

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ST. LUCIE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 04-1322
)
JUDITH LEE HUETER,)
)
 Respondent.)

)

RECOMMENDED ORDER

A formal hearing was held in this case in Fort Pierce, Florida, on June 24, 2004, before Florence Snyder Rivas, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: David Miklas, Esquire
Elizabeth Coke, Esquire
J. David Richeson & Associates, P.A.
Post Office Box 4048
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For Respondent: Catherine J. Chamblee, Esquire
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STATEMENT OF THE ISSUE

At issue is whether Petitioner St. Lucie County School Board (School Board or Petitioner) should terminate the employment of Respondent Judith Lee Heuter (Respondent or

Heuter) following her second conviction for Driving Under the Influence (DUI).

PRELIMINARY STATEMENT

By letter dated March 11, 2004, Michael Lannon, Superintendent of St. Lucie County Schools, advised Respondent that he was recommending her dismissal based upon a second conviction for DUI. A Statement of Charges and Petition for Termination of the same date set forth the specific legal grounds for termination.

Respondent timely asserted her right to an administrative hearing to challenge the termination.

The identity of witnesses and exhibits and attendant stipulations and rulings rendered at hearing are contained in the one-volume transcript of the June 24, 2004, final hearing which was filed on July 26, 2004.

At hearing, the undersigned reserved ruling on Petitioner's objection to the relevancy of Respondent's evidence concerning her professional competence, as well as evidence concerning her history of alcoholism and related treatment. All such evidence was received subject to a standing objection lodged by Petitioner. The parties were invited to brief the objection(s) in their post-hearing submissions, with the understanding that

evidence received pursuant to Petitioner's standing objection(s) would be disregarded to the extent it was in fact irrelevant.

Upon consideration, evidence relating to Heuter's professional competence, as well as evidence concerning her history of alcoholism and related treatment, is deemed relevant to the alleged violations of Florida Administrative Code Rules 6B-1.001 (2) and 6B-1.001 (3); School Board Policy 3.56 (3) (b) (2), (19) (29) and (37); and Respondent's argument regarding School Board Policy 3.56 (a). Accordingly, such evidence is considered only in connection with those provisions.

By agreement of the parties, the record remained open and the testimony of Susan Ranew was taken telephonically in the presence of a court reporter with the undersigned presiding on June 29, 2004.

Proposed Recommended Orders were timely submitted by the parties and have been carefully considered. References to Sections are to the Florida Statutes (2004). References to the Code are to the Florida Administrative Code (2002).

FINDINGS OF FACT

1. Heuter has served as a teacher in the St. Lucie County school system for over 13 years. At all times material to this case, Heuter is party to a professional services contract with the School Board.

2. Heuter's personal and professional reputations were unblemished until November 12, 1999, when she was arrested for DUI. By letter dated December 14, 1999, Respondent was notified by the School Board Personnel Director, Susan Ranew (Ranew), that she was to meet with Ranew on January 11, 2000, regarding the arrest.

3. The meeting took place as scheduled. Ranew gave Heuter a letter signed by Assistant Superintendent for Human Resources Russell Anderson. The letter stated, in pertinent part:

. . . [Y]our recent arrest could be a violation of the Florida Code of Ethics for Public Officers and Employees and the General Personnel Policies of the St. Lucie County School Board Policies section 3.56. State Board of Education Administrative Rule 6B-1.001 states at subsection (3) that the educator is [sic] "aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct. . . .

. . . [Y]ou are directed to refrain from this type of behavior in the future. Your failure to follow this directive will result in more severe disciplinary action. . . .

The letter further advised Heuter that she was to be recommended for a two-day suspension, a disciplinary action which she did not contest. In due course, the suspension was formally imposed and was served by Heuter.

4. In addition, the 1999 arrest resulted in an investigation by the state's Education Practices Committee (EPC). On September 7, 2001, the EPC issued a Final Order, which included a letter of reprimand and three years' probation. The terms of the probation included a provision that Heuter refrain from alcohol consumption and engage in substance abuse counseling.

5. Legal proceedings relating to the 1999 DUI concluded on February 14, 2000, when Heuter plead no contest to the charge in St. Lucie County Court.

