**STATE OF FLORIDA**

**PUBLIC EMPLOYEES RELATIONS COMMISSION**

**In the Matter of Impasse Between:**

**BREVARD FEDERATION OF TEACHERS,**

 **Employee Organization,**

**v. Case No.: SM-2018-030**

**SCHOOL DISTRICT OF BREVARD COUNTY,**

 **Employer.**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **/**

**REPORT AND RECOMMENDATIONS OF SPECIAL MAGISTRATE**

**Thomas W. Young, III**

**May 17, 2019**

**APPEARANCES**

**FOR BREVARD FEDERATION OF TEACHERS**

**Graham Picklesimer**

**Southern Region Bargaining/Advocacy Specialist**

**Florida Education Association**

**NEA/AFT/AFL-CIO**

**213 S. Adams St.**

**Tallahassee, FL 32301**

**FOR SCHOOL DISTRICT OF BREVARD COUNTY**

**Wayne L. Helsby, Esq.**

**Allen, Norton & Blue, P.A.**

**1477 W. Fairbanks Ave., Suite 100**

**Winter Park, Florida 32789**

**PRELIMINARY MATTERS**

The School Board of Brevard County (SBBC) is the governing body of Brevard Public Schools (BPS) which educates about 72,000 students with a teaching force of about 4,900 instructional personnel, the great majority of whom are classroom teachers. These instructional personnel are represented by the Brevard Federation of Teachers (BFT), The parties’ collective bargaining relationship dates back to 1977.

Negotiations for a successor to the parties’ collective bargaining agreement (“CBA”) for the 2018-19 fiscal year commenced on August 20, 2018. BFT declared impasse on December 17, 2018. Most of the outstanding issues the parties brought to negotiations were resolved prior to or following the declaration of impasse. Two issues were brought before the Special Magistrate at a hearing in Viera, FL, on April 23, 2019 - the amounts of recurring and non-recurring salary increases to be granted for the BFT’s bargaining unit, and the amount of supplement to be granted to employees who hold a certification from the Florida Department of Education in the area of Exceptional Student Education.

At hearing, the parties presented evidence through testimony of witnesses and introduction of exhibits. References to exhibits will be indicated for the Brevard Federation of Teachers as *(BFT # \_\_\_),* and for the School Board of Brevard County as (SBBC # \_\_\_\_). References to the briefs of the parties will be indicated as *(BFT Br. at p. \_\_\_),* or *(SBBC Br. at p. \_\_\_),* as appropriate. References the collective bargaining agreement will be indicated as CBA. There was no verbatim transcription of the hearing.

At the conclusion of the hearing, the parties agreed that the post hearing briefs would be filed by the close of work, May 14. The briefs of the Parties were timely filed. It was agreed further that the Recommendations in this proceeding would issue by 5:00 PM, May 17, at which time the record in these proceedings will be closed.

**APPLICABLE FLORIDA STATUTES**

The following statutes are relevant and material to the disposition of the issues at impasse.

447.403 Resolution of impasses.—

 (3) The special magistrate shall hold hearings in order to define the area or areas of dispute, to determine facts relating to the dispute, and to render a decision on any and all unresolved contract issues. . . .

447.405 Factors to be considered by the special magistrate.—The special magistrate shall conduct the hearings and render recommended decisions with the objective of achieving a prompt, peaceful, and just settlement of disputes between the public employee organizations and the public employers. The factors, among others, to be given weight by the special magistrate in arriving at a recommended decision shall include:

 (1) Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved.

 (2) Comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar

 (3) The interest and welfare of the public.

 (4) Comparison of peculiarities of employment in regard to other trades or

 (a) Hazards of employment.

 (b) Physical qualifications.

 (c) Educational qualifications.

 (d) Intellectual qualifications.

 (e) Job training and skills.

 (f) Retirement plans.

 (g) Sick leave.

 (h) Job security.

 (5) Availability of funds.

**IMPASSE ISSUES TO BE RESOLVED**

It is determined that the following issues remained unresolved at impasse:

* The amounts of recurring and non-recurring salary increases to be granted for the BFT’s bargaining unit, and
* The amount of supplement to be granted to employees who hold a certification from the Florida Department of Education in the area of Exceptional Student Education.

**POSITIONS OF THE PARTIES**

**BREVARD FEDERATION OF TEACHERS**

It is BFT's position that salaries of instructional personnel in Brevard County significantly lag behind their counterparts in comparable districts, and the district has the fiscal resources to remedy this problem. The interest and welfare of the public demands that it should do so rather than hold taxpayer dollars in reserve well in excess of both state requirements and the Board’s own policies.

Regarding Issue # 1 - BFT's position is that salary increases should be awarded according to contract status and 2017-18 performance evaluation as follows:

Salary Schedule Highly Effective Effective

 Performance Pay $2,300 $1,725

 Grandfather $2,299 $1,724

SBBC’s position is that salary increases should be awarded according to contract status and 2017-18 performance evaluation as follows:

Salary Schedule Highly Effective Effective

 Performance Pay $770 $540

 Grandfather $769 $539

In addition, the Board’s proposal entails a $1,000 one-time bonus for all instructional personnel not rated “Unsatisfactory.”

Regarding Issue #2 – BFT's position is that bargaining unit members certified in Exceptional Student Education should receive an $835 supplement in addition to the $165 supplement they already receive for being certified in a critical shortage area, for a total supplement of $1,000.

SBBC's position is that these employees should only receive the current $165 critical shortage area supplement.

**Comparability with Regional and Like-Sized Public Employers**

With regard to the comparison of the annual income of employment of the public employees in question, BFT initially points out that instructional personnel in BPS work longer days than their counterparts in many other districts. *(BFT #1).* The most common workday length for teachers in the state of Florida is 7.5 hours, but BPS instructional personnel work an 8-hour day. BFT calculates that this amounts to an additional 98 hours of work performed over the course of a standard 196-day work year – 1568 hours vs. 1470 hours. BFT argues that, "it is self-evident that an employee who receives a $50,000 salary to perform 1568 hours of work is less well-compensated than an employee who receives the same $50,000 salary to perform 1470 hours of work. Recognition of this fact must underpin any analysis comparing BPS instructional salaries against those of comparable employers."  *(BFT Br. at p. 8).*

BFT also points out that teachers in BPS enjoy less unencumbered planning than their counterparts in comparable districts at both the elementary and secondary levels. Even though the parties reached a tentative agreement this year to provide more unencumbered planning time to teachers at all levels, teachers in BPS will still have anywhere from 9-54 hours less of daily unencumbered planning time over the course of the 36-week school year than teachers in comparable districts. *(BFT #2).*

