

STATE OF FLORIDA
SCHOOL BOARD OF MADISON COUNTY, FLORIDA

MADISON COUNTY SCHOOL BOARD,

Petitioner,

vs.

DOAH Case No. 10-0998

DR. JAMES BROWN,

Respondent.

FILED
2010 AUG 11 A 11:14
DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

On July 16, 2010, an Administrative Law Judge ("ALJ") with the Division of Administrative Hearings ("DOAH") submitted his Recommended Order ("RO") to the Madison County School Board (the "SCHOOL BOARD" or the "BOARD") in the above captioned proceeding. A copy of the RO is attached hereto as Exhibit A. The RO indicates that copies were sent to counsel for the SCHOOL BOARD, George T. Reeves, Esq., and counsel for the Respondent, DR. JAMES BROWN, ("DR. BROWN"). No exceptions were filed by any party. This matter is now before the SCHOOL BOARD for final agency action.

BACKGROUND

By letter dated February 2, 2010, Lou S. Miller, the duly elected and serving Superintendent of Schools for the Madison County School District, (hereinafter the "SUPERINTENDENT") gave DR. BROWN notice of her intent to seek the termination of his employment with the SCHOOL BOARD for, among other reasons, his alleged violation of the Principles of Professional Conduct for the Education Professional conduct contained in Rule 6B-1.006(3)(d), 6B-1.006(3)(h) and 6B-1.006(5)(h). DR. BROWN requested a hearing by letter

dated February 11, 2010. The DIVISION accepted jurisdiction and entered its INITIAL ORDER dated March 2, 2010. By Notice dated March 9, 2010, the DIVISION set the final hearing in this matter for April 13, 2010. The matter proceeded to hearing on that date.

Proposed Recommended Orders were filed by each party. The ALJ subsequently issued his RO on July 16, 2010.

RECOMMENDED ORDER

In the RO the ALJ recommended that the SCHOOL BOARD enter a final order terminating DR. BROWN's employment. (RO page 17). The ALJ found that there was just cause to terminate DR. BROWN because DR. BROWN's "behavior in this case rises to the level of misconduct in office for the following reasons: (a) he intentionally misrepresented subject matter relevant to students' academic programs; and (b) he submitted false information in letters in connection with professional activities." (RO ¶¶ 44, 48, page 44)

STANDARDS OF REVIEW OF DOAH RECOMMENDED ORDERS

Section 120.57(1)(l), Florida Statutes, prescribes that an agency reviewing a recommended order may not reject or modify the findings of fact of an ALJ, "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 on competent substantial evidence." § 120.57(1)(l), Fla. Stat.; *Charlotte County v. IMC Phosphates Co.*, 18 So.3d 1089 (Fla. 2d DCA 2009); *Wills v. Fla. Elections Comm'n*, 955 So.2d 61 (Fla. 1st DCA 2007). The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, "competent substantial evidence" refers to the existence of some evidence (quantity) as to each essential element and as to its admissibility under legal rules of

evidence. *See e.g., Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm'n*, 671 So.2d 287, 289 n.3 (Fla. 5th DCA 1996).

A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See e.g., Rogers v. Dep't of Health*, 920 So.2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep't of Env'tl. Prot.*, 695 So.2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands County Sch. Bd.*, 652 So.2d 894 (Fla. 2d DCA 1995). These evidentiary-related matters are within the province of the ALJ, as the "fact-finder" in these administrative proceedings. *See e.g., Tedder v. Fla. Parole Comm'n*, 842 So.2d 1022, 1025 (Fla. 1st DCA 2003); *Heifetz v. Dep't of Bus. Regulation*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). Also, the ALJ's decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. *See e.g., Collier Med. Ctr. v. State, Dep't of HRS*, 462 So.2d 83, 85 (Fla. 1st DCA 1985); *Fla. Chapter of Sierra Club v. Orlando Utils. Comm'n*, 436 So.2d 383, 389 (Fla. 5th DCA 1983).

