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FILED

2010 AUG 13 P 12:08

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DIVISION OF  
ADMINISTRATIVE  
HEARINGS

August 11, 2010

Clerk, Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-1550

**RE: Brevard County School Board v. Joyce D. Iloka**  
**DOAH Case No. 09-0957**

Dear Clerk:

This firm represents the School Board of Brevard County.

Enclosed is a copy of the Final Order entered by the School Board  
in the referenced case on August 10, 2010.

Very truly yours,



Harold T. Bistline  
School Board Attorney

HTB/pc  
Enclosure

cc: Joseph R. Lowicky, Esquire  
Thomas L. Johnson, Esquire  
Jackie Joy, School Board Affairs

BEFORE THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

BOARD AGENDA ITEM NO. F-21  
August 10, 2010

BREVARD COUNTY SCHOOL BOARD, )  
)  
Petitioner, )  
)  
vs. )  
)  
JOYCE D. ILOKA, )  
)  
Respondent. )  
\_\_\_\_\_ )

DOAH CASE NO. 09-0957

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FINAL ORDER

This case was referred to the Division of Administrative Hearings. The assigned Administrative Law Judge ("ALJ") submitted a Recommended Order to the Agency, Brevard County School Board ("School Board"), recommending that the School Board enter a final order terminating Respondent, Joyce D. Iloka's, employment with the School District for incompetency. The Recommended Order of June 8, 2010, entered herein is incorporated by reference. Timely exceptions were filed by Respondent. Timely replies to the exceptions were filed by the Petitioner.

In a Section 120.57(1) proceeding an agency's Final Order is entered after a hearing is held, evidence is received, and the ALJ has submitted a Recommended Order. The general rule of deference to the ALJ's findings of fact is that an agency may reject or modify a finding of fact only if the finding is not supported by competent, substantial evidence. The agency has no authority to reweigh conflicting evidence. Section 120.57(1)(I), Florida Statutes. See e.g. Heifetz v. Department of Business Regulation,

475 So.2d 1277, 1281 (Fla. 1st DCA 1985). The agency may adopt the ALJ's findings of fact and conclusions of law in a recommended order, or the agency may reject or modify the conclusions of law over which it has substantive jurisdiction. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase the penalty without a review of the complete record and without stating with particularity its reasons therefore in the final order, by citing to the record in justifying its action. Section 120.57(1), Florida Statutes.

The merits of the exceptions will now be addressed.

#### **RESPONDENT'S EXCEPTIONS**

Respondent takes exception to the ALJ's Conclusions of Law found in paragraphs 45, 46 and 47 and the ALJ's recommendation in paragraph 50 of the Recommended Order.

Respondent claims that the ALJ made one error of law that justifies the exceptions, specifically that the "ALJ failed to give adequate weight to Petitioner's failure to include student performance indicators in its assessment of Respondent's competency". Respondent also claims that "as a matter of law, Petitioner cannot terminate a teacher's employment for incompetency unless it includes an assessment of her student's performance".

#### **RULING ON EXCEPTIONS**

In all three of the exceptions Respondent argues that a teacher cannot be terminated for incompetency in the absence of

record evidence of student performance indicators derived from standardized tests. Respondent further argues that although the evidence showed and the ALJ found that Respondent was unable to perform the duties of her employment, such a conclusion is not relevant to the issue of whether Respondent is competent to teach. This is an argument that completely ignores the clear language of Section 1012.33(1)(a), Florida Statutes (2009) and Florida Administrative Code Rule 6B-4.009 which provides the basis for termination of a teacher's employment for incompetency.

Respondent cites Florida Appellate Court decisions, Sherrod v. Palm Beach County School Board, 963 So.2d 251 (Fla. 4th DCA 2006) and Young v. Palm Beach County School Board, 968 So.2d 38 (Fla. 4th DCA 2006), and Recommended Orders from several ALJs in support of her position. Respondent's reliance on this authority is misplaced because those cases involved teacher termination actions based upon an earlier version of Section 1012.34, Florida Statutes, and the failure to correct performance deficiencies and not termination for just cause for incompetency under Section 1012.33, Florida Statutes.

Respondent's reliance on the ALJ's Recommended Order in Dupper v. Monroe County School Board, DOAH Case No. 08-6398 (2009) is equally misplaced because the School Board's rejection of the ALJ's conclusion of law that student performance is a required basis for termination of a teacher pursuant to the current version of Section 1012.34(3), Florida Statutes, was affirmed by the Third District in Dupper v. The School Board of Monroe County, Florida, 2010 WL

2637827 (Fla.App. 3 Dist.).

The long standing authority to terminate a teacher's employment for incompetency under Section 1012.33, Florida Statutes, is separate and distinct from the recently enacted provisions of Section 1012.34, Florida Statutes. Respondent has failed to provide any legal support for her argument that evidence of student performance indicators are required to prove a teacher's incompetency under Section 1012.33, Florida Statute, and Florida Administrative Code Rule 6B-4.009.

Additionally, the School Board finds that the greater weight of authority holds that the current version of Section 1012.34, Florida Statutes (2009), does not require evidence of student performance based upon standardized testing to support every termination action of a teacher for failure to correct performance deficiencies. Such an interpretation would make it impossible to terminate a teacher for unsatisfactory performance who does not teach a core curriculum subject that is assessed by standardized testing instruments, and would also make it impossible for a school district to comply with the actions required within the 90 day probationary period of Section 1012.34(3)(d)2.a., Florida Statutes. Dupper, 2010 WL 12637827 (Fla.App., 3 Dist.)

The findings of fact and conclusions of law in the Recommended Order are correct and supported by competent, substantial evidence in the record.

FINDINGS OF FACT

The School Board adopts the findings of fact set forth in the Recommended Order.

CONCLUSIONS OF LAW

The School Board adopts the conclusions of law set forth in the Recommended Order.

RECOMMENDATION OF THE ALJ

The School Board adopts the Recommendation of the ALJ set forth in the Recommended Order.

It is Thereupon Ordered that:

A. Respondent's exceptions to paragraphs 45, 46 and 47 of the Recommended order are denied.

B. Respondent's exception to the ALJ's Recommendation in paragraph 50 of the Recommended Order is denied.

C. The Recommended Order is adopted as the Final Order of the School Board of Brevard County and Respondent, Joyce D. Iloka, is terminated from employment as a teacher with the Brevard County School District effective February 10, 2009.

DONE AND ORDERED this 10th day of August, 2010.

THE SCHOOL BOARD OF  
BREVARD COUNTY, FLORIDA

By: 

AMY KNEESSY, Chairman

NOTICE OF RIGHT TO JUDICIAL REVIEW

Parties to this Final Agency Action are hereby advised of their right to seek judicial review of this Final Agency Action pursuant to Section 120.68, Florida Statutes, and Florida Rules of Appellate procedure 9.030(b)(1)(C) and 9.110. To initiate an appeal, one copy of a Notice of Appeal must be filed, within the time period stated in the Florida Rule of Appellate procedure 9.110, with the Clerk of the School Board of Brevard County, 2700 Judge Fran Jamieson Way, Viera, Florida 32940. The second copy of the Notice of Appeal, together with the filing fee, must be filed with the appropriate District Court of Appeal.

Filed with the Clerk in the  
Office of the Superintendent  
this 10th day of August, 2010.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U. S. Mail to the persons named below on this 11 day of August, 2010.

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*HTB*

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