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THE FLORIDA SENATE

In re: Executive Order of Suspension, Number 19-13
Suspension of Ms. Mary Beth Jackson, Superintendent of Schools
Okaloosa County, Florida

GOVERNOR DESANTIS' REBUTTAL BENCH MEMORANDUM

COMES NOW, the Executive Office of Governor Ron DeSantis ("EOG"), by and through Deputy General Counsel Nicholas Primrose, pursuant to Special Master Goodlette's letter dated April 23, 2019, respectfully submits this rebuttal bench memorandum for review in the matter of Executive Order 19-13, Suspension of Mary Beth Jackson ("Jackson"), Okaloosa County School Superintendent.

1. Introduction

On Friday, May 3, 2019, Jackson filed her Bench Memorandum ("Jackson Memorandum") in opposition to EOG's Bench Memorandum. The Jackson Memorandum attempts to argue that Jackson bears no responsibility for the child abuse/neglect that occurred within Okaloosa Schools during her tenure as the Superintendent and that Jackson exhibited no neglect or incompetence. Jackson would have the Florida Senate reinstate her back as the Superintendent of Okaloosa Schools absent any of the factual evidence that she is unfit to continue in that position. Reinstating Jackson as the Superintendent would not be in the best interest of the health, safety and welfare of students in Okaloosa Schools.

At the outset, EOG does not deny that Jackson has enjoyed a long tenure in education. There is no dispute that she was twice elected as the Superintendent as Okaloosa Schools. However, what the facts, evidence and testimony will show is that Jackson has failed as a leader, and as a result, the health, safety, and welfare of the students have been placed in jeopardy. The failure was not limited to the 2015-2016 academic year, but rather continued through her suspension.

2. Rebuttals

A. School District Policies

Jackson's first argument attempts to place blame and responsibility on the entire School Board. Jackson argues, "[t]he School Board, not the Superintendent, adopts policies." Jackson Memorandum, pg. 6. This position is not new, as Jackson has never accepted any responsibility

or role in the scandal that hangs over Okaloosa Schools. Jackson's attempt to place blame for deficient policies onto the entire School Board fails for two reasons. First, section 1001.41, Florida Statutes, says it is the Superintendent who recommends policy changes for the School Board to consider. Second, the Superintendent is the full-time chief executive of the entire school system and, therefore, is wholly responsible for the entire administration, management, and supervision of the school district. *See* EOG00006. Therefore, Jackson bears the sole responsibility for recommending policies and insuring they are adopted to protect the health, safety and welfare of the students. There should be no passing the blame onto the elected School Board members who rely on Jackson's day-to-day oversight and management to be aware of deficiencies.

Yet, Jackson seemingly takes credit for her swift action in changing policies once the media exposed the issues surrounding Teacher Stillions. Jackson Memorandum, pg. 8. Jackson touts that the policy was changed in late 2017 to require parental notification of allegations of abuse, investigation procedures, and other revisions. *Id.* First, the acknowledgment that policies required changes is an admission by Jackson that the policies were, in fact, deficient and lead to serious program failures and oversight. That acknowledgment must fall on Jackson's shoulders as the chief executive of Okaloosa Schools. The admission that policies were inadequate is enough to find neglect of duty and incompetence. Second, the policy changes, while necessary, are too little, too late. The Florida Senate should view Jackson's efforts, only after the charges of abuse became public, as nothing more than Jackson protecting herself in the mounting public scrutiny over her failed leadership.

It should not be lost on the Florida Senate that Jackson's other argument is that it is an "unfortunate, but unfailing truth" that policies cannot prevent all incidents from occurring. Jackson Memorandum, pg. 8. Public officials, especially ones entrusted to protect the vulnerable student population, should not have the mentality that utopia is unattainable. This argument is *prima facie* neglect of duty and incompetence. Jackson's belief that Okaloosa Schools' policies "were more than adequate to address the safety and welfare of the students" is disrespectful to the parents and students who have been impacted by the child abuse/neglect, and is evidence of her unfit character to continue to lead the school district. Jackson Memorandum, pg. 9.

Our superintendents have a primary responsibility to provide a quality education to our students, while protecting their health, safety, and welfare to the fullest extent. And policies that are deficient in accomplishing those two tasks should be heavily scrutinized and critiqued.