BFT asserts that SBBC's comparability analysis lacks validity and credibility and should be disregarded wherever it conflicts with the Union’s. BFT points out that SBBC CFO Zuercher testified that she obtained the various salaries, salary adjustments, and insurance contributions shown in its analysis by contacting her counterparts in other districts directly and asking them. However, none of these communications nor any other documentary form of evidence in support of the figures in question were offered into the record. BFT argues that, "not only does this omission render Ms. Zuercher’s testimony on comparability essentially an elaborate form of hearsay, but it also fails to provide the Special Magistrate with any means of verifying the validity of her analysis." BFT points out further that many factors that could skew the District's data for any particular comparable district. *(BFT br. at p. 8).*

Furthermore, BFT argues that SBBC's reliance on average and highest teacher salaries in its analysis is methodologically unsound. By definition, the “highest teacher salary” metric invites comparisons of outliers. The “highest teacher salary” therefore should not be viewed as indicative of overall teacher salaries in any meaningful sense. Furthermore, BFT points out that demographics such as varying levels of experience can skew the results of the survey. *(BFT Br. at pp. 8-9).*

BFT asserts that starting salaries, on the other hand, are a more useful metric. Thousands of new teachers are hired around the state of Florida every year, and differences between starting salaries among districts is obviously a primary consideration in these teachers’ employment decisions. To the extent that the Board’s comparability analysis deserves note at all, it should be noted that BPS ranks seventh out of the nine districts examined in the Board’s comparability analysis in total annual starting salary, even without taking the increased workday in BPS into consideration. BFT argues that, by contrast, the Union’s comparability analysis is significantly more robust and more credible than the Board’s. It is supported by documentation from the relevant collective bargaining agreements and official statistics of the Florida Department of Education rather than "hearsay." *(BFT Br. at p. 9; BFT # 7, 8).*

Moreover, to give a fuller picture of teachers’ career salary trajectories across comparable districts, the BFT’s analysis looks not only at starting salaries, but also at 5, 10, and 15 years of experience. The BFT’s analysis also looks at the median salary in each comparable district in addition to the average salary. By virtue of its definition as the middle value in a distribution of data, the median salary is immune to the effects of outliers and other skews in the overall distribution of salaries and therefore a better representation of a “typical” teacher’s salary than the average salary.

BFT points out that compensation for instructional personnel in BPS is at the bottom among comparable districts in almost every metric. BFT concludes that, from the information provided, three conclusions can be drawn:

* Teacher compensation in BPS is significantly below the average among comparable districts in every metric.
* Despite having the most experienced workforce, instructional personnel in BPS enjoy some of the lowest mean and median salaries among comparable districts.
* At no point in the first fifteen years of his or her career can a teacher expect to be better compensated with BPS than with any comparable districts.

BFT points out further that BPS instructional salaries remain below-average throughout the first fifteen years of a teacher’s career trajectory even without accounting for the longer workday*. (BFT Br. at pp. 9-10).*

Interestingly, BFT notes that, in contrast, the salaries for other employee groups in BPS compare favorably or are higher than those in comparable districts. *(BFT Br. at p. 10; BFT #5).* The District did not address this point.

Significantly, BFT concluded its comparative analysis by pointing out that SBBC's salary proposal lags behind 2018-19 settlements in comparable districts and would therefore cause BPS to fall even farther behind. The only uncertainty is whether it lags behind all comparable districts or all but one. It is clear from the evidence that adoption of the Board’s salary offer would do nothing to remedy the current instructional salary gap between BPS and comparable districts and would only cause BPS to fall farther behind. *(BFT Br. at p. 12; BFT #2 at pp. 26,27; BFT #6 at pp. 1-3)*

**Increased Supplement for Employees With Certification in the Area of Exceptional Student Education**.

BFT offered testimony from Jamie Clapp, a high school math teacher at Eau Gallie High School who holds certification in Exceptional Education. BPS, being particularly short of such certified teachers, currently has a practice of requiring teachers who hold a certificate in Exceptional Education to write Individualized Education Plans (IEP) for students who are not on any of their rosters.

IEPs are one of the so-called “Six Pillars” of the Individuals with Disabilities Education Act (IDEA), which requires them to be completed for any student with a disability to assist the school district in accommodating their needs and providing them with equal opportunities in education. Significant federal funding is provided to enable BPS to meet its obligations under IDEA, which would be jeopardized if the district should fail to uphold them.

Ms. Clapp testified at length to the various tasks involved in shepherding an IEP through completion. She testified that it takes about three to four hours per IEP, depending on the complexity of the particular student’s needs. She further testified that each student on an IEP must receive a reevaluation every three years, which generally takes about an hour. In total, Ms. Clapp testified that she had spent around 90-110 hours this year performing these extra duties for 27 students this year, a fairly typical year. In exchange for this work, she testified that she receives one “IEP day” each semester for a total of sixteen hours of relief from regular duties, and a supplement for being certified in a “critical shortage area” of $165 . Basic arithmetic gives in an overall “wage” of around $2 per hour to perform these duties.

Ms. Clapp further testified that much of the work associated with IEPs is seasonal, particularly during September-October, and that during this time her capacity to fulfill the duties of her primary job is diminished. In her own words: “That does carry over into the classroom because you’re mentally exhausted, you haven’t had any kind of break from the routine. I do want to make sure I give the best to my kids, which is hard when you’re doing that much work.” It is not fair to Ms. Clapp’s students that she should have to shoulder an undue portion of the burden of completing IEPs caused by the overall lack of instructional personnel qualified to complete them.

The Union believes that adoption of its salary proposal for all instructional personnel would improve BPS’s ability to recruit and retain teachers in general. But in recognition of the particular circumstances currently afflicting teachers certified in Exceptional Education, the BFT has also proposed an additional $835 supplement for such teachers. This would raise the total compensation for teachers similarly situated to Ms. Clapp from around $2 per hour to around $10 per hour. BFT argues that this could incentivize more employees to become certified in Exceptional Education, thereby spreading the workload across more employees and further increasing the “hourly rate” associated with the duties. The Union’s proposal is a sensible, cost-efficient, targeted approach to solving a problem that disproportionately impacts a small group of employees and their students. *(BFT Br. at p. 23-24).*

**Availability of Funds**

Florida Statutes, Section 1011.051 Guidelines for general funds.—provides as follows:

The district school board shall maintain a general fund ending fund balance that is sufficient to address normal contingencies.

 1(1) If at any time the portion of the general fund’s ending fund balance not classified as restricted, committed, or nonspendable in the district’s approved operating budget is projected to fall below 3 percent of projected general fund revenues during the current fiscal year, the superintendent shall provide written notification to the district school board and the Commissioner of Education.

