

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ARTHUR J. GALLAGHER RISK MANAGEMENT
SERVICES, INC., D/B/A GALLAGHER,

Petitioner,

CASE NO. 20-4844BID

v.

THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FL,

Respondent,

And

MARSH USA, INC.,

Intervenor.

_____ /

**FINAL ORDER OF THE SCHOOL BOARD
OF MIAMI-DADE COUNTY, FLORIDA**

THIS CAUSE having been heard by The School Board of Miami-Dade County, Florida, at its regular meeting of February 10, 2021, for the purpose of considering Petitioner's Exceptions to the Administrative Law Judge's Recommended Order in the case of Arthur J. Gallagher Risk Management Services, Inc., d/b/a Gallagher v. School Board of Miami-Dade County, Florida, DOAH Case No. 20-4844BID. In compliance with, and having reviewed the record as defined by Fla. Stat. § 120.57(1)(f),

IT IS HEREBY ORDERED by The School Board of Miami-Dade County, Florida, that the Administrative Law Judge's Recommended Order, and the Finding of Facts and Conclusion of Law contained therein, is hereby, adopted in-part and modified in-part by adopting Petitioner's Exceptions to the Recommended Order, as the Final Order of the

School Board of Miami-Dade County, Florida.

I. Procedures for Ruling on Exceptions and Adopting Final Order.

Following the receipt of the parties' Exceptions and Responses thereto, the School Board duly noticed a meeting, which was held on Wednesday, February 10, 2021, to hear and address the Exceptions to the ALJ's Recommended Order. All parties were timely served notice of this hearing. At the three-hour hearing, counsel for the Petitioner, counsel for the Intervenor and counsel for the Superintendent were entitled to and did make oral presentations to the School Board of their arguments and references to the record as to each Exception and Response. All School Board members were afforded an opportunity to ask questions, deliberate and discuss before voting.

The School Board reviewed and duly considered the ALJ's Recommended Order, the Exceptions and Responses submitted, and the complete record of the above-styled cause. This review was completed prior to voting on the Exceptions. The School Board had also been advised of the appropriate standards of its review of an ALJ's findings of fact and conclusions of law in the Recommended Order, and consulted legal counsel to provide legal advice in the School Board's deliberations and voting on this matter on the Exceptions and adoption of this Final Order.

II. Rulings on Exceptions.

In rendering a final order, the School Board may consider any exception to the Recommended Order raised by a party to the administrative hearing, or it may act on its own initiative. *Westchester Gen. Hosp. v. Dep't of Health and Rehab. Servs.*, 419 So. 2d 705, 708 (Fla. 1st DCA 1982) ("Agency power to modify and reject flows from the statute

and is not dependent on the filing of exceptions." Each of Petitioner's nine (9) Exceptions to the proposed Findings of Fact, Conclusions of Law, and Recommendation contained in the Recommended Order are accepted.

III. Findings of Fact and Conclusions of Law.

The School Board has jurisdiction over the subject matter and the parties hereto. The School Board adopts the Conclusions of Law of the ALJ's Recommended Order, except as stated below and finds that they are supported by competent substantial evidence in the record.

The School Board further finds that the proceedings upon which the adopted Conclusions of Law were based complied with the essential requirements of law.

A. Standard of Review Concerning Petitioner's Exceptions.

Petitioner filed nine (9) Exceptions to certain paragraphs set forth in the Recommended Order of the ALJ, pursuant to Section 120.57, Florida Statutes, and the Respondent and Intervenor both filed responses to Petitioner's Exceptions.

In reviewing said Exceptions, the Board was advised that the controlling statute, Section 120.57(1)(l), Florida Statutes (2019), states as follows:

120.57(1)(l) The agency may adopt the recommended order as the final order of the agency. **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. **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.**

The School Board is not free to re-weigh the evidence presented or to reject the findings of fact unless there is no competent, substantial evidence to support them. See *Health Care and Ret. Corp. of Am. v. Dep't of Health and Rehab. Servs.*, 516 So. 2d 292, 296 (Fla. 1st DCA 1987); *Heifetz v. Dep't of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985); *Schumacher v. Dep't of Prof'l Reg.*, 611 So. 2d 75 (Fla. 4th DCA 1992). However, there must be *some* competent substantial evidence to support each finding of fact. See § 120.57(l)(1), Fla. Stat. (2016).

