STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOHN L. WINN, AS COMMISSIONER OF EDUCATION,

Petitioner,

vs.

VIRGINIA BRYAN MARTIN,

Respondent.

Case No. 07-3592PL

RECOMMENDED ORDER

Pursuant to notice, the final hearing in this case was held on November 29, 2007, in Bartow, Florida, before Jeff B. Clark, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ron Weaver, Esquire
Post Office Box 5675
Douglasville, Georgia 30154-0012

For Respondent: Edward Gay, Esquire
1516 East Concord Street
Orlando, Florida 32803

STATEMENT OF THE ISSUES

Whether Respondent, Virginia Bryan Martin, is guilty of the acts alleged in the Administrative Complaint dated April 16, 2007, and, if so, should her Florida Professional Educator's Certificate be disciplined.

## PRELIMINARY STATEMENT

On April 16, 2007, Petitioner, John L. Winn, Commissioner of Education, authored an Administrative Complaint that alleged violations of Subsections 1012.795(1)(c) and (e) and (2), Florida Statutes, in that Respondent, Virginia Bryan Martin, operated a motor vehicle while under the influence of alcohol on two occasions, both resulting in arrests for Driving Under the Influence ("DUI"). One instance resulted in a plea of nolo contendere to a reduced charge of reckless driving; the other resulted in a plea of nolo contendere to DUI and an adjudication of guilty.

Based on these two incidents, it was alleged that Respondent was guilty of gross immorality or an act involving moral turpitude, having been convicted of a misdemeanor, felony, or other criminal charge. As a result of the allegations in the Administrative Complaint, Petitioner recommended to the Educational Practices Commission ("EPC") that Respondent's Florida Professional Educator's Certificate be sanctioned.

Respondent, through her attorney, timely responded to the Administrative Complaint, requesting a formal hearing. On August 8, 2007, EPC forwarded the case to the Division of Administrative Hearings. On the same day, August 8, 2007, the parties were sent an Initial Order requesting, among other things, suggestions for mutually convenient dates for a final

hearing. Based on the response of the parties, the case was scheduled for final hearing on October 18, 2007, in Tampa, Florida. On October 2, 2007, Respondent requested a continuance; the request was unopposed. The case was continued to November 29, 2007.

On October 12, 2007, the parties jointly moved to have the case moved from Tampa, Florida, to Polk County, Florida. This motion was granted. The case was heard as rescheduled on November 29, 2007, in Bartow, Florida.

At the final hearing, Petitioner presented the testimony of two witnesses: Michael Lewis and Ricky Dubose, both Lakeland police officers. Petitioner offered a videotape of an incident that occurred on April 25, 2007, which resulted in Respondent's arrest for DUI. At the hearing, Respondent orally entered a Motion in Limine directed to the prohibition of the videotape and testimony regarding the incident. Ruling was reserved on Respondent's motion; however, the videotape was viewed, in part, and the two police officers testified. The videotape was marked as Petitioner's Exhibit 1, but has been retained by Petitioner's counsel.

In relation to the Motion in Limine, the appropriate party was directed to file a written motion in limine, a response, and a rebuttal, as set forth in an Order Regarding Post-Hearing

Submittals dated December 7, 2007. Ultimately, on January 9, 2008, Respondent's Motion in Limine was denied.

At the hearing, Respondent testified and presented three additional witnesses: Kenneth Strong, Kendra Hightower, and Brenda Hardman. Respondent submitted six exhibits that were received into evidence and marked Respondent's Exhibits 1 through 6.

The Transcript of the proceedings was filed on December 5, 2007. The parties agreed to file proposed recommended orders on or before January 30, 2008; this agreement was ratified by the undersigned. Both parties timely filed Proposed Recommended Orders.

## FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing, the following Findings of Fact are made:

1. Respondent holds Florida Professional Educator's Certificate No. 624273, covering the areas of educational media specialist, elementary education, middle grades integrated curriculum, family and consumer science, and exceptional student education.

2. During all times material to the allegations of misconduct, Respondent was employed at Brandon Alternative School in the Hillsborough County School District.

3. In the early morning hours of April 25, 2004, Respondent was arrested for DUI by Officer Michael Smith of the Lakeland Police Department. Officer Smith videotaped Respondent's erratic driving and the following police stop.

4. The videotape and testimony revealed that Respondent was driving her automobile while under the influence of alcohol. Although initially denied, Respondent acknowledged coming from a bar. She was abusive and threatening to the officer and her daughter, who arrived on the scene of Respondent's arrest.

5. Respondent's conduct was, in short, reprehensible.

6. On November 5, 2004, Respondent was charged with DUI incidental to a motor vehicle accident that occurred in Lakeland, Florida. Both vehicles were damaged to such an extent that they were not drivable. Respondent was charged with careless driving, in addition to DUI.

