is the prerogative of the ALJ to assess the weight of the evidence, and this Board cannot re-weigh it absent a showing that the finding was not based on competent, substantial evidence. *Rogers v. Department of Health*, 920 So.2d 27 (Fla. 1st DCA 2005). This Board is bound to honor the ALJ’s Findings of Fact unless they are not supported by competent, substantial evidence. *B.J. v. Department of Children and Family Services*, 983 So.2d 11 (Fla. 1st DCA 2008). “Competent substantial evidence,” is explained as: “[T]he 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.” *Dept. of Highway Safety and Motor Vehicles v. Wiggins*, 151 So.3d 457 (Fla. 1st DCA 2014), quoting *DeGroot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957).

Standards for Exceptions to Conclusions of Law

6. Section 120.57(1)(l), Florida Statutes, further provides:

The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

Responses to Respondent’s Exceptions

FINDINGS OF FACT

7. In the exception to Finding of Fact 13, Respondent takes exception to the finding that Respondent had *completed* two BAS assessments out of 18 students on May 12, 2017.

Respondent states the record evidence reflects that she had *entered* two BAS assessments on that date.

8. The competent substantial evidence indicates that Respondent had in fact completed only two Benchmark Assessment Systems (BAS) assessments out of 18 students by May 12, 2017. (Tr. 79:8-19).² Supporting this finding is further evidence that Respondent was offered a substitute teacher to complete BAS assessments for the remaining students. (PHS¶ 13; Tr. 77:14-22; 79:21-80:2).³ The intended purpose of providing substitutes to teachers was to have substitute teachers takeover the classroom while teachers could perform BAS assessments in a corner of the classroom. (Tr. 78:12-24). Gibbs used this time to assess students in the morning; however, in the afternoon on that day, Gibbs was observed walking around the classroom, grading homework, and watering plants. *Id.* After school on Friday, May 12, 2017, there was a Response to Intervention (RTI) meeting at Mirror Lake Elementary (MLE). Gibbs told Marlen Veliz, MLE Principal, that she had completed the BAS assessments for two (2) of her eighteen (18) students. (Tr. 79:8-11). Respondent responded by stating that she felt confident that she would be able to complete the remaining BAS assessments. *Id.* Respondent did not refute being offered a substitute teacher to *complete* BAS assessments in her testimony. The ALJ made a credibility determination and made a permissible inference that Respondent had indeed only completed two BAS assessments by May 12, 2017.

² Volume 1 of the transcript is for the hearing held on June 20, 2019. Volume 2 of the transcript is for the hearing held on September 12, 2019. Volume 3 of the transcript is for the hearing held on November 26, 2019. Volumes 1 and 2 of the transcript are consecutively numbered while the page numbering for Volume 3 of the transcript begins at page 1. Due to the page numbering of Volume 3 of the transcript, citations to Volume 3, will be preceded by “Vol. 3” as follows: (Vol. 3 Tr. [page #]:[line #]).

³ “PHS” refers to the Joint Prehearing Statement and the facts stipulated to by the Respondent and Petitioner.

9. In the exception to Finding of Fact 17, Respondent takes exception of the finding that Respondent completed BAS assessments for 16 of her students on May 15, 2017. Respondent states the record evidence reflects that she completed BAS assessments for the 16 students prior to May 15, 2017, but did not enter scores until May 15, 2017.

10. The competent substantial evidence indicates that Respondent had in fact completed only two BAS assessments out of 18 students by Monday, May 15, 2017. (*Id.*; Tr. 81:2-8). Respondent failed to refute testimony that she was offered a substitute teacher on Friday, May 12, 2017 to complete BAS assessments – and failed to refute Veliz’s testimony that Respondent stated she felt confident she would be able to complete the remaining BAS assessments. (Tr. 79:21-80:2). Through her lack of refuting Veliz’s testimony, Respondent implicitly admitted that she in fact had only completed two BAS assessments by May 12, 2017 and that 16 more were remaining. It is an impossible task to complete BAS assessments for 16 students in one day. (Tr. 81:9-11). Moreover, by May 26, 2017, student BAS folders were received from all third grade teachers – except from Respondent. Gibbs never turned in completed BAS assessments. (Tr. 50:4-6; 51:21-25). It was also found in Finding of Fact 19, that there the reassessments completed by Hafez and the District did not align with Respondent’s scores. Respondent did not file an exception to this finding. As the ALJ found, the competent substantial evidence indicates Respondent never fully completed the BAS assessments.