SBBC has a adopted a policy that 3.5% of general fund revenues must be reserved for “contingencies.” BFT presented evidence concerning SBBC's of the Board’s fund balance going back to FY 2012-13. Table 5 at page 13 of the BFT brief indicates the following:

FY Committed 2730 -Assigned 2740-Unassigned 2750-Total Available

 Fund Balance Fund Balance Fund Balance Fund balance

2012-13 $0.00 $2,134,173.34 $37,003,774.17 $39,137,947.51

2013-14 $0.00 $2,627,977.54 $44,689,863.21 $47,317,840.75

2014-15 $0.00 $2,651,043.00 $42,670,004.98 $45,321,047.98

2015-16 $0.00 $3,078,912.19 $40,640,305.33 $43,719,217.52

2016-17 $0.00 $2,591,483.00 $47,642,853.00 $50,234,336.00

2017-18 $3,905,904.00 $3,313,651.00 $41,888,590.00 $49,108,145.00

2018-19 (Proj.)$3,905,904.00 $3,313,651.00 $46,020,797.49 $53,240,352.49

*(BFT Br. at p. 13; BFT # 20, 21).*

The amounts as a percentage of total general revenues are shown in Table 6 below :

Fiscal Year Total Revenues 2730 2740 2750 % of Revenues

2012-13 $475,312,524.45 0.00% 0.45% 7.79% 8.23%

2013-14 $492,126,902.29 0.00% 0.53% 9.08% 9.61%

2014-15 $506,798,802.71 0.00% 0.52% 8.42% 8.94%

2015-16 $526,249,755.98 0.00% 0.59% 7.72% 8.31%

2016-17 $536,434,272.00 0.000 0.48% 8.88% 9.36%

2017-18 $547,030,406.00 0.71% 0.61% 7.66% 8.98%

2018-19 (Proj.)$550,144,565.39 0.71% 0.60% 8.37% 9.68%

BFT asserts that the Board’s fund balance vastly exceeds thresholds set by both state law and its own policies. For the 2018-19 fiscal year, the Board passed a budget that projected a Financial Condition Ratio of 8.97%. At no point in the last seven fiscal years has the Financial Condition Ratio fallen below 8%. BFT points out that SBBC presented no evidence or testimony to substantially refute any of these claims. Although conceding that CFO Zuercher did state at one point that the Florida Department of Education has said in meetings that the general fund balance should be increased to 10%, BFT points out that, without any written record of such a suggestion being made or any witness presented who made it, the testimony is hearsay. *(BFT Br. at p. 14).*

Furthermore, BFT points out that, in addition to its large Financial Condition Ratio, the Board currently has another 0.71% of its total general fund revenues designated as “committed.” The Governmental Accounting Standards Board defines the “committed” portion of the fund balance as follows:

 Amounts that can only be used for specific purposes pursuant to constraints imposed by formal action of the government’s highest level of decision-making authority should be reported as committed fund balance. Those committed amounts cannot be used for any other purpose unless the government removes or changes the specified use by taking the same type of action (for example, legislation, resolution, ordinance) it employed to previously commit those amounts.

In other words, BFT argues that, although the committed portion of the fund balance is not included within the Financial Condition Ratio calculation, it is nevertheless funding that is within the power of the Board – the highest decision-making authority in BPS – to allocate towards the Union’s proposal if it chooses to do so. The Union’s analysis regarding the availability of funds therefore considers the “committed” available for potential use in funding the Union’s proposal, even though the Union’s proposal remains affordable even without it. *(BFT Br. at p. 14).*

BFT concludes, "the magnitude of the overbudgeting and underspending during the fiscal year practiced by the Board is quite significant and highly predictable." *(BFT Br. at p. 15).* Were the Board’s general fund balance in the 5-6% range, the affordability of the Union’s proposal would be in doubt. But with the current 9.68% of total general revenues the Board is holding in the committed, assigned, and unassigned portions of the fund balance, the effects of the Union’s proposal on the long-term fiscal stability of Brevard Public Schools are quite modest. *(BFT Br. at pp. 17, 18).*

BFT also points out that State funding through the 2018-19 Florida Education Finance Program brought significant increases in discretionary revenues over 2017-18. BFT asserts that, by the 4th calculation for 2018-19, the discretionary revenues available to BPS have increased by almost $4 million compared to 2017-18. BFT maintains that that discretionary funding also increased significantly on a per student basis*.* Consequently, BFT concludes that,not only has BPS received more state funding by virtue of having more students to educate, it has been given greater resources with which to educate them. *(BFT Br. at pp. 19-20, Tables 9, 10).*

Furthermore, in addressing SBBC's argument that the portions of its fund balance the BFT believes are available are, in fact, not available, the SBBC supplied a breakdown of its June 30, 2018 fund balance. *(SBBC #2, p. 24).* The correspondence of each of the Board’s components with the GASB-required classifications is summarized in Table 11 below:

Table 11 – Employer Breakdown of Ending Fund Balance for FY 2017-18

Component Amount GASB Classification

Inventory on Hand $497,808 Nonspendable

Prepaids expenses $3,564,123 Nonspendable

State categoricals $5,152,248 Restricted

Committed fund

balance – FY1718 $3,905,904 Committed

Encumbrances $4,061,762 Unassigned

Carryforwards $10,462,587 Unassigned

Reserve for Medical

Insurance $3,100,000 Unassigned

School operations $3,313,651 Assigned

State Required Contingency $19,880,369 Unassigned

Non-recurring funding $4,383,872 Unassigned

Fund Balance at 6/30/18 $58,322,324 Ending Fund Balance

BFT does not contest that the “Inventory on Hand,” “Prepaids Expenses” and “State Categoricals” amounts are not available for use in funding its proposal. Ms. Zuercher’s own testimony reveals which of the remaining amounts are – or could be made – available for use:

• She described the $3,905,904 in “Committed fund balance – FY1718” as “to pay for future years’ priorities in a ‘grant-style’ of funding.” These funds are for Board priorities; the Board has full power to reprioritize them to increase teacher salaries.

• She described the $4,061,762 in “Encumbrances” as “purchase orders for goods and services that have not received as of June 30, those are contractual commitments” and later said “I suppose we could cancel purchase orders.” No details were given as to what kind of contractual commitments they entailed. But again, these funds are not beyond reach; they could be reallocated towards increasing teacher salaries.

• She described the $10,462,587 in “Carryforwards” as “a mixture of grants or specific funding such as Adult Ed funding, or our pre-paid funding, as well as some other funds that the district has committed to the schools to allow to carry forward.” The district has allowed schools to retain these funds, it could just as easily reclaim them for the purpose of increasing teacher salaries.

• She described the $3,100,000 in “Reserve for Medical Insurance” as “to allow for any potential future losses” which may affect the Board’s ability to maintain 60 days’ worth of claims in reserve as required by the Florida Office of Insurance Regulation, though no evidence was provided as to its need to be used this year. In the absence of any such evidence, these funds are free to be redirected towards increasing teacher salaries.

