

BEFORE THE SCHOOL BOARD OF ST. LUCIE COUNTY, FLORIDA

ST. LUCIE COUNTY SCHOOL BOARD,  
Petitioner,

v.

DOAH Case No. 13-3603TTS

DRU DEHART,  
Respondent.

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FINAL ORDER

THIS CAUSE came before The School Board of St. Lucie County, Florida (“School Board”), as governing body of the School District of St. Lucie County, Florida (“District”), for final agency action in accordance with Section 120.57(1)(k) and (1), Florida Statutes.

Appearances

For Petitioner: David Miklas, Esquire  
Leslie Jennings Beuttell, Esquire  
Richeson & Coke, P.A.  
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For Respondent: Mark Wilensky, Esquire  
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Suite 103  
1300 Corporate Center Way  
Wellington, Florida 33414

Introduction

The Respondent Dru Dehart is a teacher with a professional service contract employed by the Petitioner St. Lucie County School Board. In September 2013, the Petitioner, by and through the Superintendent of Schools, sought to discipline the Respondent for just cause in accordance with Section 1012.33(6)(a), Fla. Stat., Fla. Admin. Code Rule 6A-10.081, and School Board Policy 6.301. The basis for seeking the stated discipline was conduct of the Respondent that occurred at her school

on March 20, 2013, as set forth in a Statement of Charges and Petition for Termination dated September 16, 2013 (“Petition”).

The Respondent requested a formal administrative hearing and one was held on December 9-11, 2013, before an Administrative Law Judge (“ALJ”) of the Division of Administrative Hearings of the Florida Department of Administration. The hearing was conducted by videoconference with the ALJ in Tallahassee while the parties and witnesses were in St. Lucie County. On February 12, 2014, the ALJ entered a Recommended Order finding that (a) the Respondent failed to intervene in certain student misconduct, failed to take reasonable effort to protect a student from the harmful misconduct of other students, and improperly influenced several student witnesses, and (b) the Respondent’s misconduct warrants termination. Recommended Order at pp. 30-32, ¶¶ 63-66. The ALJ recommended that the School Board enter a final order finding the Respondent guilty of violating Fla. Admin. Code Rule 6A-10.081 and School Board Policy 6.301, and terminating her employment. Recommended Order at p. 33. The Recommended Order has been forwarded to the School Board in accordance with Section 120.57(1), Florida Statutes, and is attached to and made a part of this Final Order.

The Respondent filed written exceptions to the Recommended Order (“Respondent’s Exceptions”) on February 27, 2014. *See* Section 120.57(1)(k), Fla. Stat.; Fla. Admin. Code Rule 28-106.217(1). The Petitioner filed a response to the exceptions (“Petitioner’s Response”) on March 10, 2014. *See* Fla. Admin. Code Rule 28-106.217(3). Both parties have also submitted proposed forms of final order.

The School Board met on April 10 and 22, 2014, in Fort Pierce, St. Lucie County, Florida, to take final agency action. At the hearing on April 10, 2014, argument was presented by counsel for each of the parties. Upon consideration of the Recommended Order, the Respondent’s Exceptions,

the Petitioner's Response, the proposed forms of final order, and argument of counsel to the parties, and upon a review of the complete record in this proceeding, the School Board finds and determines as follows:

#### Rulings on Exceptions

An agency may reject or modify an ALJ's finding of fact only if the finding is not supported by competent, substantial evidence, or the proceedings on which the finding was based did not comply with essential requirements of law. *See* Section 120.57(1)(1), Fla. Stat.; *Abrams v. Seminole County School Board*, 73 So. 3d 285, 294 (Fla. 5<sup>th</sup> D.C.A. 2011); *Schrimsher v. School Board of Palm Beach County*, 694 So. 2d 856, 860 (Fla. 4<sup>th</sup> D.C.A. 1997). The agency has no authority to reweigh conflicting evidence. *See, e.g., Heifetz v. Department of Business Regulation*, 475 So. 2d 1277, 1281 (Fla. 1<sup>st</sup> 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. *See* Section 120.57(1)(1), Fla. Stat. *See also State Contracting and Engineering Corporation v. Department of Transportation*, 709 So. 2d 607 (Fla. 1<sup>st</sup> D.C.A. 1998) (an agency is not required to defer to the ALJ on issues of law). The agency may accept the recommended penalty in a recommended order, but may not reduce or increase the penalty without review of the complete record and without stating with particularity its reasons in the final order, by citing to the record in justifying its action. *See* Section 120.57(1)(1), Fla. Stat.