11. In the exception to Finding of Fact 39, Respondent takes exception of the finding that the ALJ relied upon hearsay insofar as to statements of students, who confirmed to Veliz that they had not practiced on their computers, and who did not testify at the Final Hearing.

12. Pursuant to section 120.57(1)(c), Florida Administrative Code, “[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence.” While the

unidentified students did not testify at the Final Hearing, the competent substantial evidence still indicates that Respondent had not taken any time for her students to practice on their computers for the FSA. Respondent admitted in her testimony she failed to provide instruction to her students on how to utilize the computer to practice for the FSA. (Vol. 3 Tr. 52:2-11). Further, Respondent received computers approximately one month prior to the FSA to enable her students to practice for the FSA. She failed to retrieve her students' computers from the media room where they were stored. (Tr. 476:10-477:10). The ALJ therefore concluded that the competent substantial evidence indicates Respondent failed to provide instruction not based on hearsay.

13. In the exception to Finding of Fact 40, Respondent takes exception of the finding that the ALJ relied upon hearsay insofar as to the statements of Mr. Anthony Nembhard, who confirmed to Veliz that Respondent had logged into the Test Administrator Course on February 6, 2017, and who did not testify at the Final Hearing.

14. Pursuant to section 120.57(1)(c), Florida Administrative Code, “[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence.” While Mr. Nembhard did not testify at the Final Hearing, the competent substantial evidence still indicates that Respondent had only used her password once on February 6, 2017. Respondent herself testified that she does not remember how many times she logged in to complete the Test Administrator Certification Course offered by AIR. (Vol. 3 Tr. 49:9-50:4). Veliz testified that she was told by the AIR Help Desk how to log into the AIR system herself and print a report indicating that Respondent had not completed the Test Administrator Certification Course. (Tr. 115:4-25). This was stipulated to by the Respondent in the Joint Prehearing Statement. (PHS ¶ 41). The ALJ therefore concluded that the competent substantial evidence indicates Respondent failed to complete the Test Administrator Certification Course not based on hearsay.

15. In the exception to Finding of Fact 41, Respondent takes exception of the finding that Respondent merely scrolled through the test administrator material, without actually reviewing the tutorial, in to the get to a “Congratulations!” page in order for Respondent to screenshot and print that page as proof she completed the tutorial.

16. The competent substantial evidence indicates that Respondent did not complete the Test Administrator Certification Course and instead scrolled through to get to a “Congratulations!” screen. Respondent herself testified that her printer was not working, yet she was able to print the certificate that did not print her name on it. (Vol. 3 Tr. 50:5-10). It was uncovered that a teacher could scroll through the course without actually taking it and get to a “Congratulations!” screen, which could be printed out. (Pet. Ex. 1, Tab 5, Bates 4633). This was also agreed to in the Joint Prehearing Statement (PHS ¶ 42). This finding by the ALJ is not inconsistent with Finding of Fact 37 (which Respondent does not take exception to), which found that Respondent submitted a certificate with her name handwritten on it (and no completion date) and looked like a screenshot – while other teacher certificates had their names printed on it. Respondent suggests that she “perused” the tutorial in March, but there is no evidence that Respondent accessed the system on any day other than February 6, 2017. The certificate submitted by Respondent had no completion date. The ALJ weighed all the evidence presented and made a credibility determination and by competent evidence that Respondent could have scrolled through the course without taking it and printed a screenshot of the “Congratulations!” page.

17. In the exception to Finding of Fact 43, Respondent takes exception of the finding that that she “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.”

18. The competent substantial evidence indicates that Respondent failed to provide

instruction to her students on how to utilize computers so they would be ready to take the FSA. Respondent admitted in her testimony she failed to do so. (Vol. 3 Tr. 51:3-52:11). Further, Respondent received computers approximately one month prior to the FSA to enable her students to practice for the FSA. She failed to retrieve her students' computers from the media room where they were stored. (Tr. 476:10-477:10). On April 24, 2017, Veliz approached some third grade students and asked them how their computer practice tests were going. Several students from Gibbs' class stated that they had not practiced yet because their teacher did not know how to log in. Students from other classes stated that they had practiced several times. (PHS ¶ 40; Tr. 112:1-10). April 25, 2017, Veliz went into Gibbs' classroom with Hernandez to assist students in practicing prior to the test. None of the students had any idea how to log in, did not know which browser to use, and every single one of them indicated that it was their first time accessing this practice test. The students were confused and did not know how to log in. This student confusion took place in the presence of Gibbs, Hernandez, and Veliz. (PHS ¶ 43).