• She described the $3,313,651 in “School operations” as “funds that the schools have brought into use for expenditures and the district has allowed them to carry that forward.” As with the $10.5 million in "carryforwards" discussed above, these funds are only “reserved” because the district has decided to allow schools to reserve them.

• She described the $19,880,369 in the “State-Required Contingency” as “slightly above” the 3% required by the state. Follow-up questioning by the Special Magistrate elicited Ms. Zuercher’s estimate of this amount as 3.1% of total general revenues. In fact, it is 3.63% of total general revenues. Put another way, ~0.63% of total revenues, almost $3.5 million, could be reallocated towards raising teacher salaries without falling below the 3% threshold. *(BFT Br. at pp. 20-21).*

In any event, of the $58.3 million that lay in the Board’s general fund balance at the end of FY 2017-18, BFT concludes that Ms. Zuercher’s testimony establishes that over $32 million of it is able to be repurposed by either school district administration or the Board itself without running afoul of Section 1011.051 of the Florida Statutes. Both parties estimated the difference in total costs of the two proposals to be around $8-9 million. *(BFT br. at p. 21-22).* BFT concludes, "[I]t is eminently clear from the record that funds are available to pay for the Union’s proposal. The remaining question is whether the Union’s proposed usage of these funds or the Board’s proposed usage of these funds would better serve the interest and welfare of the public." *(BFT Br. at p. 22).*

**Interest and Welfare of the Public**

BFT asserts that it is clear that salaries for teachers in BPS significantly lag behind those in comparable districts, a phenomenon that the available evidence does not support afflicting other employee groups in BPS. At a long-term total cost differential of about $8.5 million compared to the Board’s proposal and with over $32 million available in the general fund balance to spend, it is similarly clear that there is sufficient availability of funds to pay for the Union’s proposal, if the Board makes the Union’s proposal a priority.

BFT argues that the critical question is whether the “opportunity cost” associated with funding the Union’s proposal is so great that the interest and welfare of the public would be better served by continuing to allocate the fund balance towards other uses or towards no use at all. *(BFT br. at pp. 24-25).*

BFT asserts that the value to BPS of compensating teachers above – or, at the very least, at – market rate is self-evident. Population centers in surrounding districts with better compensation are well within commuting distance of any location in Brevard County. Many BPS employees already live in these surrounding counties. With the legislature’s actions to eliminate professional services contracts for instructional personnel hired after July 1, 2008, the most significant economic incentive facing most teachers is compensation. With teacher shortages afflicting school districts state-wide (and nation-wide), the labor market for teachers is a seller’s market. *(BFT Br. at p.25).*

BFT points out that no evidence was presented that significant expenses loomed on the horizon for which the fund balance might itself need to be expended, let alone that such expenditures would be a more worthwhile use of the fund balance than raising teacher salaries. No evidence was presented that greater reserves should be maintained for any particular reason. No evidence was presented that it is necessary to maintain reserves in order to enhance or preserve the district’s bond ratings and therefore minimize borrowing costs that may be charged by creditors, let alone any significant details as to the amounts by which such borrowing costs might fluctuate according to various drawdowns on the fund balance. No credible evidence was presented to even suggest that state funding might languish in future years. Presumably, if any such evidence existed, the Board would have brought it forward in the hearing. Yet it did not.

It is BFT's position that SBBC offered virtually no evidence or justification of any kind as to why its current priorities, as expressed through Ms. Zuercher’s testimony on which portions of the fund balance are “reserved,” would better serve the interest of the public than bringing teacher compensation up to the market rate.

Nearly $15 million is – as far as Ms. Zuercher offered in her testimony – simply allowed to remain housed in various departments and schools for no reason in particular. Another $3.1 million is held “just in case” the district’s self-insured health insurance fund eventually requires a cash infusion, but no evidence was supplied beyond Ms. Zuercher’s own vague assertions that the funds would be required in this or future years. Over $4 million is currently set aside for outstanding purchase orders which Ms. Zuercher admitted could be cancelled; perhaps these purchase orders were for purposes more important than raising teacher salaries, or perhaps not. No details were provided. The “State-Required Contingency” is in excess of what the state requires by almost $3.5 million, and again, no details are provided as to why the public interest is better served by maintaining these reserves at this level than it is by raising teacher salaries.

BFT concludes that SBBC's assertion of its inability to pay for the BFT’s proposal without any evidence, is counter to standard principles of interest arbitration, as articulated in the seminal text *How Arbitration Works*:

 Employers who have pleaded inability to pay have been held to have the burden of producing sufficient evidence to support the plea. The alleged inability must be more than “speculative,” and failure to produce sufficient evidence will result in a rejection of the plea.

According to BFT, testimony offered by SBBC's witnesses and the very limited documentary evidence provided in support amply demonstrate the Board’s hesitation and unwillingness to pay, but simply do not carry its burden of proof that it genuinely lacks the ability to pay. Given the comparably low teacher salaries in BPS, the interest and welfare of the public would be best served by significantly increasing salaries for all members of the BFT bargaining unit. *(BFT Br. at pp. 25-26).*

**SCHOOL DISTRICT OF BREVARD COUNTY**

It is the School District’s position that its final offer to the Union on teachers’ salaries and ESE supplements is grounded in financial realities. The School District is simply not in a position to devote more recurring dollars than it has offered to fund the Union’s salary and ESE supplement demands.

**Availability of Funds**

Regarding the School District’s funding. SBBC proposes several key points for the Special Magistrate to take into consideration:

* In 2016, the Florida Legislature elected to reduce the required local effort millage, which resulted in an average loss in revenue to the Brevard County School District of $13.3 million per year, for a total loss since 2016 of almost $40 million dollars to the School District. (School District Exhibit 1, pages 16-19). The State of Florida did not make up for this loss of funding with State revenues.
* In each fiscal year since FY 2015-16, the School District has suffered a reduction in the dollars allocated to it through the Florida Education Finance Program (FEFP) from the initial calculations through the fifth and final calculation. (School District Exhibit 1, page 23). For the year in question for purposes of this impasse proceeding, FY 2018-19, the School District lost $1,586,083 in FEFP funding from the initial calculation through the most recent calculation.
* An examination of the School District’s available recurring funds that are able to be used for salary and benefit increases in FY 2018-19 initially showed a deficit of $8,352,240. Given this deficit, the School District initiated various actions to provide additional dollars to be utilized for teacher salary and benefit increases, including a revised instructional staffing plan; revised school allocations; funding maintenance expenses with capital funds, utilizing lapse salaries for terminations and retirees and transferring $1.5 million dollars from reserves. The dollars realized from these actions totaled $14,422,000, leaving $6,069,760 in recurring funds for the School District to devote to salary and benefit increases. (School District Exhibit 1, page 22).