6. As a first time DUI offender, Heuter was directed to alcohol abuse treatment. Thus, at the time the EPC entered its Final Order requiring treatment, Heuter was already in treatment.

7. Although cooperative with treatment, Heuter was not persuaded that she suffered from alcoholism, a chronic disease requiring lifelong treatment. Such denial is a classic symptom of alcoholism.

8. Heuter was arrested a second time for DUI on June 17, 2003. This event proved the catalyst for her acknowledgment that she was an alcoholic and would, without treatment, remain a danger to herself and others.

9. Heuter promptly reported the arrest to her principal at the time, Diane Guffey (Guffey), to Jane Summa (Summa), who was

slated to take over as principal at Heuter's assigned school for the 2003-2004 school year, and to personnel director Ranew.

10. Heuter also returned to alcohol abuse counseling with appropriately credentialed professionals, and an understanding she had previously lacked concerning the seriousness of her illness.

11. Heuter plead no contest to the second DUI and was convicted of the criminal charge on December 17, 2003. She was still on EPC probation at the time of the second offense, and an investigation in that forum is pending.

12. More than one month elapsed between Heuter's no contest plea and the time she was informed of the Superintendent's intent to recommend termination.

13. Petitioner contends that Heuter knew or should have known from the time of the second arrest that a conviction would automatically result in her termination.

14. In support of this contention, Petitioner asserts that Heuter was told by Ranew at their January 11, 2000, meeting of an "unwritten policy" which required that she be terminated upon conviction.

15. The "unwritten policy" upon which Petitioner relies is not a School Board policy, but rather a district policy. The difference between School Board policy and district policy in St. Lucie County includes, but is not limited to, the fact that

School Board policies are promulgated in writing following a period of deliberation which includes an opportunity for public comment.

16. After careful consideration of all of the record evidence regarding the existence of an unwritten (district level) policy, the fact-finder is not persuaded that such policy existed. At most, one or more current and former district officials, neither of whom testified, held the view that any person who might commit a second alcohol or drug-related criminal offense should be terminated without regard to any mitigating factors which may exist.

17. The parties agree that this is a case of first impression in St. Lucie County, in that the School Board has never undertaken to address the question of whether teachers or other employees should be terminated automatically upon a second DUI conviction.

18. However, in other contexts relating to substance abuse, the School Board has crafted written policy which demonstrates careful attention to what people, places, and circumstances are intended to be brought within the scope of the policy, and what, if any, discretion the School Board reserves to deal with the offender on an individualized basis.

19. For example, School Board Policy 3.59 addresses substance abuse in the workplace. This policy specifically provides:

3.59 DRUG FREE WORKPLACE

(1) It is the intent of the School Board that work environments be free of the presence of illegal drugs and alcohol. Therefore, employees are prohibited from possessing, using, manufacturing, dispensing, distributing, or being under the influence of illegal drugs or alcohol while on duty. For the purposes of this policy, illegal drugs are those controlled substances as defined by federal or state law, or any counterfeit of such drugs or substances.

(2) For purposes of this policy, "workplace" means the site for the performance of work done in connection with employment. Workplace includes any school building or any school premises; and any vehicle used to transport students to and from school and school activities off school property during any school-sponsored or school-approved activity, event or function, such as a field trip or athletic event, where students are under the jurisdiction of the School District.

(3) As a condition of employment, each employee shall notify his or her supervisor of his or her conviction of any criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction. An employee who violates the terms of this policy may be nonrenewed or his or her employment may be suspended or terminated. However, at the discretion of the School Board, such employee may be allowed to participate in and satisfactorily complete a drug abuse assistance or rehabilitation program

approved by the School Board in lieu of a nonrenewal, suspension, or termination. Sanctions and discipline against employees, including nonrenewal, suspension, and termination, shall be recommended within thirty (30) days of receiving notice of an employee's conviction. Within ten (10) days of receiving notice of an employee's conviction in violation of this rule, the Superintendent shall notify the state and federal department of education.

(4) A drug-free awareness program is hereby established, and is to be implemented by the Superintendent, to inform employees of the dangers of drug abuse in the workplace, of the School Board's policy of maintaining a drug-free workplace, of available drug counseling, rehabilitation, and assistance programs, and of the penalties to be imposed upon employees for drug abuse violations occurring in the workplace. As a part of this program, all employees and applicants for employment shall be given notice of the School Board's policy regarding the maintenance of a drug-free workplace.

