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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

CASE NO, 10-4143

DEBORAH SWIRSKY-NUNEZ,

Respondent.

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RESPONDENT'S RENEWED MOTION FOR SANCTIONS  
AND TO SUPPRESS

Respondent Deborah Swirsky-Nunez, by and through undersigned counsel files this her Renewed Motion for Sanctions and to Exclude and as grounds therefor states as follows:

1. Respondent attempted to take the deposition of Sue Buslinger-Clifford.
2. During the deposition, counsel for Petitioner injected his comments and instructed the witness on how to answer specific questions.
3. Ultimately, the deposition upon oral questions was terminated by counsel for the Petitioner.
4. Petitioner sought a protective order against the continuation of the oral deposition, and an Order was entered allowing the continuation of the deposition upon written questions.
5. The questions, or interrogatories, pursuant to the Order were served and Petitioner sought an extension of time within which to be allowed to serve the answers.

6. The Court set forth a deadline for service of the answers in light of the time constraints existing due to the upcoming final hearing.
7. Although purported answers were served by the time set by the court, the answers that were served were incomplete, evasive, raised objections and most egregiously were prepared by counsel for Petitioner.
8. Because of the shortness of time, follows up questions as may be contemplated by the Rules are not feasible.
9. To the extent that the witness is being presented as an expert witness and not represented by counsel in this matter, and certainly not represented by counsel for Petitioner, the participation of Petitioner's counsel in the preparation of the answers was improper and taints the viability of Respondent's use of the answers.
10. Assistance in answering the deposition questions by counsel amounts to counsel testifying. The procedure for answering written questions is clearly set forth in the Rules which contemplates rebuttal questions from opposing counsel. In this case, counsel for Petitioner obviated that provision by answering the questions or assisting in witness' responses himself, while at the same time claiming attorney-client privilege.
11. Because of the irregularities, the answers provided cannot be relied upon by Respondent for the preparation of her case.

WHEREFORE, Respondent seeks an Order:

- (1) Suppressing the deposition of Sue Buslinger-Clifford and allowing for a new deposition upon oral questions;

- (2) Permitting the taking of Mr. La Piano's deposition to ascertain the extent of his involvement in the actual answers;
- (3) Striking the testimony of the witness, or at a minimum delaying the testimony of the witness until a complete deposition could be had

Respectfully submitted,

/S/

Maria del Carmen Calzon, Esq.  
Florida Bar No. 797383  
1825 Ponce de Leon Boulevard, #249  
Coral Gables, Florida 33134

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was furnished to Christopher LaPiano, Esq. Miami-Dade County School Board Attorney's Office, 1450 NE Second Avenue, Miami, Florida 33132 this 26th day of April, 2011.

/S/

Maria del Carmen Calzon, Esq.

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