*(SBBC Br. at p. 8)*

In its brief, SBBC described its position regarding the General Fund Balance. As Chief Financial Officer Zuercher testified to at length, a “Fund balance” must be examined in two different ways: (1) a Fund balance kept in accordance with Generally Accepted Accounting Principles (GAAP Fund Balance), which is a Fund balance consisting of the net position of governmental funds calculated in accordance with GAAP principles; and (2) a “budgetary” Fund balance, which is the net position of governmental funds calculated on a budgetary basis. It is essential to maintain adequate levels of Fund balance to mitigate current and future risk, such as revenue shortfalls and unanticipated expenditures.

The Governmental Accounting Standards Board (GASB) requires a GAAP Fund balance to be classified as follows:

 a. Non- spendable – amounts that cannot be spent because they are in a non- spendable form (inventory) or contractually obligated (prepaid insurance);

 b. Restricted – external constraints are placed on the funds, i.e.: creditors; legislation; or statute;

 c. Committed – set aside for specific purpose pursuant to constraints imposed by formal action of the School Board;

 d. Assigned – constrained by intent to be used for specific purposes, but are neither restricted nor committed; and

 e. Unassigned – fund balance not assigned to other funds and that are restricted, committed or assigned to a specific purpose; it includes in funds set aside for contingencies or emergencies

The adequacy of assigned/unassigned (unrestricted) Fund balance considers each entity’s unique situation. This includes, for example, such matters as vulnerability to natural disasters, volatile revenue sources, or cuts in State and Federal aid. The Government Finance Officers Association (GFOA) recommends governmental entities maintain an unrestricted Fund balance of at least two (2) months of either revenues or expenditures. Two months of revenues for the Brevard School District equals $91,690,761. The School District’s adopted budgetary unrestricted Fund balance was $25,202,240, significantly below the recommended amount. As of April 30, 2019, the unrestricted Fund balance was $23,422,330. *(SBBC Br. at pp. 9-11).*

In addition, SBBC points out that a review of the final budget amendment (#10) for fiscal years 2014-2015, 2015-2016, 2016-2017, and 2017-2018 shows that the final budgetary fund balance for three out of four years was below 5% of revenues at the end of the year. Florida Statutes impose penalties for a District’s fund balance falling below 3% of revenues. If a decision had been made in any one of those years to spend $8 million of fund balance for recurring salary increases, it is BPS's position that the financial condition ratio would have dropped below 3%. The District would have remained below 3% until actual dollars were identified to replenish the Fund balance.

The School District’s Fund balance revenue is non-recurring revenue, much like a savings account. Increases to teachers’ base salaries, on the other hand, result in recurring costs that must be funded in years to come. Thus, for example, the Union’s final salary proposal would cost the School District in fiscal year 2018-19 over $12 million dollars in salary increases to teachers’ base pay ($701,666 for “effective” teachers; $11,400,902 to “highly effective teachers; and $819,135 for ESE supplements). Netted against the $4,225,131 recurring dollars the School District has already placed on the table, the School District would be required to find another $8,686,572 to fund the Union’s request. (School District Exhibit 1, page 8).

However, this means that in fiscal years 2019-20 and each of the fiscal years beyond, the School District would have to likewise come up with this additional $8.7 million dollars to pay for these base pay increases.

SBBC next addresses BFT’s demand for additional supplement dollars to ESE teachers. SBBC does not dispute that ESE teachers expend considerable efforts in undertaking the various tasks associated with teaching the School District’s exceptional students. That is why the current $165 supplement for ESE teachers exists in the first place. However, the cost of the Union’s proposed increase of that supplement from $165 to $835 is over $800,000. *(SBBC #1 at p. 8).* Again, it is the position that the School District’s final proposal to increase teachers’ salaries overall stretches to the limit its available recurring dollars to fund such enhancements. As laudable it is to afford ESE teachers additional dollars for their work, the only way to achieve that within the School District’s financial means is to reduce the salary increase offer to all others, an inequity that in this fiscal year the School District is not willing to undertake. *(SBBC Br. at pp. 13-14).*

To further support its position regarding availability of funds, SBBC points out that the School District retained the services of the well-respected and highly credentialed School financial expert HBEC Group, Inc., to examine the School District’s revenues and expenses, and to specifically determine ways in which the School District might find dollars to devote to increases in teachers’ salaries. HBEC’s thirty-page report was entered into evidence at the hearing as School District Exhibit 3.

As to the School District’s Fund balance, the following observation was made by HBEC:

 “The analysis of district spending and the trends in the district’s fund balance does not reveal any recurring surplus General Fund revenue. The amount of the district’s unassigned fund balance is actually trending down. Reserve reductions will jeopardize the district’s credit rating and drive up the cost of debt. That could impair the ability of the district to transfer funds from the Capital Fund to the General Fund to pay allowable operating expenses, which would further impair the fund balance and the fiscal stability of the General Fund. Fund balance revenue is by its nature non-recurring revenue. To draw down fund balances for an increase in employee compensation for one year begs the question from where will the revenue for the second, third and other future years of the salary package come? The revenue outlooks for FY 2019-20, FY 2020-2021, and FY 2021-2022 do not forecast the availability of significant amounts of new revenue and the Legislative history for the past several years suggests that it is likely that revenue increases will be accompanied by mandates for spending the revenue as the Legislature sees fit. It is concluded that the District’s unassigned fund balance is not an appropriate source of revenue to pay for the recurring expense of [a] salary expenses.”

*(SBBC # 3,at p. 29).*

**Comparability**

SBBC next addresses the factor of comparability. With regard to comparability with contiguous districts, the data, which Chief Financial Officer Zuercher testified was obtained through direct communication with her contemporaries at these School Districts as well as financial information gained from these School Districts, shows the following:

 1. Although Brevard is the second largest of these School Districts behind Orange County, all of the comparable School Districts in the contiguous study received a higher increase in FEFP funding in fiscal year 2018-19 than Brevard, except Indian River.

 2. Of the five contiguous School Districts surveyed, only Orange and Indian River had a higher average teacher salary than does Brevard.

 3. Of the five contiguous School Districts surveyed, only Seminole and Volusia had a greater top end teacher salary than Brevard.

 4. Although Brevard’s starting teacher salary ($39,226) ranked lower in the survey of contiguous School Districts, it ranks higher than Volusia at $38,712, and within only $774 of the starting salaries at Orange and Seminole ($40,000).

 5. The Brevard School District has the 5th lowest total of District level administrator in the State of Florida, well below the average of all School Districts in Florida. (School District Exhibit 1, page 11). Yet the Brevard School District has the 5th highest number of instructional staff per District level administrator All of this is to say that the Brevard School District is clearly not “top heavy”. Historically it has chosen to eschew administrative overstaffing in favor of seeking to establish and maintain competitive teacher salaries.