19. In the exception to Finding of Fact 52, Respondent takes exception of the finding that a summary memo constitutes a disciplinary action.

20. Finding of Fact 52 does not find that a summary memo constitutes a disciplinary action. Instead, Finding of Fact 52 simply lists the numerous summary memos and the subject matters of each that Respondent previously received.

21. In the exception to Finding of Fact 53, Respondent takes exception of the finding that placing a teacher on administrative reassignment constitutes a prior discipline.

22. Finding of Fact 53 does not find that an administrative reassignment constitutes a disciplinary action. Instead, it merely mentions the fact that Gibbs was placed on administrative reassignment.

23. In the exception to Finding of Fact 54, Respondent takes exception of the finding that characterizations of questioned conduct that occurred in 2014-2015 and 2015-2016 school years were considered by the ALJ as “prior misconduct.”

24. Finding of Fact 54 does not find that allegations against the Respondent were considered prior misconduct, but merely states that there were issues in each of these school years. Nevertheless, Respondent did receive discipline based on the alleged conduct in these school years. Respondent entered into a settlement agreement with the Education Practices Commission, as Respondent concedes in Finding of Fact 55, which resulted in a written reprimand being placed in Respondent’s personnel file with the District. (Pet. Ex. 30, Bates 001239).

25. In the exception to Finding of Fact 55, Respondent takes exception of the finding that a letter of reprimand was not issued by the Board, but rather was based upon a settlement agreement entered into by the Respondent and Department of Education in which Respondent disputes she engaged in misconduct.

26. Finding of Fact 55 does not find that reprimand was issued by the Board, but rather states that it was issued by the Education Practices Commission. A letter of reprimand was issued based upon probable cause due to the allegations and based upon a Final Order. This letter of reprimand was made part of Respondent’s personnel file with the District. (Pet. Ex. 30, Bates 001239).

CONCLUSIONS OF LAW

27. In the exception to Conclusion of Law 66, Respondent states that it is a mixed finding of fact and conclusion of law and takes exception to the extent that the ALJ found that Respondent failed to correctly complete BAS assessments for her students.

28. The competent substantial evidence overwhelmingly indicates that Respondent

failed to complete BAS assessments for her students. Respondent takes no exception to the findings of fact that Wright and Hafez had to help assess Respondent's students (Finding of Fact 14), that no BAS folders could be found and only blank scoring sheets in Respondent's classroom (Finding of Fact 15), that Respondent failed to turn in the protocols – the student BAS folders containing the data for all three assessment periods (Finding of Fact 18), that the Director of Literacy re-assessed Respondent's students and found the scores entered by Respondent did not align with the reassessments (Finding of Fact 19 and Finding of Fact 18), and that Respondent failed to attend a mandatory training on BAS and failed to review a Brainshark presentation (Finding of Fact 21). The ALJ weighed this evidence and properly concluded by competent evidence that Respondent failed to complete BAS assessments of her students.

29. In the exception to Conclusion of Law 68, Respondent states that it is a mixed finding of fact and conclusion of law and takes exception to the extent that the ALJ found that Respondent submitted “fraudulent grading” of her students' BAS assessments.

30. The competent substantial evidence overwhelmingly indicates that Respondent fraudulently graded BAS assessments for her students. Respondent takes exception to the finding that Respondent did not complete BAS assessments by May 12, 2017, but rather did not enter scores into BASIS until May 15, 2017. However, Respondent takes no exception to the findings of fact that Wright and Hafez had to help assess Respondent's students (Finding of Fact 14), that no BAS folders could be found and only blank scoring sheets in Respondent's classroom (Finding of Fact 15), that Respondent failed to turn in the protocols – the student BAS folders containing the data for all three assessment periods (Finding of Fact 18), and that the Director of Literacy re-assessed Respondent's students and found the scores entered by Respondent did not align with the reassessments (Finding of Fact 19 and 18), and that Respondent failed to attend a mandatory

training on BAS and failed to review a Brainshark presentation (Finding of Fact 21). The ALJ weighed this evidence and properly concluded by competent evidence that Respondent fraudulently graded BAS assessments of her students by entering incorrect scores into BASIS.