B. Training

Jackson claims training was more than sufficient within Okaloosa Schools, yet this argument is replete with factual misrepresentations of the evidence and testimony. First, Jackson claims that there were trainings for staff throughout the year, reminding them of their mandatory duty to report child abuse, by citing to testimony from Karen Peek. However, the testimony of Ms. Peek does not stand for what Jackson represents to the Senate. One only needs to read the transcript, wherein, Ms. Peek says she cannot pinpoint to specific training "other than to being in June of 2018 when it became required that every single employee had to be re-trained." MBJ004664.

EOG acknowledges that Jackson changed the policy in June 2018 to require all employees to be trained and certified annually. However, that means Jackson must admit that

prior to June 2018, not all employees were trained and certified on mandatory reporting. In fact, Ms. Peek testified that prior to June 2018, there was no requirement preexisting staff read School District policies, the Code of Conduct, or be trained annually—that was only required of new teachers and new personnel. *See generally* MBJ004689-004692. And while Jackson relies on Ms. Peek’s testimony that she knew her obligation to report child abuse, it is not difficult to see how long-tenured teachers and personnel, who went years or decades without refresher trainings would fail in their responsibilities. The Florida Senate only need to look at Investigator Farley’s findings and recommendations in the Teacher Stillions report:

- It is problematic that employees did not make an immediate report of alleged inappropriate interactions/procedures between Teacher Stillions and the Pre K disable students. All employees are required to report any actual or suspected cases of child abuse, abandonment or neglect.

- Staff personnel be briefed that they are mandated reporters and should immediately report abuse/neglect.

EOG01129-01130. There were numerous teachers and personnel who saw inappropriate behavior towards developmentally disabled Pre-K students that did not report anything to their superiors or DCF. Investigator Farley rightfully called that finding “problematic” and recommended supplemental training on that exact responsibility. Contrary to Jackson’s assertion, not all of the Okaloosa Schools teachers and personnel knew of their responsibility.

Jackson claims that Ms. Peek knew about her mandatory reporting duties and “she was frequently told of that obligation by the District.” Jackson Memorandum, pg. 11. Compare that to Ms. Peek’s answer to this question by Jackson’s attorney, “[s]o for the 29 years running back from 2013, you recall being advised every year that there was a mandatory reporting obligation to you, as a teacher, must abide by? A: No, I could not say that.” MBJ004665-004666. While Jackson attempted to rehabilitate the testimony, it cannot be lost that Ms. Peek confirmed multiple times in her deposition that the only annual training that occurred was for *new* employees and *not* pre-existing staff. And while EOG will agree that Ms. Peek certainly knows her responsibilities, the facts from the Teacher Stillions incident confirm not every teacher or staff member remember theirs. The failure of personnel remembering this very important statutory duty falls on the shoulder of one person—Jackson.

Jackson also claims there was training for principals and assistant principals, that she mandated, as evidence her leadership on training was sufficient. However, there are many faults with this argument. First, as mentioned above, it is undisputed staff did not know about their responsibility. The only inference that can be drawn from this fact is that while principals may have been informed of the responsibility, that information was not disseminated appropriately within the schools themselves. Second, Specialist Mary Elias-Evans testified during the criminal investigation she was completely unaware of her responsibilities or whether she allowed to report if she saw inappropriate behavior between a teacher and student.

Q And if you had, you would have reported the incident to law enforcement or DCF if you suspected child abuse. Go ahead.

A I never knew that I could report an incident. If I had known, I would have, if I felt it was abuse. But any instance I have come in contact with in my 18, 19 years of experience, it's been the teacher that's called or administration that called, so I never knew I could call. But if I knew then what I know now, and knew I could call, if I thought it was child abuse, yes, I would call.

EOG00191. This testimony is a consistent theme of the failed training program put in place by Jackson. A cashier at Kenwood Elementary School, Melanie Sorem Smith ("Melanie Smith") testified:

Q Okay. Did you ever report that to anyone?

A I did not.

Q Why not?

A At the time I had no inkling who to go to to even talk to about that, and so when I -- I was shocked by the incident and I began to approach her, she just let me know that she had her ways of handling these children and that -- she didn't say it in so many words, but she was letting me know that I needed to step back.