. . . [A]t the discretion of the School Board, such employee may be allowed to participate in and satisfactorily complete a drug abuse assistance or rehabilitation program approved by the School Board in lieu of a non-renewal, suspension, or termination.

20. At all times material to this case, Heuter is actively participating in treatment as prescribed by appropriately credentialed professionals involved in her care. The opportunity to do the work for which she was trained provides a powerful incentive for Heuter to continue to cooperate in her treatment. Heuter's employer-based insurance provides partial

coverage for her treatment. Her treating professionals regard her illness as medically similar to diabetes, heart disease, or other types of chronic and potentially life-threatening illnesses. So long as Heuter remains in compliance with her treatment program, she is well able to perform her job.

21. There is no evidence that symptoms of Heuter's alcoholism ever surfaced in the classroom, or elsewhere on school grounds or on school time. Rather, at all times material to this case, Heuter enjoys the unqualified support and respect of experienced school principals she has served for and with over the course of her career.

22. On March 23, 2004, following the decision to terminate Hueter's employment, Jane Summa (Summa), who was to be the principal at Heuter's assigned school the following academic year, prepared Heuter's performance review for the current year. She wrote:

It is with great pleasure that an
EXCEPTIONAL OVERALL PERFORMANCE APPRAISAL
RATING be granted to this highly effective
teacher! Yet it comes as no surprise due to
the fact that performance consistently
exceeds the requirements of this position.
As a direct result, students are
consistently afforded an opportunity to
perform at the highest possible level. Add
to this one who always works in a positive,
effective manner with all stake holders and
you have a staff person that I am very proud
to say is a true WEATHERBEE MARINER.
(Emphasis in original).

23. Diane Guffey (Guffey), Respondent's principal at the time of both DUI infractions, would welcome Heuter back to her teaching staff.

24. In a letter dated April 22, 2004, Guffey wrote:

Ms. Hueter is a teacher who has made a difference in the lives of many children. . . . Teaching and children are a passion for her and she gives the job her best.

Although Ms. Hueter has made some mistakes of bad judgment in her personal life, I have never seen any adverse effect on her teaching.

As an administrator, I sometimes have to work with marginal teachers. Mrs. Hueter is an example of a mentor teacher who can help other teachers become better. Mrs. Hueter is an excellent teacher whom I would be proud to work with at anytime in any school.

25. Robert Dougherty (Dougherty) provided glowing testimony concerning Heuter's teaching of his two sons. According to Dougherty, Heuter had extracted success from his sons in situations where other teachers had tried and failed. His personal knowledge and focus is narrowly based upon his parent/teacher relationship with Heuter, and, like the testimony of Summa and Guffey, was considered only as it may bear upon the alleged violation of Rule 6B-1.001(2) and (3).

26. No evidence was presented in support of Petitioner's request for back pay and benefits.

CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto. § 120.57(1), Fla. Stat.

28. Heuter is employed pursuant to a professional services contract and may be terminated only for just cause. Just cause includes but is not limited to misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude. § 1012.33(1)(a), Fla. Stat.

29. The School Board is required to prove its allegations by a preponderance of the evidence. Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990). Dismissal may be predicated only upon the grounds set forth in the charging document, in this case the Statement of Charges and Petition for Termination. Lusskin v. Agency for Health Care Administration, 731 So. 2d 67, 69 (Fla. 4th DCA 1999); Cottrill v. Dept. of Insurance, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Klein v. Dept. of Business and Professional Regulation, 625 So. 2d 1237, 1238-39 (Fla. 2d DCA 1993); Delk v. Dept. of Professional Regulation, 595 So. 2d 966, 967 (Fla. 5th DCA 1992); Willner v. Dept. of Professional Regulation, Board of Medicine, 563 So. 2d 805, 806 (Fla. 1st DCA 1990), rev. denied, 576 So. 2d 295 (1991).

30. The factual basis for each of the grounds for termination alleged by Petitioner is the second DUI conviction. Petitioner contends that the second DUI violates several provisions of School Board Policy 3.56(3)(b), a non-inclusive list of infractions which "warrant disciplinary action." The policy does not mandate a penalty of termination, whether one or more of its provisions is violated.