The Respondent's Exceptions will be addressed in order.

Respondent's Exception No. 1. The Respondent excepts to the failure of the ALJ to make a finding of fact that the student V.S. had "heard from other students in the hallway, that R.W. had cursed at Respondent during second period." *See* Respondent's Exceptions at ¶ 1. The Petitioner counters that the evidence is hearsay that neither supplements nor explains other non-hearsay evi-

dence nor falls into an exception to the hearsay rule. *See* Petitioner’s Response at ¶ 1; Fla. Admin. Code Rule 28-106.213(3).

The statements of V.S. are hearsay, which may not be used except as permitted under Fla. Admin. Code Rule 28-106.213(3). The Respondent has not explained how the statements supplement or explain other non-hearsay evidence, nor what exception to the hearsay rule might apply, and therefore the statements may not be used to establish a finding of fact. “If there is competent substantial evidence in the record to support the ALJ’s findings of fact, the agency may not reject them, modify them, substitute its findings, or make new findings.” *Rogers v. Dept. of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005).

The Respondent’s Exception No. 1 is rejected as the findings of fact in the Recommended Order are supported by competent substantial evidence.

Respondent’s Exception No. 2.<sup>1</sup> The Respondent excepts to the failure of the ALJ to make a finding of fact that, when speaking between the second and third period, the Respondent and Ms. Kalyn Nova did not refer to the student R.W. by name, but instead as “the student we spoke about this morning.” *See* Respondent’s Exceptions at ¶ 2. The Respondent argues that, because the testimony of the Respondent and Ms. Nova on this issue is un-contradicted, it must be accepted as proof of a contested issue. *Id.* The Petitioner responds that the record does include contradictory testimony. *See* Petitioner’s Response at ¶ 2. Specifically, the Petitioner notes that the student D.S. testified that he was present in Ms. Nova’s classroom when the Respondent walked in and repeated to Ms. Nova statements that R.W. had made to the Respondent. *Id.* Tr. p. 208.

“Evidentiary matters such as credibility of witnesses and resolution of conflicting evidence are the prerogative the ALJ as the finder of fact in administrative proceedings.” *Reily Enterprises*,

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<sup>1</sup> In her proposed form of final order, the Respondent indicates that she has withdrawn her Exception No. 2.

*LLC v. Florida Department of Environmental Protection*, 990 So. 2d 1248, 1251 (Fla. 4th DCA 2008). “In a fact-driven case such as this, where an employee’s conduct is at issue, great weight is given to the findings of the [ALJ], who has the opportunity to hear the witnesses’ testimony and evaluate their credibility.” *Resnick v. Flagler County School Board*, 46 So. 3d 1110, 1112 (Fla. 5<sup>th</sup> D.C.A. 2010). *See also Siewert v. Casey*, 80 So. 3d 1114, 1116 (Fla. 4<sup>th</sup> D.C.A. 2012) (the finder of fact is to weigh the credibility of witnesses).

The Respondent’s Exception No. 2 is rejected as the findings of fact in the Recommended Order are supported by competent substantial evidence.

Respondent’s Exception No. 3. The Respondent excepts to the finding of fact in Paragraph 9 of the Recommended Order that the differences in language recounted by three different individuals regarding what R.W. said in the Respondent’s classroom were immaterial. Recommended Order at p. 14. *See* Respondent’s Exceptions at ¶ 3. In reply, the Petitioner points out that the Respondent is relying solely on the hearsay statement of student V.S., addressed above in the discussion of the Respondent’s Exception No. 1, and that the three versions of R.W.’s statement recounted in the Recommended Order were not materially different. *See* Petitioner’s Response at ¶ 3.