*(SBBC # 2, p. 27).* SBBC contends this data supports the conclusion that the Brevard School District ranks very high in comparison with contiguous districts in terms of teachers’ compensation.

SBBC asserts that an analysis of data for districts of similar size supports the same conclusion. The School Districts that fall within this category include: (1) Osceola; (2) Pasco; (3) Seminole; and (4) Volusia. Regarding the one District included in this list that was not previously analyzed, Pasco: (1) it received a higher FEFP funding increase than Brevard in fiscal year 2018-19; (2) its starting teacher salary is lower than Brevard ($38,650 vs. $39,226); (3) its highest teacher salary is substantially below that of Brevard ($69,506 vs. $74,461); and (4) its average teacher salary is substantially lower than Brevard ($43,228 vs. $47,890). (*SBBC # 2, p. 26).*

SBBC argues that BFT's argument regarding comparators is "fatally flawed." Specifically, SBBC refers to the BFT contention that Brevard teachers are paid less than their contemporaries in these School Districts because they work longer hours (40 hours per week) than do teachers in many of the contiguous and state-wide School Districts (37.5 hours per week). SBBC points out that, in this regard, BFT failed to mention to the Special Magistrate is that the Brevard School District offered in its first proposal to the BFT a reduction in hours from 40 per week to 37.5 hours per week, with no reduction in pay. The BFT summarily rejected that proposal under the apparent premise that it would “look bad” to the community that teachers are working less hours.

SBBC contends that for BFT to now contend that the teachers it represents in Brevard County do not compare favorably to other School Districts in pay because they work longer hours than others is disingenuous at best. SBBC argues that BFT could easily have accepted the District’s offer, worked a shorter workweek and not suffered any reduction in pay, thus resulting in a higher effective hourly rate. SBBC concludes that, because BFT rejected this offer, they cannot in good conscience now come to the Special Magistrate and contend that their hourly rate is lower than teachers in comparable School Districts as a result of working longer hours. *(SBBC Br. at p. 19)*

**Interest and Welfare of the Public**

SBBC maintains that, by maintaining sound fund balance practices, and at the same time offering to teachers recurring salary adjustments that not only are within the District’s means but keep the teachers’ compensation competitive with contiguous and similarly sized School Districts, the Brevard School District is clearly protecting the interests and welfare of the citizens of the Brevard County. The Union’s proposals, on the other hand, commit non-recurring dollars to recurring costs, thus jeopardizing the School District’s long-term financial stability. That is clearly not in the best interests of the public and should not be recommended by the Special Magistrate.

**DISCUSSION AND ANALYSIS**

**Comparability**

At the outset of its discussion of the comparability factor, BFT points out that instructional personnel in BPS work longer days than their counterparts in many other districts. The most common workday length for teachers in the state of Florida is 7.5 hours, but BPS instructional personnel work an 8-hour day. In fact, of the seven comparator districts, only Indian River and Brevard teachers work eight hour days. *(BFT #1).* It is noted that Indian River School District is also at impasse with its teachers.

As indicated above, BFT calculates that this amounts to an additional 98 hours of work performed over the course of a standard 196-day work year – 1568 hours vs. 1470 hours. BFT argues that, "it is self-evident that an employee who receives a $50,000 salary to perform 1568 hours of work is less well-compensated than an employee who receives the same $50,000 salary to perform 1470 hours of work. Recognition of this fact must underpin any analysis comparing BPS instructional salaries against those of comparable employers."  *(BFT Br. at p. 8).* BFT's argument in this regard is persuasive.

However, as indicated above, SBBC argues that BFT's position in this regard is "fatally flawed" because the District proposed in bargaining to reduce the teachers' work day to 7 1/2 hours and BFT rejected the proposal. Nevertheless, it is observed that the rejection of the District proposal does not change the fact that Brevard teachers currently work an 8 hour day, whereas all but one of the remaining 6 comparable districts work a 7 1/2 hour day. It is concluded that it is appropriate to consider the longer work day when comparing salaries against those of comparable employers.

In addition, BFT asserts that starting salaries, on the other hand, are a more useful metric. Thousands of new teachers are hired around the state of Florida every year, and differences between starting salaries among districts is obviously a primary consideration in these teachers’ employment decisions. BFT observes that, even using the Board’s comparability analysis, BPS ranks seventh out of the nine districts examined in the Board’s comparability analysis in total annual starting salary, even without taking the increased workday in BPS into consideration. BFT's position and data on this point are compelling.

BFT argues that its comparability analysis is significantly more robust and more credible than the Board’s. It is supported by documentation from the relevant collective bargaining agreements and official statistics of the Florida Department of Education rather than "hearsay." *(BFT Br. at p. 9; BFT # 7, 8).*

Moreover, to give a fuller picture of teachers’ career salary trajectories across comparable districts, the Union’s analysis looks not only at starting salaries, but also at 5, 10, and 15 years of experience. The Union’s analysis also looks at the median salary in each comparable district in addition to the average salary. By virtue of its definition as the middle value in a distribution of data, the median salary is immune to the effects of outliers and other skews in the overall distribution of salaries and therefore a better representation of a “typical” teacher’s salary than the average salary.

SBBC presented data that supported a different conclusion - i.e., that the Brevard School District ranks very high in comparison with contiguous districts in terms of teachers’ compensation. BFT correctly points out that SBBC CFO Zuercher testified that she obtained the various salaries, salary adjustments, and insurance contributions shown in its analysis by contacting her counterparts in other districts directly and asking them.

However, as noted by BFT, none of these communications nor any other documentary form of evidence in support of the figures in question were offered into the record. BFT argues that, "not only does this omission render Ms. Zuercher’s testimony on comparability essentially an elaborate form of hearsay, but it also fails to provide the Special Magistrate with any means of verifying the validity of her analysis." BFT points out further that BFT that many factors that could skew the results for any particular comparable district. *(BFT br. at p. 8).* BFT's argument is more compelling and supports giving greater weight to its data and conclusions in this regard.

BFT presented data establishing that BFT compensation for instructional personnel in BPS is at the bottom among comparable districts in almost every metric. BFT concludes, from the information provided, that three conclusions can be drawn:

* Teacher compensation in BPS is significantly below the average among comparable districts in every metric.
* Despite having the most experienced workforce, instructional personnel in BPS enjoy some of the lowest mean and median salaries among comparable districts.

At no point in the first fifteen years of his or her career can a teacher expect to be better compensated with BPS than with any comparable districts. This conclusion was not rebutted by SBBC.