7. At the hearing, Respondent admitted that prior to the accident, she had drunk so much that she was "feeling no pain." In addition, she minimized the accident, denied fault, and denied that she had been charged with a driving infraction.

8. The November 5, 2004, DUI accident occurred while the legal resolution of the April 25, 2004, DUI was still pending.

9. Respondent's judgment and veracity are subject to serious question.

10. Respondent pled nolo contendere to a reduced charge of reckless driving on the April 25, 2004 DUI. On the November 25, 2004 DUI, she pled nolo contendere. The court found her guilty of DUI. She was sentenced to a treatment program, served 25 days in jail, paid $732.50 in fines and costs, and attended a DUI and Victim Impact Class.

11. Nothing offered by Respondent as mitigating her behavior is accepted as credible.

## CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in accordance with Section 120.569 and Subsection 120.57(1), Florida Statutes (2007).

13. Subsection 1012.795(1), Florida Statutes, reads, in pertinent part, as follows:

> (1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for a period of time not to exceed 3 years, thereby denying that person the right to teach for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach for a period of time not to exceed 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person; . . . or may impose any other penalty provided by law, provided it can be shown that the person:

(c) Has been guilty of gross immorality or an act involving moral turpitude. [Count 1 of the Administrative Complaint.]

* * *

(e) Has been convicted of a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation. [Count 2 of the Administrative Complaint.]

14. Subsection 1012.795(2), Florida Statutes, reads, in pertinent part, as follows:

> (2) The plea of guilty in any court, the decision of guilty by any court, . . . shall be prima facie proof of grounds for revocation of the certificate. . . [Count 3 of the Administrative Complaint]

15. Because Respondent's teaching certificate is at risk of being sanctioned, Petitioner bears the burden of proving the allegations in the Administrative Complaint by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The definition of clear and convincing evidence is found in the case of Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983).

16. The Administrative Complaint in this case charged violations of Subsections 1012.795(1)(c) and (e), and 1012.795(2), Florida Statutes, as set forth hereinabove.

17. As the Court has held, "by virtue of their leadership capacity, teachers are traditionally held to a high moral standard in a community." Adams vs. Professional Practices

Council, 46 So. 2d 1170, 1171 (Fla. 1st DCA 1981). As a teacher, it is not necessary that Respondent "be charged with or convicted of a crime in order to be subject to revocation of a certificate based on conduct reflecting gross immorality or moral turpitude. . . ." Walton v. Turlington, 444 So. 2d 1082, 1084 (Fla. 1st DCA 1984).

18. To understand the meaning of "gross immorality" or "moral turpitude," resort is made to provisions within Florida Administrative Code Chapter 6B-4.

19. Florida Administrative Code Rule 6B.4009(2) defines immorality as:

> [C]onduct that is inconsistent with standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the educational profession into public disgrace or disrespect and impair the individual's service in the community.

For the conduct to be considered "grossly" immoral, it would need to be a form of immorality that is obvious and inexcusable.

20. "Moral turpitude" is defined at Florida Administrative Code Rule 6B-4.009(6) as a:

> Crime that is evidenced by an act of baseness, vileness, or depravity in the private and social duties which, according to the accepted standards of the time, a man owes to his or her fellowman or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

21. When measured against these definitions, Respondent's conduct in abusively consuming alcoholic beverages and then operating a motor vehicle, even though done on two occasions, does not reach the level of gross immorality. Her personal conduct, particularly her vitriolic demeanor, is inexcusable. Hopefully, having endured the humiliation of the video exhibition of her behavior and the profound consequences of her egregious conduct, Respondent has learned greater self-control in her use of alcohol. However unsavory Respondent's conduct, Petitioner has failed to prove clearly and convincingly that Respondent violated Subsection 1012.795(1)(c), Florida Statutes.

22. Respondent has been found guilty of DUI by a Florida court; DUI is not "a minor traffic violation." As a result, Petitioner has proved clearly and convincingly that Respondent violated Subsection 1012.795(1)(e) and (2), Florida Statutes.

## RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Petitioner, John L. Winn, Commissioner of Education, issue a final order finding that:

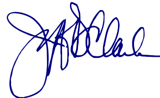
1. Count 1 be dismissed;

2. Respondent be found guilty of Counts 2 and 3; and

3. Respondent's Florida Professional Educator's Certificate be placed on probation for 24 months, during which

time she will be subject to rehabilitative conditions, as determined appropriate by the EPC.

DONE AND ENTERED this 13th day of February, 2008, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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this 13th day of February, 2008.

COPIES FURNISHED:

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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.