The Respondent’s Exception No. 3 is rejected as the findings of fact in Paragraph 9 of the Recommended Order are supported by competent substantial evidence.

Respondent’s Exception No. 4. The Respondent excepts to the failure of the ALJ to find that when the Respondent left Ms. Nova’s classroom, there was a female student walking in the same direction as the Respondent and the Respondent was talking to her. *See* Respondent’s Exceptions at ¶ 4. The Petitioner counters that the Respondent does not explain how the proposed finding is a relevant fact that might bear on the other findings of fact or conclusions of law in the case. *See* Petitioner’s Response at ¶ 4.

The Respondent's Exception No. 4 is rejected as the findings of fact in the Recommended Order are supported by competent substantial evidence.

Respondent's Exception No. 5. The Respondent excepts to the to the findings of fact in Paragraphs 18 and 19 of the Recommended Order that it appeared that the Respondent said something to the boys in the hallways, and that it was unlikely it was about running as the boys were not running. Recommended Order at pp. 17-18. *See* Respondent's Exceptions at ¶ 5. The Respondent further states that both the Respondent and Ms. Nova testified that the Respondent asked the boys in the hall to stop running. *Id.* The Petitioner counters that Ms. Nova also testified that after she entered her classroom she could not hear if anything further was said by the Respondent to the boys in the hall. *See* Petitioner's Response at ¶ 5. The Petitioner also notes that the video evidence in the record supported the ALJ's finding of fact that additional statements from the Respondent to the boys in the hallway seemed likely. *Id.*

The Respondent's Exception No. 5 is rejected as the findings of fact in Paragraphs 18 and 19 are supported by competent substantial evidence.

Respondent's Exception No. 6. The Respondent excepts to the to the finding of fact in Paragraph 21 of the Recommended Order that student R.W. testified that student D.S. said that the Respondent wanted to speak with R.W. Recommended Order at p. 18. *See* Respondent's Exceptions at ¶ 6. The Respondent states that the testimony, as hearsay, may not support a finding of fact. *Id.* The Petitioner counters that hearsay may be used to supplement or explain other admissible evidence, as provided in Fla. Admin. Code Rule 28-106.213(3). *See* Petitioner's Response at ¶ 6. The Petitioner points out that there was also testimony from D.S. that the Respondent asked D.S. and M.B. to talk to R.W. to ask what was going on with him, and that the ALJ specifically noted that the Respondent asked D.S. if he would talk to R.W. *Id.*

The Respondent's Exception No. 6 is rejected as the findings of fact in Paragraph 21 of the Recommended Order are supported by competent substantial evidence.

Respondent's Exception No. 7. The Respondent excepts to the to the finding of fact in Paragraph 32 of the Recommended Order that seeing student D.S. and student M.B. walking student R.W. across the hall and opening the door of another occupied classroom establishes the inference that the Respondent knew or reasonably should have known that the boys were not merely going to talk to student R.W. about what might be wrong. Recommended Order at p. 18. *See* Respondent's Exceptions at ¶ 7. The Petitioner counters that the ALJ's inference is supported by other evidence and by findings of fact to which the Respondent did not take exception. *See* Petitioner's Response at ¶ 7.

The Respondent's Exception No. 7 is rejected as the findings of fact in Paragraph 32 of the Recommended Order are supported by competent substantial evidence.

Respondent's Exception No. 8. The Respondent excepts to the to the finding of fact in Paragraph 33 of the Recommended Order that the Respondent had a duty to act when student D.S. asked if he may confront student R.W. Recommended Order p. 22. *See* Respondent's Exceptions at ¶ 8. The Respondent argues that the Petitioner failed to plead that the request of D.S. and/or M.B. to confront R.W. established a duty to act on the part of the Respondent. *Id.* The Petitioner counters that its Petition includes allegations that "two eighth grade male students became involved in this discussion with [the Respondent] and sought permission to confront [student R.W.]." Recommended Order at p. 3. *See* Petitioner's Response at ¶ 8. The Petitioner cites to the ALJ's observation that the vast portion of the "hearing time was devoted to Respondent's failures to act, and Respondent never objected to any of this evidence on the ground of relevance." Recommended Order at p. 10.