31. By way of defense, Respondent contends that termination under the facts and circumstances of this case constitutes a violation of School Board Policy 3.56 as it relates to progressive discipline.

32. For the reasons set forth below, it is determined that Heuter violated subsections (b) (7), (19), (29), and (37) of School Board Policy 3.56(b) and that discipline is warranted. However, these violations, taken together, do not amount to just cause for termination under the circumstances of this case. Alternatively, Heuter has proved that the School Board's progressive discipline policy militates in favor of a penalty less than termination for this second offense.

33. With respect to Petitioner's allegations, Rule 3.56(3)(b) provides in pertinent part:

EMPLOYEE STANDARDS OF CONDUCT

* * *

(3) Disciplinary Guidelines for Employees.

* * *

(b) The following list is not intended to be all-inclusive, but is typical of infractions that warrant disciplinary action:

- (1) insubordination.
- (2) Violation of drug and alcohol policy.

* * *

(7) Conviction of a criminal act that constitutes a misdemeanor.

* * *

(19) Violation of any rule, policy, regulation, or established procedure.

* * *

(29) Any violation of the Code of Ethics of the Education Profession, the Principles of Professional Conduct for the Education Profession, the Standards of Competent Professional Performance, or the Code of Ethics for Public Officers and Employees.

(30) Off duty contact that does not promote the good will and favorable attitude of the public toward the School District, its programs, and policies.

* * *

(37) Alcohol-related offenses, including driving under the influence of alcohol.

. . .

34. (a) Subsection (1) re: Insubordination: Following the first DUI, Heuter was directed in writing to "refrain from this type of behavior in the future." There is no evidence that Heuter's conduct was a function of disrespect for the directive, as opposed to a manifestation of her disease. Accordingly, Petitioner failed to prove this stated ground for termination.

35. (b) Subsection (2) re: Violation of drug and alcohol policy: The existence of an unwritten policy applicable to this case was not proved. Only one drug and alcohol policy applicable to employees (as opposed to students) was in place at relevant times. The policy, entitled 3.59 DRUG FREE WORKPLACE and set forth in pertinent part above, by its own terms addresses the use of drugs and alcohol on school property. There is no evidence that Heuter used or abused alcohol or any drug in the workplace. Accordingly, Petitioner failed to prove this stated ground for termination.

36. (c) Subsection (7) re: Conviction of a criminal act that constitutes a misdemeanor: Heuter does not deny that she violated this subsection, thus this charge is sustained.

37. (d) Subsection (19) re: Violation of any rule, policy, regulation, or established procedure: The Petitioner has proved violations of School Board Policy 3.56 (b)(7),(19),(29),and (37) each of which is a rule or policy. Accordingly, Petitioner proved this stated ground for termination; however, this

violation is cumulative and should not be considered in enhancement of discipline under the circumstance of this case.

38. (e) Subsection (29) re: Any violation of the Code of Ethics of the Education Profession, the Principles of Professional Conduct for the Education Profession, the Standards of Competent Professional Performance, or the Code of Ethics for Public Officers and Employees.

39. In support of this charge, three Rule violations are cited: (a) Rule 6B-1.006(5)(P); (b) Rule 6B-1.001(2), and (c) Rule 6B-1.001(3):

(a) Rule 6B-1.006(5)(P):

Rule 6B-1.006(5)(P) provides in pertinent part:

(5) Obligation to the profession of education requires that the individual:

* * *

(p) Shall comply with the conditions of an order of the Education Practices Commission.

Based solely upon the undisputed facts adduced at hearing, it may be inferred that at a minimum Heuter was in violation of the EPC's proscription against consuming alcohol at the time of her second arrest. Accordingly, Petitioner has proved this stated ground for termination.

(b) Rule 6B-1.001(2):

Rule 6B-1.001(2) provides in pertinent part:

6B-1.001 Code of Ethics of the Education Profession in Florida.

* * *

(2) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

40. This Rule is part of Florida's Code of Ethics for professional educators. Respondent accurately notes that some DOAH cases have viewed the Code of Ethics as "aspirational" and not easily applied as a disciplinary standard. Palm Beach County School Board v. Laakso, DOAH Case No. 01-4839 (2003); See also Palm Beach County School Board v. Oppel, DOAH Case No. 01-4533 (2002); Pinellas County School Board v. Lemiesz, DOAH Case No. 96-3253 (1997); and Pinellas County School Board v. Snyder, DOAH Case No. 93-4972 (1993).