EOG00307. Melanie Smith went into further detail regarding the deficiencies of training related to reporting suspected or actual child abuse:

Q Okay. Now, you said now, currently, that they have posters and you've been instructed on calling it in or reporting it in and stuff like that.

A Yes.

Q Back then were there any posters on telling you how to report stuff?

A Not that had ever been pointed out to me. I had never seen them.

Q Okay. So if you did believe that something like the arm grabbing could be harmful, did you even know who to contact outside the school to report that to?

A Not at that time. I do now, because the hotline number is out there.

Q Okay. But back then --

A No.

Q -- you didn't know who to report that to. Had you ever been told to report anything to the administration at the school if you saw something?

A No.

Q Okay. You had never received any kind of training about how to report any incidents that you saw --

A No.

Q -- that were suspected --

A Mr. Farley never brought those up in our trainings. At the beginning of the school year we would

always have all of Okaloosa County school came together over in Niceville, and that was not a topic that was discussed.

Q And Mr. Farley did that training?

A Yes.

Q And he never trained you all on any type of reporting then about anything that you might see?

A No.

Even the teacher's aide, Gina Mercer, who eventually complained to Investigator Farley about Teacher Stillions' inappropriate behavior was not properly trained to identify suspected child abuse/neglect or how to report it:

Q Okay. You said you never received any training on abuse or neglect?

A No.

Q Did it even cross your mind that the way a teacher treated a child in the school system could be abuse or neglect?

A No, I didn't think about that.

Q So until all this came out, you never really considered that there could be an abuse or neglect situation in the classroom?

A No, not until everybody started asking around and sit back and think about it and -- you know.

EOG00283. The inconvenient truth for Jackson is that the overwhelming testimony provided during the criminal investigation into the Teacher Stillions' incident contradicts her assertions that training in Okaloosa Schools was sufficient to protect the health, safety and welfare of students. While Jackson may believe discussing reporting requirements with principals and assistant principals is evidence of adequacy, the facts do not support her assertion.

Of equal import is Jackson's argument that she was involved with implementing additional training in other areas of instruction within Okaloosa Schools, highlighting authorizing training for exceptional needs students and their behavior issues. Jackson Memorandum, pg. 14. This argument is suspect and contradictory to Jackson's claimed innocence. First, if Jackson was knowledgeable about increased suspensions for students within the ESE program, why was she not knowledgeable about the full extent of the investigation into Teacher Stillions. Second, when a recommendation was made to provide trainings on mandatory reporting of actual or suspected child abuse/neglect within an ESE program, why did that not immediately raise concerns for Jackson to investigate further. And third, Jackson admits training was conducted in direct response to Investigator Farley's report into Teacher Stillions. Jackson Memorandum, pg. 15. The admission comes in an e-mail exchange between Assistant Superintendent Stacie Smith and Joan Pickard, the new principal at Kenwood Elementary School on July 18, 2016—one month after the Teacher Stillions' report was published.

From: Smith, Stacie
Sent: Monday, July 18, 2016 2:02 PM
To: Pickard, Joan
Cc: Farley, Arden ; Sommer, Melody ; Jackson, Mary Beth
Subject: Kenwood Training

Mrs. Pickard,

From the recent events that have taken place I am requesting that Kenwood Elementary receive training during the 2016/2017 school year. Does Kenwood have a CIP team that includes both instructional and ed-support employees? if not, this needs to occur.

I would like for Mr. Farley to have time to speak to your staff in preplanning on the code of ethics specifically (5) Obligation to the profession of education requires that the Individual: (a)- (q). There seems to be confusion/forgetfulness on employees respecting other employees.

I would also like there to be a reminder during pre-planning of the mandatory requirement to report child abuse/neglect.

EOG01157. If the Florida Senate believes that Jackson did not know about the full extent of the Teacher Stillions' abuse investigation, findings and recommendations, this e-mail should have immediately raised a red-flag for Jackson. How does a superintendent see an e-mail with "mandatory requirement to report child abuse/neglect" and not immediately ask to (1) read the report in full; (2) be briefed by Investigator Farley; and (3) take immediate action? The lack of e-mails or involvement by Jackson infers she knew exactly what was in Investigator Farley's report, its findings and recommendations, and this course of action by Assistant Superintendent Smith was approved by Jackson. The latter is confirmed when Joan Pickard replies back to all of the individuals, including Jackson:

From: Pickard, Joan </o=okaloosa school district/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=joan.pickard>
Sent: Monday, July 18, 2016 5:36 PM
To: Smith, Stacie (Hr)
Cc: Jackson, Mary Beth; Sommer, Melody; Farley, Arden
Subject: RE: Kenwood Training

I have contacted Arden for dates that he is available during preplanning.