**Increased Supplement for Teachers With a Certificate in Exceptional Education** Regarding the proposed increase in the supplement for teachers who hold a certificate in Exceptional Education, the unrebutted testimony from Jamie Clapp, a high school math teacher at Eau Gallie High School, was particularly compelling. BPS, being particularly short of such certified teachers, currently has a practice of requiring teachers who hold a certificate in Exceptional Education to write Individualized Education Plans (IEP) for students who are not on any of their rosters.

Ms. Clapp testified at length to the various tasks involved in shepherding an IEP through completion. As noted above, Ms. Clapp testified that she had spent around 90-110 hours this year performing these extra duties for 27 students this year, a fairly typical year. In exchange for this work, she testified that she receives one “IEP day” each semester for a total of sixteen hours of relief from regular duties, and a supplement for being certified in a “critical shortage area” of $165. BFT calculates that Ms. Clapp receives an overall “wage” of around $2 per hour to perform these duties.

Ms. Clapp further testified that much of the work associated with IEPs is seasonal, particularly during September-October, and that during this time her capacity to fulfill the duties of her primary job is diminished. In her own words: “That does carry over into the classroom because you’re mentally exhausted, you haven’t had any kind of break from the routine. I do want to make sure I give the best to my kids, which is hard when you’re doing that much work.” It is not fair to Ms. Clapp’s students that she should have to shoulder an undue portion of the burden of completing IEPs caused by the overall lack of instructional personnel qualified to complete them.

In recognition of the particular circumstances currently afflicting teachers certified in Exceptional Education, the BFT has also proposed an additional $835 supplement for such teachers. This would raise the total compensation for teachers similarly situated to Ms. Clapp from around $2 per hour to around $10 per hour. BFT argues that this could incentivize more employees to become certified in Exceptional Education, thereby spreading the workload across more employees and further increasing the “hourly rate” associated with the duties. It is concluded that BFT's proposal is a sensible, cost-efficient, targeted approach to solving a problem that disproportionately impacts a small group of employees and their students.

**Availability of Funds**

As compelling as BFT's arguments and data are in support of its salary proposals, the fundamental question is availability of funds. It is always so.

And, when parties go to impasse over salaries, there is seldom a disagreement that teachers deserve more pay. There is an acknowledged teacher shortage in Florida. Florida school districts have difficulty attracting and retaining high quality teachers.

The issue is almost always whether the district has sufficient funds to provide its teachers with a competitive salary. This is certainly so in the instant case. Not surprisingly, the parties' respective positions regarding availability of funds to provide for the increases proposed by BFT are widely divergent.

At the outset of this discussion, it is respectfully observed that there are always funds available to provide for increases such as the ones proposed by BFT. It is a question of priorities . . . of choices. The Superintendent recommends a budget that is full of choices, and the School Board reviews the recommendations and adopts a budget. The budget is a living document, capable of being amended during the fiscal year as circumstances and priorities change.

BFT has focused on the District's fund balance as a source for the funds to finance its proposed salary increases. The District understandably responds that it is not fiscally responsible to fund recurring costs (salary increases) with non-recurring funds (Fund Balance). SBBC maintains that there simply are no more recurring dollars available to fund salary increases beyond that which has been offered by the School District.

In this case, the evidence of record establishes that, in 2014, the School Board adopted District Policy 6120, with regard to fund balance, which provides as follows:

 The Board understands that the financial stability of the District is key to attaining its vision, mission, organizational values, and operational beliefs. Additionally, the Constitution of the State of Florida requires that school districts operate under a balanced budget.

 There are many unforeseen conditions which can impact both increases and decreases in revenues and expenditures thereby impacting the financial stability of the District. To ensure the financial strength and stability of the District, the Board is committed to maintaining a fund balance of three and one-half per cent (3 1/2%) of the District's General Fund revenue to be reserved for contingencies.

*(BFT #8; Emphasis added).*

The evidence of record establishes that, since 2012, the District's total available fund balance has varied from 8.23% to the current projected 9.68%. *(BFT #8).* As noted by SBBC, the Governmental Accounting Standards Board (GASB) requires a GAAP Fund balance to be classified as follows:

 a. **Non- spendable** – amounts that cannot be spent because they are in a non- spendable form (inventory) or contractually obligated (prepaid insurance);

 b. **Restricted** – external constraints are placed on the funds, i.e.: creditors; legislation; or statute;

 c. **Committed** – set aside for specific purpose pursuant to constraints imposed by formal action of the School Board;

 d. **Assigned** – constrained by intent to be used for specific purposes, but are neither restricted nor committed; and committed or assigned to a specific purpose; it includes in funds set aside for contingencies or emergencies.

 e. **Unassigned** – fund balance not assigned to other funds and that are restricted, committed or assigned to a specific purpose; it includes in funds set aside for contingencies or emergencies.

Board’s components with the GASB-required classifications are summarized in Table 11 below:

 Table 11 – Employer Breakdown of Ending Fund Balance for FY 2017-18

 Component Amount GASB Classification

 Inventory on Hand $497,808 Nonspendable

 Prepaids expenses $3,564,123 Nonspendable

 State categoricals $5,152,248 Restricted

 Committed fund

 balance – FY1718 $3,905,904 Committed

 Encumbrances $4,061,762 Unassigned

 Carryforwards $10,462,587 Unassigned

 Reserve for Medical

 Insurance $3,100,000 Unassigned

 School operations $3,313,651 Assigned

 State Required Contingency $19,880,369 Unassigned

 Non-recurring funding $4,383,872 Unassigned

 Fund Balance at 6/30/18 $58,322,324 Ending Fund Balance

The evidence of record, including the GASB description of the General Fund components, establishes that, of these components listed above, the Committed Fund Balance, Encumbrances, Carryforwards, Reserve for Medical Insurance, School Operations, State Required Contingency, Non-recurring Funding, all represent "choices." In other words, the amounts in these various components have been determined by the School Board in its adopted budget. By definition, some or all of these components can be changed by board action.