The Respondent did not object to the Petitioner's purported failure to plead when the Petitioner offered evidence at the hearing on her duty to act, nor did the Respondent address the matter in

her proposed recommended order filed with the ALJ on February 7, 2014. The ALJ concluded that the issues of failure to act either were tried by consent of the parties, or were tried because they were identified in the Petition. Recommended Order at pp. 10-11. *See also, id.*, at p. 3 (ALJ's description of the alleged failures to act as set forth in the Petition).

The Respondent's Exception No. 8 is rejected as the findings of fact in Paragraph 33 of the Recommended Order are supported by competent substantial evidence.

Respondent's Exception No. 9. The Respondent excepts to the to the purported "speculation contained in the unnumbered paragraph on page 10" that "is not labeled [as] a Finding of Fact or Conclusion of Law, but its speculation permeates the issues of unpled issues." *See* Respondent's Exceptions at ¶ 9. The Petitioner responds that the paragraph is dicta not essential to the determination of the case. *See* Petitioner's Response at ¶ 9.

The Respondent's Exception No. 9 is rejected as the findings of fact set forth in the Recommended Order are supported by competent substantial evidence, and the conclusions of law are supported by competent legal authority.

Respondent's Exception No. 10. The Respondent excepts to the finding of fact in Paragraph 36 of the Recommended Order (referenced in her Exceptions as Paragraph 33) that the video appeared to show that after R.W. and the other boys entered the restroom, one of the boys locked the door behind them. Recommended Order at p. 23. *See* Respondent's Exceptions at ¶ 10. The Respondent argues that, because the door locks from the inside and there is no camera inside the restroom, the finding is simple speculation. *Id.* The Petitioner counters that the video evidence supports the ALJ's inference and conclusion because that evidence indicates that several students who attempted to enter the bathroom were unable to do so, while other students who appeared to use keys were able to enter. *See* Petitioner's Response at ¶ 10.



The Respondent's Exception No. 10 is rejected as the findings of fact in Paragraph 36 of the Recommended Order are supported by competent substantial evidence.

Respondent's Exception No. 11. The Respondent excepts to the findings of fact in Paragraph 50 of the Recommended Order, contending, among other matters, that "the ALJ cannot make a finding of ultimate fact that asking the students if they heard a specific statement that Respondent understood to have been made constitutes improper influencing of student witnesses" because "[t]here is no finding that any student was asked to conform its [sic] testimony to the recollection of the Respondent." *See* Respondent's Exceptions at ¶ 11. The Petitioner counters that the evidence, specifically the testimony of the Assistant Principal, supports the ALJ's finding that the Respondent did not have the responsibility to investigate her own acts and omissions, and that "the leading questions constituted improper influencing of student witnesses." Recommended Order at pp. 26-27. *See* Petitioner's Response at ¶ 11.

The Respondent's Exception No. 11 is rejected as the findings of fact in Paragraph 50 of the Recommended Order are supported by competent substantial evidence.

Respondent's Exception No. 12. The Respondent excepts to the conclusion of law in Paragraph 62 of the Recommended Order that "Respondent's request that D.S. talk to R.W. . . . establishes Respondent's knowledge and duty to intervene later in the hallway . . ." Recommended Order at p. 30. *See* Respondent's Exceptions at ¶ 12. In particular, the Respondent argues that "[t]here is nothing about walking across the hall with R.W. that foreshadowed future events." *Id.* The Petitioner replies that there was adequate evidence to support the conclusion. *See* Petitioner's Response at ¶ 12. *See also* Recommended Order at pp. 21-22.