As to training for staff to unify, I believe you are referring to their not reporting Ms. Stillions' behavior? I think having Arden share about their responsibilities will assist in this area. If there is another issue regarding lack of unity among the staff, please give me a call. I believe from reading Arden's report, that the not reporting was lack of knowing what/when to report and it seemed some fear of retaliation by a union rep. however unfounded that fear may have been.

EOG001157. The Florida Senate should not believe Jackson's assertion that she only became aware of the details of the Teacher Stillions' incident in late 2017. Jackson Memorandum, pg. 16. It should also not be persuaded that since Jackson mandated annual re-training in June 2018. However, even assuming arguendo, that Jackson did not know about the details until late 2017 and recommended changes in June 2018, her initial failure to be fully informed as training failures is prima facie evidence of neglect of duty and incompetence.

C. Stillions Incident

Jackson spends a significant portion of her memorandum discussing the underlying facts of the Teacher Stillions incident. One critical portion of her argument rests on the assertion that one of the parents of a minor child authorized Teacher Stillions to utilize certain behavioral techniques with her child. While this may be true, it is also true that none of these techniques were in the minor child's individual education plan ("IEP"). The IEP is a critical plan developed in a collaboration effort between the child's parents and school personnel, designed to properly protect the child in difficult situations. At the outset, EOG acknowledges that developmentally challenged students require different needs and special attention, however, what occurred in the Teacher Stillions' incident was not within what is appropriate interaction with a Pre-K developmentally challenged student.

Jackson claims, without evidence, that Investigator Farley called DCF to report his knowledge of suspected child abuse. Jackson Memorandum, pg. 24. Jackson cites to a deposition testimony of Steve Chatman and Stacie Smith for her assertion that Investigator Farley called DCF. Both individuals have no independent knowledge of the phone call, but rather took Investigator Farley's word. While Steve Chatman believes "to the best of [his] recollection" that Investigator Farley spoke to DCF investigator Teresa Gomez and there were no indicators of abuse, there is zero corroborating evidence of a call, especially in spring/summer 2016. Rather, the finding of no indicators of abuse was not released by DCF until summer 2017, once DCF and Okaloosa County Sheriff's Office were given the Stillions report.

Furthermore, Teresa Gomez explicitly testified she never spoke to Investigator Farley prior to the issuance of the Teacher Stillions report about the allegations of suspected child abuse/neglect. Teresa Gomez testified that even if she received all call personally, it is DCF policy that they cannot take reports and that "all abuse reports have to go through the Florida Abuse Hotline." MBJ Ex. 149, MBJ005705. And to eliminate any doubt as to Teresa Gomez's knowledge:

Q	Okay. Did you ever talk to Mr. Farley about the situation with Mr. Stillions?
A	No.
Q	Did you ever talk to him about [REDACTED]?
A	No.
Q	Okay. Did he ever attempt to call or leave you a message regarding that case?
A	No.

MBJ Ex. 149, MBJ005705. Furthermore, anytime DCF receives a call on the Florida Abuse Hotline, they memorialize the call, even if they determine no follow-up investigation is required.

Here, there is no evidence that Investigator Farley ever called the Hotline in spring/summer 2016.

However, assuming *arguendo*, that Investigator Farley called DCF in spring/summer 2016 while he was investigating Teacher Stillions, the fact that Jackson did not demand to be informed every time DCF was called regarding a teacher is troubling, and dangerous. Furthermore, the fact that Jackson did not require written confirmation if there was a finding of no child abuse confirms a lack of leadership or concern for the health, safety and welfare of the students. A competent, diligent superintendent would demand from her investigators documentation of calls with DCF and findings, instead of taking their word.

