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**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

v.

CASE NOS. 17-6470TTS
17-6427TTS

KAMLA C. BHAGWANDIN,

Respondent.

_____ /

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

v.

DARLENE G. TAYLOR,

Respondent.

_____ /

**MOTION TO PROHIBIT THE INTRODUCTION OF THE DEPOSITION AND TRIAL
TESTIMONY OF TONY BERMUDEZ AS SUBSTANTIVE EVIDENCE
AND TO SUPPRESS ITS USES AT TRIAL**

Petitioner, the Miami-Dade County School Board ("School Board"), by and through its undersigned counsel, and pursuant to Fla. R. Civ. P. 1.330 and 1.130, hereby files its Motion to Prohibit the Introduction of the Deposition and Trial of Tony Bermudez as Substantive Evidence and to Suppress its Uses at Trial and in support hereof states as follows:

1. DOAH Case Nos. 17-640TTS and 17-6427TTS, pertaining to Dr. Kamla Bhagwandin and Ms. Darlene Taylor respectively, both arose from the same incident at South Dade Middle School. Dr. Bhagwandin was working as teacher and Ms. Taylor as

a paraprofessional when the pair allegedly physically mistreated an autistic middle school student.

2. The incident resulted in both Dr. Bhagwandin and Ms. Taylor being arrested for battery, an offense that disqualified them for employment under Fla. Stat. 435.04 and School Board Policy. The criminal trial for both former employees was consolidated and took place on January 8–10, 2018. Both Dr. Bhagwandin and Ms. Taylor were found not guilty.

3. During their defense of that criminal action, the Respondents' criminal defense attorneys, Michelle Delancy and Kristi Kassebaum, took the deposition of witness Tony Bermudez. The deposition took place on December 27, 2017 between 10:00 a.m. and 12:00 p.m. For reasons unknown, the State Attorneys assigned to the criminal matter did not attend the deposition. Mr. Bermudez was entirely unrepresented for the duration of the deposition.

4. The School Board received no notice of this deposition. As a result it had no opportunity to develop the testimony of Mr. Bermudez. As such, pursuant to Fla. R. Civ. P. 1.330(a) and (b), this deposition testimony must not be used against the School Board as substantive evidence in this DOAH proceeding. See Dinter v. Brewer, 420 So. 2d 932 (Fla. 3d DCA 1982); *Airport Rent-A-Car, Inc. v. Lewis*, 701 So. 2d 893, 897 (Fla. 4th DCA 1997).

5. The School Board also did not have an opportunity to develop the testimony of Mr. Bermudez at the criminal trial because it was not a party.

6. Mr. Bermudez was working as a substitute teacher for the School Board when he witnessed the misdeeds of the Respondents that occurred on or about August

31, 2017. On that day he wrote three written statements about what he had witnessed the Respondents do to an autistic student. Despite both defense attorneys having had possession of these statements, none were presented to Mr. Bermudez either before, during or after the deposition. The deposition also took place approximately 4 months after the alleged incident. Unrepresented, Mr. Bermudez was likely nervous and intimidated by two seasoned criminal defense attorneys.

6. At the end of the deposition, Ms. Delancy told Mr. Bermudez on the record that he would have an opportunity to read the deposition prior to trial. Mr. Bermudez clearly expressed his desire to do so on the record. Yet, according to Mr. Bermudez, no one ever contacted him to review the transcript. This is a direct violation of Fla. R. Civ. P. 1.310(8)(e). As such, the deposition should be excluded from use for any purpose in this DOAH proceeding, including but not limited to impeachment, pursuant to Fla. R. Civ. P. 1.330(d)(4).

7. Since the trial testimony of Mr. Bermudez entails several lines of questioning related to his deposition testimony, it too has been tainted by the underlying problems with the taking of the deposition and should be excluded from use for any purpose in this DOAH case.

WHEREFORE, the School Board respectfully requests that this Administrative Law Judge grant this Motion, excluding the deposition and trial testimony of Tony Bermudez as substantive evidence in this case and prohibiting use of the deposition and trial testimony for any other purpose, including impeachment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served via email on this 18th day of February, 2018 to **Michelle Delancy**, attorney for Respondent **Darlene Taylor**, mdelancy@hamiltonmillerlaw.com, 150 Southeast Second Avenue, Miami, Florida 33131, and **Branden Vicari, Esq.**, attorney for Respondent **Kamla Bhagwandin**, 29605 U.S. Highway 19 North, Suite 110, Clearwater, Florida 33761, branden@herdsaklaw.com, nicky@herdsaklaw.com

By: /s/ Christopher J. La Piano

CHRISTOPHER J. LA PIANO, ESQ.

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