The Respondent's Exception No. 12 is rejected as the conclusions of law set forth in Paragraph 62 of the Recommended Order are supported by competent legal authority.

Respondent's Exception Nos. 13 and 14. The Respondent excepts to the conclusions of law in Paragraph 63 of the Recommended Order that relate to “the three alleged failures to act.” Recommended Order at pp. 30-31. *See* Respondent's Exceptions at ¶ 13. In particular, the Respondent contends that allegations of failure to act were waived by the content of the Pretrial Stipulation. *Id.* The Petitioner counters that the overwhelming majority of the hearing was spent discussing this issue without any objection from the Respondent. *See* Petitioner's Response at ¶ 13. *See also* Recommended Order at pp. 10-11; ruling on Respondent's Exception No. 8, *supra*.

The Respondent further excepts to the conclusions of law in Paragraph 63 relating to failures to act based on an assertion that “there was absolutely no proof presented that Respondent knew that D.S. and M.B. were proceeding to deal with R.W. for the disrespect that he had earlier shown Respondent.” *See* Respondent's Exceptions at ¶ 14. The Petitioner counters that the ALJ made appropriate finding of fact, including findings to which the Respondent did not except, that support the conclusions of law in Paragraph 63. *See* Petitioner's Response at ¶ 14. *See also* Recommended Order at pp. 21-22.

The Respondent's Exception Nos. 13 and 14 are rejected as the conclusions of law set forth in Paragraph 63 of the Recommended Order are supported by competent legal authority.

Respondent's Exception No. 15. The Respondent excepts to the conclusion of law in Paragraph 64 of the Recommended Order that relates to the waived issues of breach of duty “for the reasons set forth” in her prior exceptions and “because there was no Finding of Fact that Respondent had dispatched the eighth grade boys to deal with R.W. upon which such a conclusion could be based.” Recommended Order at p. 31. *See* Respondent's Exceptions at ¶ 15. The Petitioner responds by relying upon its responses to the prior exceptions, and further counters that the conclu-

sions of law are supported by appropriate findings of fact. *See* Petitioner’s Response at ¶ 15. *See also* Recommended Order at pp. 21-22.

The Respondent’s Exception No. 15 is rejected as the conclusions of law set forth in Paragraph 64 of the Recommended Order are supported by competent legal authority.

Respondent’s Exception No. 16. The Respondent excepts to the conclusion of law in Paragraph 65 of the Recommended Order that the Respondent failed to protect R.W. from conditions harmful to learning or his mental or physical health or safety, and failed to intervene when she saw D.S. and M.B. remove R.W. from his class, arguing there is no Finding of Fact in support of those conclusions. Recommended Order at p. 31. *See* Respondent’s Exceptions at ¶ 16. The Petitioner counters that the conclusions of law are supported by appropriate findings of fact. *See* Petitioner’s Response at ¶ 16. *See also* Recommended Order at pp. 21-22.

The Respondent’s Exception No. 16 is rejected as the conclusions of law set forth in Paragraph 65 of the Recommended Order are supported by competent legal authority.

Respondent’s Exception No. 17. The Respondent excepts to the conclusion of law in Paragraph 66 of the Recommended Order that the “Respondent influenced several student witnesses at lunch when she asked them leading questions about what they had seen,” contending that the ALJ made no Finding of Fact directly supporting the conclusion. Recommended Order at p. 32. *See* Respondent’s Exceptions at ¶ 16. The Petitioner replies that the Respondent is merely rearguing the matters presented in her Exception No. 11. *See* Petitioner’s Response at ¶ 17. *See also* Recommended Order at pp. 26-27.

The Respondent’s Exception No. 17 is rejected as the conclusions of law set forth in Paragraph 66 of the Recommended Order are supported by competent legal authority.

Respondent's Exception No. 18. The Respondent excepts to the conclusion of law in Paragraph 68 of the Recommended Order that the Respondent assigned any duty to the students that was exclusively that of the Respondent and the administration, asserting that no Finding of Fact or evidence of record supports the conclusion. Recommended Order at p. 32. *See* Respondent's Exceptions at ¶ 18. The Petitioner counters that the conclusions of law are amply supported by findings of fact. *See* Petitioner's Response at ¶ 18. *See also* Recommended Order at pp. 15, 18, and 21.