31. In the exception to Conclusion of Law 69, Respondent takes exception to the extent that it is actually a Finding of Fact that found that Respondent logged in “false” BAS assessments/scores into BASIS.

32. For the reasons stated in paragraphs 28 and 30 above, ALJ weighed all evidence and properly concluded that Respondent logged in false BAS assessments of her students by entering incorrect scores into BASIS.

33. In the exception to Conclusion of Law 70, Respondent takes exception to the finding that, because Respondent’s grading of one of her student’s BAS assessments did not square with that student’s FSA score, it somehow constitutes proof that all of Respondent’s assessments were incorrect.

34. Respondent takes no exception to the finding of fact that of the 18 students in Respondent’s class, only six scored a three or above on the FSA, six students scored a two, and five students scored a one (Finding of Fact 20). There is a correlation between BAS and FSA scores. For the past three years, the District has had a 78% correlation between students who score on the higher end of their BAS levels and a level three (3) on the FSA. (Tr. 414:13-25). If a student scores a one (1) or two (2) on the FSA, it likely indicates that the student is not reading on grade level. (Tr. 414:4-7).⁴ The ALJ weighed this evidence and correctly concluded by competent

⁴ See Pet. Ex. 1, Tab 3, Bates 4549, and Pet. Ex. 73 (i.e. student 4 received a one (1) on the FSA and was assessed by Respondent as instructional level R, which is fourth (4th) grade level reading; student 2 received a two (2) on the FSA and was assessed by Respondent as instructional level R, which is fourth (4th) grade level of reading; student 12 received a one (1) on the FSA and was assessed by Respondent as instructional level Q, which is fourth

evidence that the BAS assessments were incorrect due to either intention or incompetence of Respondent.

35. In the exception to Conclusion of Law 72, Respondent takes exception to the extent the Finding of Fact contained therein found that Respondent's portfolio scores were "false."

36. Respondent takes no exception to the Findings of Fact 22 through 33 concerning portfolios. This includes taking no exception to the finding that Respondent gave every one of her 18 students a perfect score on the Portfolio Record Form (Finding of Fact 29), gave scores for a multiple choice test for every portfolio standard, despite that it would have been unnecessary to give the multiple choice test if a student has received a perfect score on the Portfolio Record Form (Finding of Fact 29), errors were found in grading and recording of portfolios, including incorrect grading, sample answers being provided, missing tasks, missing test items, blank or incomplete tasks, items done as homework instead of classwork, and missing multiple choice tests that were purportedly given to students and recorded on the Portfolio Record Form (Finding of Fact 30). The ALJ weighted all this evidence, the lack of refuting evidence, and properly concluded by competent evidence that Respondent's portfolio scores were false.

37. In the exception to Conclusion of Law 74, Respondent takes exception to the finding that Respondent "failed to complete the TA certification course."

38. The competent substantial evidence indicates that Respondent did not complete the Test Administrator Certification Course and instead scrolled through to get to a "Congratulations!" screen. Respondent herself testified that her printer was not working, yet she was able to print the certificate that did not print her name on it. (Vol. 3 Tr. 50:5-10). It was uncovered that a teacher

(4th) grade level reading; student 18 received a one (1) on the FSA and was assessed by Respondent as instructional level R, which is fourth (4th) grade level of reading).

could scroll through the course without actually taking it and get to a “Congratulations!” screen, which could be printed out. (Pet. Ex. 1, Tab 5, Bates 4633). This finding by the ALJ is not inconsistent with Finding of Fact 37 (which Respondent does not take exception to), which found that Respondent submitted a certificate with her name handwritten on it (without a completion date) and looked like a screenshot – while other teacher certificates had their names printed on it. The ALJ weighed all the evidence presented and made a credibility determination by competent evidence that Respondent failed to complete the TA certification course.

39. In the exception to Conclusion of Law 75, Respondent takes exception to the finding that Respondent submitted a “false completion certificate” for the TA certification course.

40. For the reasons stated above in paragraph 38, the ALJ weighed all the evidence presented and made a credibility determination by competent evidence that Respondent submitted a false completion certificate for the TA certification course.

41. In the exception to Conclusion of Law 78, Respondent takes exception to the finding that Respondent failed to complete BAS assessments; failed to maintain portfolios; and failed to complete the TA certification course.