For example, as BFT pointed out in its argument above, Ms. Zuercher’s own testimony reveals which of the remaining amounts are – or could be made – available for use:

 • She described the $3,905,904 in “Committed fund balance – FY1718” as “to pay for future years’ priorities in a ‘grant-style’ of funding.” These funds are for Board priorities. *(The Board has full power to reprioritize them.)*

 • She described the $4,061,762 in “Encumbrances” as “purchase orders for goods and services that have not received as of June 30, those are contractual commitments” and later said “I suppose we could cancel purchase orders.” *(No details were given as to what kind of contractual commitments they entailed. But again, these funds are not beyond reach; they could be reallocated towards increasing teacher salaries.)*

 • She described the $10,462,587 in “Carryforwards” as “a mixture of grants or specific funding such as Adult Ed funding, or our pre-paid funding, as well as some other funds that the district has committed to the schools to allow to carry forward.” *(The district has allowed schools to retain these funds. It could just as easily reclaim them.)*

 • She described the $3,100,000 in “Reserve for Medical Insurance” as “to allow for any potential future losses” which may affect the Board’s ability to maintain 60 days’ worth of claims in reserve as required by the Florida Office of Insurance Regulation. *(No evidence was provided as to its need to be used this year. In the absence of any such evidence, these funds are free to be redirected.)*

 • She described the $3,313,651 in “School operations” as “funds that the schools have brought into use for expenditures and the district has allowed them to carry that forward.” *(As with the $10.5 million in "carryforwards" discussed above, these funds are only “reserved” because the district has decided to allow schools to reserve them.)*

 • She described the $19,880,369 in the “State-Required Contingency” as “slightly above” the 3% required by the state. Follow-up questioning by the Special Magistrate elicited Ms. Zuercher’s estimate of this amount as 3.1% of total general revenues. *(BFT concludes that it is 3.63% of total general revenues. Put another way, ~0.63% of total revenues, almost $3.5 million, could be reallocated towards raising teacher salaries without falling below the 3% threshold.* *BFT Br. at pp. 20-21).*

Thus, according to GASB standards and Board policy, it would be feasible to fund the BFT proposals . . . if the School Board changed its priorities - i.e., if it made different "choices."

For example, with regard to the Union’s demand for additional supplement dollars to ESE teachers, the School District does not dispute that ESE teachers expend considerable efforts in undertaking the various tasks associated with teaching the School District’s exceptional students. That is why the current $165 supplement for ESE teachers exists in the first place. The District maintains that the cost of the Union’s proposed increase of that supplement from $165 to $835 is over $800,000. *(SBBC 31, page 8).* Again, District maintains that the School District’s final proposal to increase teachers’ salaries overall stretches to the limit its available recurring dollars to fund such enhancements.

SBBC opines that, "as laudable it is to afford ESE teachers additional dollars for their work, the *only way* to achieve that within the School District’s financial means is to reduce the salary increase offer to all others, an inequity that in this fiscal year the School District is not willing to undertake." *(SBBC Br. at p. 14; Emphasis added).* The record establishes that this is simply not the case. As indicated above, there are a variety of sources in the fund balance that can be utilized to fund this proposal. The District's conclusion in this regard is the consequence of a series of choices it has made. It is well within the School Board's power to change its priorities and fund this proposal without bringing its fund balance to a fiscally irresponsible position.

However, there remains the legitimate argument of SBBC that it is not fiscally prudent to fund recurring costs with non-recurring revenue. To this point, BFT asserts, "the magnitude of the overbudgeting and underspending during the fiscal year practiced by the Board is quite significant and highly predictable." *(BFT Br. at p. 15).*  **This point is most significant.** *The record establishes an unbroken pattern of conservative fiscal strategy to maintain, each year, a fund balance of between 8.23% to the current projected 9.68%. It is submitted that this practice results in funds that are no longer "non-recurring.*" As the result of the District's conservative budgeting practices, these "non-recurring " funds ***recur***each year.

**Interest and Welfare of the Public**

SBBC maintains that, by maintaining sound fund balance practices, and at the same time offering to teachers recurring salary adjustments that not only are within the District’s means but keep the teachers’ compensation competitive with contiguous and similarly sized School Districts, the Brevard School District is clearly protecting the interests and welfare of the citizens of the Brevard County. As noted above, SBBC argues that BFT's proposals commit non-recurring dollars to recurring costs, thus jeopardizing the School District’s long-term financial stability, a result that is clearly not in the best interests of the public and should not be recommended by the Special Magistrate. It is respectfully submitted that the evidence of record does *not* support the conclusion that funding the BFT proposal would jeopardize the District's long-term financial stability.

BFT asserts that the value to BPS of compensating teachers above – or, at the very least, at – market rate is self-evident. Population centers in surrounding districts with better compensation are well within commuting distance of any location in Brevard County. Many BPS employees already live in these surrounding counties. With the legislature’s actions to eliminate professional services contracts for instructional personnel hired after July 1, 2008, the most significant economic incentive facing most teachers is compensation. With teacher shortages afflicting school districts state-wide (and nation-wide), the labor market for teachers is a seller’s market. *(BFT Br. at p.25).* It seems axiomatic that the Brevard County School District would seek to put itself in a more favorable competitive position to attract and retain quality teachers, and that this would be in the best interests of the children and the public that it serves.

BFT points out that nearly $15 million is – as far as Ms. Zuercher offered in her testimony – simply allowed to remain housed in various departments and schools for no reason in particular. Another $3.1 million is held “just in case” the district’s self-insured health insurance fund eventually requires a cash infusion, but no evidence was supplied beyond Ms. Zuercher’s own vague assertions that the funds would be required in this or future years. Over $4 million is currently set aside for outstanding purchase orders which Ms. Zuercher admitted could be cancelled; perhaps these purchase orders were for purposes more important than raising teacher salaries, or perhaps not. No details were provided. The “State-Required Contingency” is in excess of what the state requires by almost $3.5 million, and again BFT points out that no details are provided as to why the public interest is better served by maintaining these reserves at this level than it is by raising teacher salaries.

The State requires a fund balance of 3%. The Board Policy requires a minimum of 3 1/2 %. The District fund balance has been consistently 5% above these required minimums. It is most respectfully submitted that this conservative fiscal strategy described above results in the underutilization of funds generated at the federal, State and local level - funds that are intended to be applied toward the education of children.

**CONCLUSION**

Given the consistent pattern of fiscal strategy since 2012 resulting in a general fund balance of between 8.23% and the projected 9.68%, and given the inherent flexibility regarding major portions of the Fund Balance as indicated above, it is concluded that the there are sufficient funds available to fund the BFT final proposal. It is concluded further that funding the BFT proposal will have a positive impact on the interest and welfare of the children and the public served by the School District of Brevard County.

**IT IS RECOMMENDED THAT THE BREVARD COUNTY SCHOOL BOARD AGREE TO THE FINAL BFT BARGAINING PROPOSALS AS FOLLOWS:**

**Issue #1 - Salary increases shall be awarded according to contract status and 2017-18 performance evaluation as follows:**

 **Salary Schedule Highly Effective Effective**

 **Performance Pay $2,300 $1,725**

 **Grandfather $2,299 $1,724**

**Issue #2 – Bargaining unit members certified in Exceptional Student Education shall receive an $835 supplement in addition to the $165 supplement they currently receive for being certified in a critical shortage area, for a total supplement of $1,000.**

***Respectfully Submitted this 17th day of May, 2019,***

 ***S/* Thomas W, Young*,III***

 Thomas W. Young, III

 Special Magistrate