Substantial evidence has been defined as evidence which establishes a "substantial basis of fact from which the fact at issue can be reasonably inferred." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). Substantial evidence is the amount of evidence in which "a reasonable mind would accept as adequate to support a conclusion." *Id.* Competent evidence is evidence which is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. *City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc.*, 857 So. 2d 202, 204 (Fla. 3d DCA 2003).

As to Petitioner's Exceptions to Recommended Order, they are adopted as follows:

EXCEPTIONS TO FINDINGS OF FACT

1. Adopt the exception to Paragraph 16 for the reasoning stated at the Board Meeting on February 10, 2021 and with particularity in Petitioner's exceptions filed with

the School Board, which set forth the reasoning that no substantial competent evidence exists in the records to support the findings of facts.

2. Adopt the exception to Paragraphs 31, 32, 58, 59, and 61 for the reasoning stated at the Board Meeting on February 10, 2021 and with particularity in Petitioner's exceptions filed with the School Board, which set forth the reasoning that no substantial competent evidence exists in the records to support the findings of facts.

3. Adopt the exception to Paragraph 42 for the reasoning stated at the Board Meeting on February 10, 2021 and with particularity in Petitioner's exceptions filed with the School Board, which set forth the reasoning that no substantial competent evidence exists in the records to support the findings of facts.

4. Adopt the exception to Paragraphs 42 and 44 for the reasoning stated at the Board Meeting on February 10, 2021 and with particularity in Petitioner's exceptions filed with the School Board, which set forth the reasoning that no substantial competent evidence exists in the records to support the findings of facts.

5. Adopt the exception to Paragraph 47 for the reasoning stated at the Board Meeting on February 10, 2021 and with particularity in Petitioner's exceptions filed with the School Board, which set forth the reasoning that no substantial competent evidence exists in the records to support the findings of facts.

6. Adopt the exceptions to Paragraphs 52, 53, 54, and 55 for the reasoning stated at the Board Meeting on February 10, 2021 and with particularity in Petitioner's exceptions filed with the School Board, which set forth the reasoning that no substantial competent evidence exists in the records to support the findings of facts.

7. Adopt the exception to Paragraph 63 for the reasoning stated at the Board Meeting on February 10, 2021 and with particularity in Petitioner's exceptions filed with

the School Board, which set forth the reasoning that no substantial competent evidence exists in the records to support the findings of facts.

EXCEPTIONS TO CONCLUSIONS OF LAW

8. Adopt the exception to Paragraph 78 and 79, and for the specific reasoning stated at the Board Meeting on February 10, 2021, and with particularity in Petitioner's exceptions filed with the School Board, to reject or modify the conclusions of law over which the School Board has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. The School Board hereby incorporates the reasoning set forth in Petitioner's exceptions to Paragraph 78 and 79, which sets forth with particularity the rationale for substituting its conclusion of law and interpretation of administrative rule, which is as or more reasonable than that which was rejected or modified.

9. Adopt the exception to Paragraph 82, and for the specific reasoning stated at the Board Meeting on February 10, 2021, and with particularity in Petitioner's exceptions filed with the School Board, to reject or modify the conclusions of law over which the School Board has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. The School Board hereby incorporates the reasoning set forth in Petitioner's exception to Paragraph 82, which sets forth with particularity the rationale for substituting its conclusion of law and interpretation of administrative rule, which is as or more reasonable than that which was rejected or modified.

As to the Administrative Law Judge's recommendation that the School Board award a contract, pursuant to the RFP 19-010-CM to Intervenor Marsh, consistent with

the School Board's action on Agenda Item E-150 ("Award Request For Proposals No. RFP-19-010-CM – Risk Management and Insurance Broker Services"), the award to Intervenor Marsh or Petitioner Gallagher is REJECTED, and Request For Proposals No. RFP-19-010-CM – Risk Management and Insurance Broker Services will be presented to the School Board at a future date as outlined in the RFP for Board consideration.

DONE AND ORDERED this 10th day of February, 2021.

**THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA**

By: Perla T. Hantman
Ms. Perla Tabares Hantman, Chair

Filed with the Clerk of The School Board of
Miami-Dade County, Florida this 23 day of
February, 2021.

APPEAL OF FINAL ORDER

This Order may be appealed by filing 2 copies of a notice of appeal accompanied by a filing fee, as set out in section 120.68(2), Florida Statutes and Florida Rules of Appellate Procedure 9.110(b) and (c), within thirty (30) days of the rendition of this Final Order.

CC: Arthur J. Gallagher Risk Management Services, Inc., d/b/a Gallagher
Marsh USA, Inc.