STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ORANGE COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 15-0689TTS

TERRI MEDUS,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held by video teleconference between sites in Orlando and Tallahassee, Florida, on August 4 and September 16, 2015, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: John C. Palmerini, Esquire
Orange County Public Schools
445 West Amelia Street
Orlando, Florida 32801

For Respondent: Suzanne Tzuanos, Esquire
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STATEMENT OF THE ISSUE

Whether Respondent Terri Medus (Respondent) engaged in an act of immorality, conduct that violates Orange County public school policy, conduct that violates the Code of Ethics, conduct

that violates the Principles of Professional Conduct of the Education Profession, or conduct that compromised her effectiveness as an educator.

PRELIMINARY STATEMENT

On or about January 26, 2015, Petitioner Orange County School Board (Petitioner), through Barbara Jenkins, Superintendent of Schools, served on Respondent Terri Medus an Administrative Complaint recommending Respondent's termination from employment. Respondent timely filed a request for administrative hearing, and this matter was referred to the Division of Administrative Hearings for a disputed-fact hearing. The disputed-fact hearing was held on August 4 and September 16, 2015.

During the hearing, Petitioner offered the testimony of Rafael Sanchez, Jr., Karen Carmona, Michael Ganio, Leighann Blackmore, and Dr. Donna Smith. Respondent testified on her own behalf and offered testimony from Sonja McMillan and Thomas Workman. Per stipulation of the parties, deposition testimony was accepted for two witnesses--Ima McCray and William Tovine. Joint Exhibits 1 and 2 were admitted into evidence. Petitioner's Exhibits 1 through 5, 7, 11 through 16, 18, and 19 were admitted into evidence. Respondent's Exhibits 1, 2, 4, 6, 11, 15, 19, and 21 were admitted into evidence.

A Transcript of the disputed-fact hearing was filed with the Division of Administrative Hearings on October 9, 2015. The parties each submitted a proposed recommended order (PRO) on November 9, 2015.

FINDINGS OF FACT

A. Stipulated Facts

1. During all times relevant hereto, Petitioner employed Respondent as a classroom teacher.

2. Respondent has held a Professional Service Contract with Petitioner since May 1986.

3. Respondent's Professional Service Contract states that Respondent will not be terminated "except for just cause," as provided by Florida Statutes.

4. Respondent pled no contest to a driving under the influence (DUI) charge stemming from an arrest on March 26, 2014, and was adjudicated guilty, in accordance with section 316.656, Florida Statutes.

5. Petitioner did not discipline Respondent for the DUI arrest or subsequent adjudication.

B. Reasonable Suspicion

6. Respondent admits that prior to December 1, 2014, she was aware of Petitioner’s drug-free workplace policy (Policy) and that she could be disciplined for reporting to work under the influence of alcohol.

7. December 1, 2014, fell on a Monday. On Saturday, November 29, 2014, Respondent flew from Detroit to Orlando after visiting her son during the Thanksgiving holiday. Respondent began consuming alcoholic beverages on the plane ride to Orlando. The following day, November 30, 2014, Respondent, by her own admission, consumed between five to ten rum and Coke beverages, which resulted in Respondent becoming intoxicated.

8. While at work on the morning of December 1, 2014, Respondent attended a 9:00 a.m. meeting. Ms. McCray, Respondent's immediate supervisor, was also present at the meeting and sat next to Respondent. The meeting lasted approximately 10 minutes.

9. Immediately following the meeting, Ms. McCray wanted to debrief with Respondent and another employee regarding what was discussed during the meeting. During the debriefing, Ms. McCray detected the smell of alcohol on Respondent's breath, observed that Respondent's hands were shaking and that her speech was slurred when she responded to questions asked, that Respondent's body language was "a little wavering," and that Respondent's eyes were "glossy." Additionally, when Ms. McCray asked questions of Respondent during the debriefing, Respondent's answers did not quite match the questions being asked by Ms. McCray.

10. Ms. McCray repeatedly asked Respondent if something was wrong. At first, Respondent said she was fine. However,

Respondent then said to Ms. McCray that she took Benadryl the night before the meeting because she could not sleep. Ms. McCray memorialized her observations of Respondent in a spiral notebook that she personally maintains.

11. Upon concluding that Respondent was likely suffering from the effects of excessive alcohol consumption, Ms. McCray was assisted in assessing Respondent's condition by Rafael Sanchez, who works for Petitioner as a senior manager in Petitioner's employee relations department. Mr. Sanchez is also a trained reasonable suspicion manager.