41. Respondent cites this passage from Administrative Law Judge Robert Meale's Recommended Order in Palm Beach County School Board vs. Edward R. Oppel:

Rule 6B-1.001(2) and (3) are clearly exhortatory in nature, as they encourage the administrator to "strive" for the "highest" and "best." Important as these provisions are for setting behavioral and professional

goals, they do not serve well as provisions describing the minimum standards that, if breached, may result in termination.

Palm Beach County School Board v. Oppel; DOAH Case No. 01-4533 (2002).

42. Judge Meale's observation is persuasive; however, the broad question of whether the Code of Ethics is aspirational in nature and therefore not an appropriate basis for termination, is beyond the scope of this discussion. In predicating Heuter's termination upon Rule 6B-1.001(2), Petitioner has, by the very terms of the Rule, invited inquiry into whether or not Heuter has conducted herself in a manner demonstrating primary professional concern for the development of the potential of her students; whether or not she strives for professional growth; and whether or not she seeks to exercise the best professional judgment and integrity.

43. In seeking answers to those questions, Heuter's teaching record; the opinions of principals Gaffey and Summa; and the opinion of a father who believes that Heuter not only showed concern for the development of his children's potential, but actually developed their potential where others had tried and failed, are all of relevance.

44. At all times material to this case, even as she progressed in the disease of alcoholism, Heuter demonstrated exemplary work on behalf of her students and maintained

"professional growth." The high quality of her professional performance held steady, and even improved, in the months following her first DUI. Even after the second DUI, administrators who must account directly to parents and to district officials when something is amiss in the classroom, would welcome her back.

45. Accordingly, Petitioner has failed to prove this stated ground for termination.

(c) Rule 6B-1.001(3):

Rule 6B-1.001(3) provides in pertinent part:

6B-1.001 Code of Ethics of the Education Profession in Florida.

* * *

(3) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

46. The case law and conclusions set forth with reference to Rule in 6B-1.001(2) above apply with equal force to this section of the Code.

47. There is no evidence that anyone, including individuals directly involved in Heuter's termination, lacked respect for or confidence in Heuter as a teaching professional at any time. There is no factual basis to conclude that Heuter

ever failed to strive to achieve and sustain the highest degree of ethical conduct. Without defending drunk driving, the undersigned has been unable to locate any case, statute, rule or other authority to support the notion that either or both DUIs constitute, under the facts and circumstances of this case, a lapse in professional ethics as a teacher.

48. Rather, the opinions of principals Gaffey and Summa demonstrate that the respect and confidence which a teacher must have remain intact. It is unimaginable that one principal, let alone two, would speak so highly of a teacher if they held any reservations concerning her ability to sustain the highest degree of ethical conduct.

49. The Rule does not demand teacher perfection; rather the verb chosen is "strive." Heuter's acknowledgment of her disease, coupled with the fact that she has fully embraced treatment, suggests that she strives, and will continue to strive, to achieve and sustain the highest degree of ethical conduct. Accordingly, Petitioner has failed to prove this stated ground for termination.

50. (f) Subsection (30) re: Off duty contact that does not promote the good will and favorable attitude of the public toward the School District, its programs, and policies: No such contact has been proved. This provision, by its terms, suggests that the "contact" referred to is contact with the public and

perhaps is limited to contact which influences the "attitude of the public toward the School District, its programs, and policies."

51. Even if the policy addressed "conduct," rather than "contact," no evidence was presented upon which findings could be made concerning the public's good will or lack thereof toward the School District, its programs or its policies, or even Heuter herself, as a result of her off-duty conduct. Accordingly, Petitioner has failed to prove this stated ground for termination.

52. (g) Subsection 30 re: Alcohol related offenses: Finally, Petitioner cites violation of subsection (37) which includes "Alcohol-related offenses, including driving under the influence of alcohol." This violation has been proved.