Section 120.57(1)(l), Florida Statutes, authorizes an agency to reject or modify an ALJ's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction." *See Barfield v. Dep't of Health*, 805 So.2d 1008 (Fla. 1st DCA 2001); *L.B. Bryan & Co. v. Sch. Bd. of Broward County*, 746 So.2d 1194 (Fla. 1st DCA 1999); *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So.2d 1140 (Fla. 2d DCA 2001). An agency has the primary responsibility of interpreting statutes and rules within its regulatory jurisdiction and expertise. *See, e.g., Pub. Employees Relations Comm'n v. Dade County Police Benevolent Ass'n*, 467 So.2d 987, 989 (Fla. 1985); *Fla. Public Employee Council, 79 v. Daniels*, 646 So.2d 813, 816 (Fla. 1st

DCA 1994). Considerable deference should be accorded to these agency interpretations of statutes and rules within their regulatory jurisdiction, and such agency interpretations should not be overturned unless “clearly erroneous.” *See, e.g., Falk v. Beard*, 614 So.2d 1086, 1089 (Fla. 1993); *Dep't of Env'tl. Regulation v. Goldring*, 477 So.2d 532, 534 (Fla. 1985). Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are “permissible” ones. *See, e.g., Suddath Van Lines, Inc. v. Dep't of Env'tl. Prot.*, 668 So.2d 209, 212 (Fla. 1st DCA 1996).

CONCLUSION

The case law of Florida holds that parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in DOAH hearing procedures or in the findings of fact of ALJs by filing exceptions to DOAH recommended orders. *See, e.g., Comm'n on Ethics v. Barker*, 677 So.2d 254, 256 (Fla. 1996); *Henderson v. Dep't of Health, Bd. of Nursing*, 954 So.2d 77 (Fla. 5th DCA 2007); *Fla. Dep't of Corrs. v. Bradley*, 510 So.2d 1122, 1124 (Fla. 1st DCA 1987). Having filed no exceptions to certain findings of fact the party “has thereby expressed its agreement with, or at least waived any objection to, those findings of fact.” *Env'tl. Coalition of Fla., Inc. v. Broward County*, 586 So.2d 1212, 1213 (Fla. 1st DCA 1991); *see also Colonnade Medical Ctr., Inc. v. State of Fla., Agency for Health Care Admin.*, 847 So.2d 540, 542 (Fla. 4th DCA 2003). However, even when exceptions are not filed, an agency head reviewing a recommended order is free to modify or reject any erroneous conclusions of law over which the agency has substantive jurisdiction. *See* § 120.57(1)(l), Fla. Stat.; *Barfield v. Dep't of Health*, 805 So.2d 1008 (Fla. 1st DCA 2001); *Fla. Public Employee Council, 79 v. Daniels*, 646 So.2d 813,

816 (Fla. 1st DCA 1994).

Having considered the applicable law and standards of review in light of the findings and conclusions set forth in the RO, and being otherwise duly advised, it is

ORDERED that:

- A. The Recommended Order (Exhibit A) is adopted in its entirety and incorporated herein by reference.
- B. The Respondent, DR. JAMES BROWN's employment with the SCHOOL BOARD is TERMINATED.

JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120. 68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the Superintendent of Schools for Madison County, Florida, 210 North East Duval Avenue, Madison, Florida 32340; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the Superintendent of Schools for Madison County, Florida.

DONE and ORDERED this 9th day of August, 2010 by the District School Board of Madison County, Florida with the members of the Board voting as follows:

Yeas: Alexander, Hall, Williamson, Alford

Nays: Hagan (qualification in official minutes)

Abstaining: None

Absent: None

DISTRICT SCHOOL BOARD OF
MADISON COUNTY, FLORIDA

By: Bart Alford
Bart Alford
Chair

Attest: Lou S. Miller
Lou S. Miller
Superintendent of Schools

CERTIFICATE OF FILING AND MAILING

I HEREBY CERTIFY that the original of the above and forgoing Final Order was filed in the office of the Superintendent of Schools and a true and correct copy of the same was provided to each of the following:

Ronald G. Stowers, Esquire
Levine & Stivers, LLC
245 East Virginia Street
Tallahassee, Florida 32301

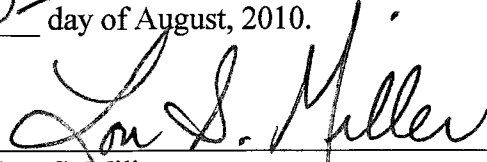
Dr. James Brown
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Division of Administrative Hearings
The DeSoto Building
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by certified mail return receipt requested on this 10th day of August, 2010.



Lou S. Miller
Superintendent of Schools