Of import, Jackson argues that Assistant Superintendent Stacie Smith interacted with Investigator Farley after the report was finalized, and it was Smith who made an independent decision of its findings and recommendations. Jackson submits to the Florida Senate that she was never told about specific details from Investigator Farley's report and she was never given a copy. EOG does not believe this to be accurate. Assistant Superintendent Stacie Smith is very clear in her deposition and interview that it was her standard practice to fully explain the report and its confirmed findings. EOG00857-00859.

Jackson confirms in her memorandum that "based on the discussions between Ms. Smith and [herself]," Jackson made the decision not to impose discipline. This begs an important question, how does a superintendent not independently read the report in its entirety for the confirmed findings and recommendations before deciding on disciplinary action. It is implausible, neglectful, and gross incompetence. It is also against statutory and district policy that disciplinary decisions should be made by the superintendent, which implies the superintendent should have independent knowledge on the incidents—not delegate that responsibility and then claim blind ignorance.

Jackson's next argument is that Teacher Stillions was removed from the classroom in May 20, 2016, an action that met her statutory responsibility under section 1012.796, Florida Statutes. Contrary to Jackson's assertion, Investigator Farley had knowledge of a legally sufficient complaint of disqualifying allegations against Teacher Stillions on April 27, 2016. EOG01067. Furthermore, Okaloosa Schools last day of class was June 2, 2016—11 days from when Teacher Stillions was allegedly removed from the classroom. Jackson also failed to explain why she directed Assistant Superintendent Smith not to refer the investigation to DOE's Office of Professional Practices if she did not read the report—Investigator Farley explicitly recommended it be referred.

To make matters worse, Teacher Stillions was paid during her alleged time removed from the classroom *and* then transferred for the start of the 2016-2017 academic year to another school with developmentally challenged students. It should not be lost that the transfer of teachers between schools requires School Board approval and Jackson did not fully disclose to the School Board the circumstances surrounding Teacher Stillions transfer or that she was the subject of an investigation. It should also not be lost that Jackson failed to provide any explanation or excuse

for allowing the terms of the Master Contract with the Teachers' Union to supersede disciplining teachers for Code of Ethics violations.

EOG agrees that Okaloosa Sheriff's Office and DCF both investigated the Teacher Stillions incident starting in Spring 2017, after the report was released to a parent. EOG acknowledges that DCF, investigating the incident over one year after the allegations were made, found no indicators of abuse. *See* MBJ Ex. 190. That is not surprising given any physical evidence of abuse would have subsided, a finding explicit in the report. *See* MBJ Ex. 189. Okaloosa Sheriff's Office believed based on the testimony and evidence that criminal charges were warranted for child abuse and failing to report child abuse. Criminal charges which Investigator Farley, Assistant Superintendent Smith, and Principal Vaughan all plead to and Teacher Stillions was found guilty of a jury of her peers, even though she has appealed.

EOG will not engage in slanderous accusations and conspiracy theories regarding the parents of the minor child involved in the Teacher Stillions incident because they are immaterial and irrelevant to Jackson's actions/inactions. EOG would further ask the Florida Senate to not engage in extraneous information raised by Jackson that is used as a red herring and smoke screens to run from her responsibility.

D. Frazier Incident

Jackson submits that action was appropriate and responsive to the Teacher Frazier incident. This is not entirely accurate. [REDACTED]

[REDACTED] MBJ Ex. 191, MBJ006238. Specifically, the alleged abuse occurred two months prior to Principal Williams entering his positions, "two months ago the teacher punched [minor child] in the chest." *Id.* In fact, the teaching assistant brought concerns to the previous principal at Silver Sands Schools and by all accounts nothing was done. [REDACTED]

[REDACTED] MBJ Ex. 191, MBJ006239.

While EOG admits Jackson recommended, and the School Board approved, a three-day suspension without pay, Teacher Frazier was allowed to continue employment throughout the remainder of the 2015-2016 academic year. If it were not for Teacher Farley's voluntary retirement, he may have been back in the classroom for the 2016-2017 academic year given Jackson's actions with Teacher Stillions.