42. For the reasons stated above in paragraphs 28, 30, 34, 36 and 38, the ALJ weighed all the evidence presented and made a credibility determination by competent evidence that Respondent failed to complete BAS assessments, failed to maintain portfolios, and failed to complete the TA certification course, respectively.

43. In the exception to Conclusion of Law 79, Respondent takes exception to the extent that the ALJ found that Respondent failed to maintain portfolios.

44. For the reasons stated above in paragraph 36, the ALJ weighed all the evidence presented and made a credibility determination by competent evidence that Respondent failed to

maintain portfolios.

45. In the exception to Conclusion of Law 83, Respondent takes exception to the conclusion that Respondent's failure to comply with BAS reporting deadlines and/or to produce BAS folders constitutes gross insubordination.

46. "Gross insubordination' means the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure in the performance of the required duties." Fla. Admin. Code R. 6A-5.056(4). Respondent also takes no exception to the finding of fact that she failed to produce the BAS assessment folders (Finding of Fact 18 in ALJ's Recommended Order). The substantial competent evidence also shows that Respondent failed to comply with the BAS reporting deadline by failing to complete BAS assessments of her students. Respondent was made well aware of the deadline and requirement to produce the BAS assessments (Findings of Fact 13 and 18 in ALJ's Recommended Order). Respondent intentionally refused to obey the deadline and produce the BAS folders. Even if her acts were not intentional, they constitute gross insubordination because her acts constituted malfeasance. Malfeasance is wrongdoing or misconduct, especially by a public official.⁵ Respondent, at the minimum, committed wrongdoing in failing to complete the BAS assessments by the deadline and failing to even turn in any BAS assessment folders. The ALJ made the proper conclusion of law based on weighing the substantial competent evidence.

47. In the exception to Conclusion of Law 84, Respondent takes exception to the conclusion that Respondent's failure to submit multiple choice assessment data constitutes gross insubordination.

48. The competent substantial evidence supports the finding that Respondent failed to

⁵ <https://www.merriam-webster.com/dictionary/malfeasance>

submit multiple choice assessment data, which Respondent does not take an exception to (Findings of Fact 30 and 32 in ALJ's Recommended Order) and did not refute these facts at the Final Hearing. The ALJ appropriately found that Respondent committed gross insubordination by failing to turn in multiple choice assessment data – which she gave student scores for on the Portfolio Record Forms (Finding of Fact 29).

49. In the exception to Conclusion of Law 85, Respondent takes exception to the conclusion that Respondent's failure to attend BAS trainings constitutes gross insubordination.

50. Respondent takes no exception to the finding of fact that she failed to attend BAS trainings (Finding of Fact 21 in ALJ's Recommended Order). In her testimony, she admitted that she did not attend trainings because she thought they were not required. (Vol. 3 Tr. 39:8-40:23). The ALJ correctly concluded that this constitutes gross insubordination based on the weight of the substantial competent evidence.

51. In the exception to Conclusion of Law 88, Respondent takes exception to the findings of fact that Respondent intentionally or recklessly failed to adhere to (1) school timelines to complete BAS assessments; (2) deadlines for BAS assessments; (3) deadlines for portfolio submissions; (4) failure to complete the TA certification course; and, (5) failure to attend BAS related training.

52. For the reasons stated above in paragraphs 8, 10, 28, 30 and 46, and Finding of Fact 18 in the ALJ's Recommended Order, the ALJ correctly concluded Respondent intentionally or recklessly failed to adhere to school timelines to complete BAS assessments and deadlines for BAS assessments by failing to even complete BAS assessments for all 18 of her students. For the reasons stated above in paragraph 48 and Findings of Fact 27, 28, 29, 30 and 32 in the ALJ's Recommended Order, the ALJ correctly concluded Respondent intentionally or recklessly failed

to adhere to deadlines for portfolio submissions by failing to maintain portfolios. For the reasons stated above in paragraphs 14, 16, and 18 and Finding of Fact 42 in the ALJ's Recommended Order, the ALJ correctly concluded Respondent intentionally or recklessly failed to complete the TA certification course. For the reasons stated above in paragraph 50 and Finding of Fact 21 in the ALJ's Recommended Order, the ALJ correctly concluded Respondent intentionally or recklessly failed to attend BAS related trainings. Respondent takes no exception to the Findings of Fact of the ALJ's Recommended Order that are referenced in this paragraph.