53. Turning to Heuter's defensive use of School Board Policy 3.56, the contention is that the School Board's decision to terminate her under the circumstances of this case violates subsection (a) relating to progressive discipline. The policy states:

The School District generally follows a system of progressive discipline in dealing with deficiencies in employee work performance or conduct. Should unacceptable behavior occur, corrective measures will be taken to prevent reoccurrence. The Superintendent is authorized to place employees on administrative assignment and/or leave as necessary during an

investigation. However, some behavior may be so extreme as to merit immediate dismissal.

54. The progression of discipline from a two-day suspension to termination, under all the circumstances of this case, is inconsistent with, at the least, the spirit of the progressive discipline policy. "Progressing" from a two-day suspension to termination is excessive, where, as here, the substance abuse occurred off school property; the prospects of rehabilitation are substantial; and the employee has made a persuasive case for mercy and understanding.

55. Individuals who bring illegal substances on to school property, or come to work in an impaired condition, pose an imminent threat to the safety of students and colleagues. Yet the School Board's written policy provides discretion to consider all circumstances surrounding the individual's employment to determine if he is a candidate for rehabilitation.

56. Such discretion is consistent with a progressive discipline policy; while it is appropriate here to impose more severe discipline that Heuter suffered following her first DUI, termination under all the circumstances of this case is a harsh punishment for which just cause is lacking.

57. In Jim Horne as Commissioner of Education v. Agostino, DOAH Case No. 03-2877PL (2004), Administrative Law Judge

Lawrence P. Stevenson recommended against revoking the license of a teacher who had battered his wife, stating:

It must be noted that Mr. Agostino's violation occurred away from school and apparently had no effect on his job performance or on his reputation among students, parents, and co-workers. Given these facts, there would be nothing to gain by depriving Mr. Agostino of his livelihood while he deals with the emotional and psychological issues underlying the events of May 16, 2003."

58. Here, too, there appears to be "nothing to gain" by depriving Heuter the chance to remain productive in a field of endeavor which is important to the community.

59. Driving while under the influence is a very serious matter, but in this case it appears to have motivated Heuter to take seriously her after-hours recklessness in a way that her previous arrest and treatment had not.

60. Implicit in the School Board's detailed and thoughtfully reasoned drug free workplace policy is the notion that substance abusers can, if properly treated and cooperating with "doctor's orders," perform their jobs as well as any individual who suffers from a chronic illness which is responding to treatment.

61. Differences of opinion, sometimes divisive, exist with regard to society's attitudes toward alcoholism. In its drug free workplace policy, the School Board has elected to treat

alcoholism as a chronic illness, rather than a moral failing. Had Heuter violated the drug free workplace policy, she would, without doubt, be a candidate for the exercise of the School Board's discretion to participate in an assistance or rehabilitation program in lieu of termination, even though it was a second offense.

62. Given the apparent conflict in the drug free workplace policy with the proposed discipline in this case, it is appropriate for the School Board to take into account substantial mitigating circumstances which include the opinions of the Board's principals; the well-being of a long-term, highly productive employee; and the students who stand to benefit in the future from the services of an experienced and dedicated teacher.

63. It is entirely appropriate to impose conditions upon the exercise of discretion in favor of Heuter's continued employment, including putting her on formal notice that any future DUI arrest will result in immediate termination. It would also be appropriate to require a letter from Heuter's treating substance abuse counselor certifying her ongoing compliance with her treatment plan, to be furnished no earlier than one week prior to the School Board's consideration of this Recommended Order.

64. Even if Heuter had presented evidence concerning entitlement to back pay and benefits, which she did not, it should be recognized that in incurring the second DUI, Heuter demonstrated that the relatively light punishment imposed following her first DUI had insufficient impact upon her behavior. It is thus appropriate to treat her period of unemployment, retroactive to the date she was notified of the charges heard in this proceeding (March 11, 2004), as a suspension without pay or benefits.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Heuter, having committed the single act of driving under the influence on June 17, 2003, violated School Board Policy 3.56 (3) (b) (7) (19), (29) and (37); dismissing the remaining charges; that acknowledging the violations proved warrant the substantial discipline of suspension without pay from March 11, 2003, to and including the date of the entry of a Final Order; and denying the claim for back pay and benefits.

DONE AND ENTERED this 10th day of September, 2004, in
Tallahassee, Leon County, Florida.

Florence Snyder Rivas

FLORENCE SNYDER RIVAS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 10th day of September, 2004.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.