12. Based on his observations, Mr. Sanchez completed a reasonable suspicion checklist and noted thereon that Respondent had slurred speech, an odor of alcohol on her breath or person, an unsteady gait or lack of balance, glassy eyes, and a runny nose or sores around her nostrils.

13. With respect to Respondent's gait, Mr. Sanchez observed Respondent walk into the side of an open door. With respect to her speech, Mr. Sanchez observed that Respondent was speaking very slowly and had difficulty articulating her words. Finally, Mr. Sanchez testified that Respondent demonstrated marked irritability when she was told she would have to be driven to a facility for reasonable suspicion alcohol testing. Petitioner was justified in requesting that Respondent submit to reasonable suspicion testing.

C. Breathalyzer Testing

14. After concluding that there was reasonable suspicion for testing Respondent for alcohol-related impairment, Ms. McCray drove Respondent to ARCPoint Labs, the facility used by Petitioner for reasonable suspicion drug and alcohol testing.

15. Karen Carmona works for ARCPoint Labs as a specimen collector and has been certified as such by the U.S. Department of Transportation since 2013. Ms. Carmona was trained to operate the machine utilized to test Respondent, the RBT IV by Intoximeters.[1/]

16. Respondent's first breathalyzer test, which was time-stamped at 11:46 on December 1, 2014, showed that Respondent's breath alcohol content (BAC) was 0.198 G/210L. Respondent's second test, which was time-stamped at 12:04 (18 minutes later) on December 1, 2014, showed Respondent's BAC level at 0.188 G/210L.

17. The operator's manual for the RBT IV provides that "[i]f an accuracy check has not occurred within the past 31 days, an accuracy check should be run prior to running a subject test to ensure the instrument has maintained proper calibration." An accuracy check of the RBT IV device used to test Respondent was performed on November 22, 2014, which is within the prescribed window established by the manufacturer.

18. For the RBT IV device used to test Respondent, the accuracy check must read plus/minus .005 of the expected target value of .038. The accuracy check performed on November 22, 2014, showed a reading of .043, which is within the acceptable range established by the manufacturer. The validity of the accuracy check was confirmed by a print-out from the RBT IV device which reads "CAL CHECK OK." If the RBT IV had produced a value outside of the parameters of the accuracy check, then the machine would have generated a printout indicating "OUT OF CAL" and it would have been necessary to perform an actual calibration of the testing device. Unlike the general accuracy check, which must fall within plus/minus .005 of the expected value of .038, an accuracy check following a calibration "should be no greater than plus/minus ".003 of the expected value if the calibration is to be considered successful." Because the RBT IV was operating within the acceptable parameters of the accuracy check, it was not necessary to perform a calibration of the machine. Respondent's argument that the machine was out of the acceptable accuracy range is not supported by the evidence. The RBT IV used to test Respondent on December 1, 2014, was operating within the limits established by the manufacturer. Additionally, a December 22, 2014, accuracy check of the RBT IV used to test Respondent read .042, which was also within acceptable operational limits.

D. Ice Breakers Candy

19. Respondent also challenges the accuracy of the breathalyzer results on the grounds that the readings cannot be trusted because prior to the administration of the test she consumed Ice Breakers candy.

20. On cross-examination by Petitioner, Respondent's expert, Mr. Thomas Workman, testified as follows:

> Q: Your opinion is that her -- that Ms. Medus eating Ice Breakers would so throw off the test that it would elevate her breath alcohol content up to .198 and .188?
>
> A: I believe it would -- it would have an effect, I don't know the degree of the effect, but it would – it would not produce a reliable result.
>
> Q: What would be -- what would be your estimate of the degree of effect of how much it would be off?
>
> A: It could account for the entire reading or it could account for a portion of the reading, I -- I can't say.

Tr., p. 376.

21. Mr. Workman's also testified that one Ice Breaker "could" cause a .198 G/2101 BAC reading depending on the "amount of compound that's in the mouth compared to the amount of alcohol that would be coming from the breath." Tr., p. 377

22. Dr. Smith, Petitioner's expert, disagrees with Mr. Workman's opinion and testified as follows:

> Even if either one of those products contained any ethanol or methanol, which are the alcohol that the device is certified to measure, the 15 minute wait between the initial and this confirmation test, when she did not have anything in her mouth at all, any residual alcohol that may have been a product of the food or the gum would have completely dissipated. So it would not be — that's why we have that 15-minute wait to ensure that any residual mouth alcohol, not alcohol that is in the bloodstream, would not be measured on the confirmation test.