53. In the exception to Conclusion of Law 90, Respondent takes exception to the findings of fact that Respondent failed to complete BAS assessments; submitted false BAS assessments; failed to document her students' completion of portfolio work; submitted false portfolio scores; failed to allow her students to practice for the FSA on their assigned computers; failed to successfully complete the TA certificate course; submitted a false TA certificate; and, that she did not maintain accurate student records.

54. For the reasons stated above in paragraphs 8, 10, 28, 30 and 46, and Finding of Fact 18 in the ALJ's Recommended Order, the ALJ correctly found based on substantial competent evidence that Respondent failed to complete BAS assessments and submitted false BAS assessments. For the reasons stated above in paragraphs 36 and 48, and Findings of Fact 27, 28, 29, 30 and 32 in the ALJ's Recommended Order, the ALJ correctly found based on substantial competent evidence that Respondent failed to document her students' completion of portfolio work and submitted false portfolio scores. For the reasons stated above in paragraphs 12 and 18 and Findings of Fact 35, 38 and 42 in the ALJ's Recommended Order, the ALJ correctly found based on substantial competent evidence that Respondent failed to allow her students to practice for the FSA on their assigned computers. For the reasons stated above in paragraphs 14, 16, and 38 and

Finding of Fact 37 in the ALJ's Recommended Order, the ALJ correctly found based on substantial competent evidence that Respondent failed to successfully complete the TA certificate course and submitted a false TA certificate. For the reasons stated above in paragraphs 8, 10, 28, 30, 36, 46 and 48, and Findings of Fact 18, 27, 28, 29, 30 and 32 in the ALJ's Recommended Order, the ALJ correctly found based on substantial competent evidence that Respondent failed to maintain accurate student records. Respondent takes no exception to the Findings of Fact from the ALJ's Recommended Order that are referenced in this paragraph.

55. In the exception to Conclusion of Law 93, Respondent takes exception to the extent the finds of fact contained therein that Respondent failed to assess her students' reading levels; falsified BAS scores; and, falsified portfolio scores and the results of multiple choice tests.

56. For the reasons stated above in paragraphs 8, 10, 28, 30 and 46, and Finding of Fact 18 in the ALJ's Recommended Order, the ALJ correctly found based on substantial competent evidence that Respondent failed to complete BAS assessments and, therefore, assess student reading levels. For the reasons stated above in paragraphs 8, 10, 28, 30 and 46, and Finding of Fact 18 in the ALJ's Recommended Order, the ALJ correctly found based on substantial competent evidence that Respondent falsified BAS scores. For the reasons stated above in paragraphs 36 and 48, and Findings of Fact 27, 28, 29, 30 and 32 in the ALJ's Recommended Order, the ALJ correctly found based on substantial competent evidence that Respondent failed to document her students' completion of portfolio work. For the reasons stated above in paragraph 36 and 48, and Findings of Fact 27, 28, 29, 30 and 32 in the ALJ's Recommended Order, the ALJ correctly found based on substantial competent evidence that Respondent submitted false portfolio scores and the results of multiple choice tests. Respondent takes no exception to the Findings of Fact from the ALJ's Recommended Order that are referenced in this paragraph.

57. In the exception to Conclusion of Law 97, Respondent takes exception to the ALJ considering the issuance of summary memoranda as prior discipline.

58. Conclusion of Law 97 makes no mention of summary memoranda. Moreover, Respondent's prior discipline, two verbal reprimands, mentioned in Finding of Fact 51 of the ALJ's Recommended Order and a written reprimand, mentioned in Finding of Fact 55 of the ALJ's Recommended Order, supports the finding that Respondent was previously disciplined and supports the finding that dismissal is warranted.

59. Respondent lastly takes exception to the ALJ's recommendation that Respondent's employment with the Board be terminated.

60. For the reasons stated within this Response to Respondent's Exceptions to the ALJ's Recommended Order, Respondent's employment with the Board should be terminated. The Recommended Order, which was based on the weight of the substantial competent evidence presented at the Final Hearing, should be adopted as a Final Order by this Board.

WHEREFORE, the Superintendent requests, for the reasons set forth above, that the Board reject the arguments presented in each and all of Respondent's Exceptions, and adopt the Findings of Fact, Conclusions of Law and Recommended Order as its own and issue a Final Order in this matter consistent therewith.

[Signature Block on Following Page]

March 30, 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via email, on this 30th day of March, 2020, on all parties of record on the Service List below.

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