Furthermore, Jackson fails to acknowledge the gravity of the allegations against Teacher Frazier, which were more than what is outlined in her memorandum on page 37. Lest there be any doubt as to the severity of the findings against Teacher Frazier, here is what Investigator Farley confirmed:

III: Findings

There was sufficient evidence that Respondent Roy Frazier violated the Code of Ethics and Principles of Professional conduct by:

- o His admission that he redirected a student with physical contact of two fingers to the shoulder area.
- o His admission that he used a side kick to slide the student over. That he nudged the student leg with his foot, usually to gently move her so he could get to the computer.
- o His admission that he (jokingly) asked an aide to pinch a student.
- o His admission that he swung a muscular dystrophy student to get him out of a mood swing that resulted in the student hitting his head on the ground.
- o His admission that he brought a BB gun to class with an umbrella used to camouflage the BB gun.
- o His admission that during a school sponsored event, he used the time for personal use in which he stop by his home residence to off load items he purchased for resale.

EOG01006. Another allegation included throwing shoes at three different students. Teacher Frazier admitted to throwing shoes in the classroom, just explained not directed at the students. EOG01003. These findings against Teacher Frazier were serious and Jackson's attempt to minimize the severity of them is concerning.

E. Wolthers and Burt Incidents

Many of the facts surrounding these incidents are still developing. However, it is clear that the allegations stem from incidents that occurred in late 2018, under Jackson's tenure. In fact, the most recent Informations filed by the State Attorney's Office charge Teacher Wolthers and Aides Madison and Lacroix with felonies for acts occurring between September 1, 2018 and November 14, 2018.

Jackson's attempt impute responsibility on Marcus Chambers is irrelevant to the case before the Florida Senate, and another example of her refusing to accept any responsibility for the bad acts that occur during her tenure as the Superintendent of Okaloosa Schools.

F. Post-Suspension

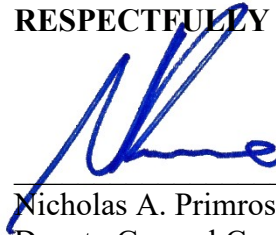
As explained above, Jackson's mantra has consistently been refusing to accept any responsibility and blame others. In the Teacher Frazier and Stillions incidents she blames everyone underneath her for making decisions, bad acts, or for failing to keep her informed. In the Wolther and Burt incidents, she cannot help but blame Marcus Chambers for actions that took place while she was still the Superintendent. And to make things worse, Jackson takes exception with how Marcus Chambers and the School Board have conducted business since her suspension. The Florida Senate should limit its review to Jackson's acts and omissions prior to her suspension, that is the only relevant material. EOG would object to any evidence or testimony submitted or elicited that goes into activities post January 11, 2019, as being wholly irrelevant to Jackson's neglect of duty and incompetence.

3. Conclusion

The evidence and testimony presented to the Florida Senate proves that Jackson neglected her duties and was incompetent. As stated in the EOG Initial Bench Memorandum, Jackson, as the Superintendent of Okaloosa Schools, was statutorily charged with numerous responsibilities that she violated. Additionally, she failed to follow Okaloosa School Board Policies governing her conduct, especially during investigations into teacher misconduct that affected the health, safety and welfare of the students she was entrusted to protect. The evidence will show that Jackson used her subordinates to remove herself from being liable to the students and their parents. The evidence will show that Jackson knew about the confirmed allegations, findings and recommendations against Teacher Stillions, much like she admits she knew about the Teacher Frazier incident. The Teacher Stillions report was finalized on June 17, 2016. Jackson directed Assistant Superintendent Stacie Smith to not take any action against Teacher Stillions and to essentially hide the report from the light of day on August 1, 2016—twenty-nine days before her primary election. Jackson’s claim that she did not read the report until Fall 2017 is unimaginable. Multiple e-mails and testimony disprove this claim. However, even assuming that is accurate, her ill-advised decision to remove herself from the investigation process is equally concerning.

EOG submits reviewing the acts and omissions from 2015 to January 11, 2019, in their totality and cumulatively confirm Jackson’s neglect of duties and incompetence. EOG respectfully submits that the Florida Senate remove Jackson permanently from her position as Superintendent of Okaloosa Schools.

RESPECTFULLY SUBMITTED,



Nicholas A. Primrose
Deputy General Counsel
Executive Office of Governor Ron DeSantis

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of May, 2019, a true copy of the foregoing has been e-mailed to counsel for Ms. Mary Beth Jackson: George Levesque, Esq. (George.levesque@gray-robinson.com).