The Respondent's Exception No. 18 is rejected as the conclusions of law set forth in Paragraph 68 of the Recommended Order are supported by competent legal authority.

Respondent's Exception No. 19. The Respondent excepts to the conclusion of law in Paragraph 68 of the Recommended Order that the Respondent "failed to prevent the student misconduct" that took place, arguing that no evidence was presented nor any Finding of Fact made in support. Recommended Order at p. 32. *See* Respondent's Exceptions at ¶ 19. The Petitioner counters that the Respondent is essentially rearguing the position taken in her Exception Nos. 14 and 18, and refers to its Responses to those Exceptions. *See* Petitioner's Response at ¶ 19. *See also* Recommended Order at pp. 21-22.

The Respondent's Exception No. 19 is rejected as the conclusions of law set forth in Paragraph 68 of the Recommended Order are supported by competent legal authority.

Respondent's Exception No. 20. The Respondent excepts to the conclusion of law contained within the Recommendation set forth in the Recommended Order, contending that the recommended penalty is not consistent with the evidence, is disproportionate, and is unsupported by a finding or conclusion of "just cause." Recommended Order at p. 33. *See* Respondent's Exceptions at ¶ 20. The Petitioner responds that the Respondent's argument is duplicative of prior Exceptions, reincor-

porates its prior Responses, and notes that the ALJ properly referenced the “just cause” standard for termination. *See* Petitioner’s Response at ¶ 20. *See also* Recommended Order at pp. 8-9, 27, and 32.

The Respondent’s Exception No. 20 is rejected as the findings of fact and conclusions of law amply support the ALJ’s recommendation, and constitute just cause, for termination.

Findings of Fact

The School Board adopts the findings of fact set forth in Paragraphs 1 through 50 of the Recommended Order.

Conclusions of Law

The School Board adopts the conclusions of law set forth in paragraphs 51 through 68 of the Recommended Order.

Penalty

The School Board adopts the penalty recommended by the ALJ in paragraph 68 and the Recommendation of the Recommended Order, and finds just cause for termination.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the Respondent Dru Dehart be, and she is hereby, terminated from her employment with The School Board of St. Lucie County, Florida, as of the effective date of this Final Order. This Final Order shall take effect upon filing with the Superintendent of Schools as Secretary of THE SCHOOL BOARD OF ST. LUCIE COUNTY, FLORIDA.

A copy of this Final Order shall be provided to the Division of Administrative Hearings within 15 days of filing, as set forth in Section 120.57(1)(m), Fla. Stat.

\* \* \*

DONE AND ORDERED this 22<sup>nd</sup> day of April, 2014.

THE SCHOOL BOARD OF ST. LUCIE COUNTY, FLORIDA

By: Deborah A. Hawley  
DEBORAH A. HAWLEY, Chair

Attest: Genelle Zoratti Yost  
GENELLE ZORATTI YOST, Superintendent and Ex-  
Officio Secretary to The School Board of St. Lucie County,  
Florida

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#### NOTICE OF RIGHT TO APPEAL

Any party adversely affected by this Final Order may seek judicial review pursuant to Section 120.68, Fla. Stat., and Fla. R. App. P. 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 Fla. R. App. P. 9.110, with the Superintendent as Ex-Officio Secretary of The School Board of St. Lucie County, Florida, 4204 Okeechobee Road, Fort Pierce, Florida 34947. A second copy of the Notice of Appeal, together with the applicable filing fee, must be filed with the appropriate District Court of Appeal.

Attachment: Recommended Order

Copies furnished to:

Mark Wilensky, Esquire  
David Miklas, Esquire  
Lesslie Jennings Beuttell, Esquire  
Daniel B. Harrell, Esquire  
Clerk, Division of Administrative Hearings