Tr., p. 283.

23. Mr. Workman's opinion is rejected because by his own admission, he is unable to say with the requisite degree of reliable scientific probability that any Ice Breaker candy consumed by Respondent sufficiently compromised Respondent's breathalyzer tests to the point of rendering the same unreliable.

E. Respondent's Rate of Alcohol Absorption

24. Mr. Workman also testified that Respondent's rate of absorption of alcohol makes it unlikely that her BAC readings were accurate. Mr. Workman's testimony is based on numerous assumptions, none of which have adequate proof to invalidate the results of the breath alcohol test.

25. First, Mr. Workman assumed that Respondent did not have any alcohol past midnight on November 30, 2014. Mr. Workman admitted that if the information regarding when Respondent stopped consuming alcohol was erroneous, then his assumption would be incorrect. Moreover, given the amount of alcohol

admittedly consumed during the weekend by Respondent, her testimony that she stopped drinking at midnight is unreliable. As previously noted Respondent starting drinking at around noon on Saturday and continued drinking throughout the entire day on the following Sunday. Such a period of sustained drinking makes it unlikely that Respondent was cognizant of the time when she stopped drinking before retiring to bed.

26. Second, Mr. Workman testified that his theory regarding Respondent's metabolic rate of alcohol absorption would depend on her weight and build. However, Mr. Workman testified that he has never seen Respondent and has no idea of her actual build and weight, other than what he had been generally told by Respondent's counsel. Additionally, Mr. Workman testified that he does not know the rate at which Respondent actually metabolizes alcohol. Dr. Smith testified there would have to be evidence of a person's actual metabolic rate in order to perform the extrapolation suggested by Mr. Workman. There is no evidence in the record which indicates how Respondent metabolizes alcohol. As such, Mr. Workman's extrapolation is rejected as unreliable.

CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2015).[2/]

28. Petitioner seeks to terminate Respondent's employment. Petitioner bears the burden of proving by a preponderance of the evidence that just cause exists for Respondent's termination. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

A. Drunkenness

29. Paragraph 15 of the Administrative Complaint alleges that "Respondent . . . committed drunkenness, as provided in Article XII, section A.2. of the collective bargaining agreement."[3/] The referenced provision of the collective bargaining agreement provides as follows:

> Any teacher may be suspended or dismissed at any time during the year, provided that the charges against him/her are based on immorality, misconduct in office, incompetence, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude, where applicable, and in accordance with Florida Statutes.

30. Petitioner acknowledges that Florida Administrative Code Rule 6A-5.056, which defines "just cause" for a dismissal action against school personnel such as Respondent, limits a charge of "drunkenness" to "persons who hold a contract issued on or before July 1, 1984," and that Respondent's contract was issued after this date. Petitioner argues, however, that it is not bound by the July 1, 1984, limitation because the controlling

collective bargaining agreement expressly provides that "drunkenness" is a proper ground for terminating Respondent's employment. Petitioner's argument is rejected because the argument ignores that portion of Article XII, section A.2., of the collective bargaining agreement which expressly provides that any disciplinary action taken pursuant thereto must be done "in accordance with Florida Statutes." Because Respondent's contract was issued after July 1, 1984, Petitioner cannot terminate her employment based on a charge of "drunkenness." See Manatee Cnty. Sch. Bd. v. Wampole, Case No. 12-0801 (Fla. DOAH Aug. 16, 2012), rejected in part, Case No. 12-002 (Sch. Bd. Manatee Cnty. Oct. 2, 2012); and rule 6A-5.056(6). Respondent may, however, be subject to disciplinary action based upon her violation of other disciplinary standards related to reporting to work while under the influence of an intoxicant.

B. Drug-Free Workplace

31. Paragraph 12 of the Administrative Complaint alleges that Respondent violated Petitioner's drug-free workplace policy by reporting to the workplace while under the influence of alcohol.

32. On October 23, 2001, the Orange County School Board adopted its drug-free workplace policy. The Policy, which was in effect during all times relevant hereto, provides, in part, as follows:

The Orange County School Board hereby affirms its intent to maintain a workplace that is free from drugs and other forms of substance abuse.

No employee shall use, possess, manufacture, distribute, or be under the influence of controlled substances or alcohol while on duty or on school board property, except when he/she is using a controlled substance in conformance with the instructions of a physician. Possession of a controlled substance or alcohol while on duty may result in a recommendation to terminate the employee. Employees on duty shall not use or take prescription drugs above the level recommended by the prescribing physician, and shall not use prescribed drugs for purposes other than that for which they were intended. Employees shall not distribute or dispense any drugs while on duty, except as permitted by school board policy JLCD-Medicines/Administering Medicines to Students.

REASONABLE SUSPICION TESTING

Reasonable Suspicion testing is based upon a belief that an employee is using or has used alcohol or drugs in violation of the School Board's policy. Reasonable suspicion testing must be based on specific, contemporaneous documented objective and articulable observations and circumstances which are consistent with the long and short term effects of alcohol or substance abuse; including, but not limited to, physical signs and symptoms, appearance, behavior, speech and/or odor on the person. Supervisors who have Reasonable Suspicion that an employee may be under the influence while on duty are required to immediately direct the employee to submit to testing as provided for by the board. Reasonable Suspicion shall be in accordance with training provided to managers, and will require confirmation by two trained managers. One of the two

managers may include the supervisor, if trained. A refusal to submit to testing will result in a recommendation to terminate the employee.

The observation checklist includes, but is not limited to:

- Slurred speech
- Confusion/disorientation
- Odor of alcohol on breath or person
- Unsteady gait or lack of balance
- Glassy eyes
- Rapid/continuous eye movement or inability to focus
- Drowsiness
- Inattentiveness
- Apparent intoxicated behavior (without odor)
- Physical injury
- Tremors or bodily shaking
- Poor coordination
- Runny nose or sores around nostrils
- Very large or small pupils
- Slow or inappropriate reactions
- Inability to respond to questions
- Complaints of racing or irregular heartbeat
- Marked Irritability
- Aggressiveness
- Inappropriate laughter or crying
- Fainting or loss of consciousness
- Improper job performance and/or violation of authority
- Other criteria as specified in OTETA, applicable

POSITIVE FINDINGS FOR CONTROLLED SUBSTANCES OR ALCOHOL

Except in extraordinary circumstances, it shall be the policy of the Superintendent to consistently recommend termination for positive findings of controlled substances or alcohol, except when he/she is using a controlled substance under, and in accordance with, the direction of a physician. A test

> result for alcohol at or above .02 will be considered a positive finding for the purpose of discipline; however, a negative result for alcohol will not be the sole determinant of whether or not alcohol was present.

33. Petitioner's Policy does not expressly define what it means for an employee to be "under the influence of alcohol." However, in considering the Policy in its entirety, it is evident that being "under the influence of alcohol" means that an employee demonstrates one or more of the indicators enumerated on the observation checklist (for reasonable suspicion testing) and has "[a] test result for alcohol at or above .02." Petitioner met its burden and proved that Respondent violated its Policy when she reported to work while under the influence of alcohol on December 1, 2014.

34. Petitioner's drug-free workplace policy provides that only in extraordinary circumstances will the superintendent not recommend termination of employment for a test result for alcohol at or above .02. There are no extraordinary circumstances present in the instant case that justify disciplinary action less than termination of employment.

C. Misconduct in Office/School Board Policy

35. Paragraph 15 of the Administrative Complaint alleges that "[b]ecause Respondent violated School Board Policies . . . [she] committed . . . misconduct in office [in accordance with] § 1012.33(1)(a), Fla. Stats., and [r]ule 6A-5.5056(2)."

36. Section 1012.33(1)(a), Florida Statutes, provides as follows:

> Each person employed as a member of the instructional staff in any district school system shall be properly certified pursuant to s. 1012.56 or s. 1012.57 or employed pursuant to s. 1012.39 and shall be entitled to and shall receive a written contract as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: immorality, misconduct in office, incompetency, two consecutive annual performance evaluation ratings of unsatisfactory under s. 1012.34, two annual performance evaluation ratings of unsatisfactory within a 3-year period under s. 1012.34, three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under s. 1012.34, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

37. Rule 6A-5.056(2) defines "misconduct in office" to include "[a] violation of the adopted school board rules" and makes it clear that a local school board, through its adopted rules, has the authority to define conduct that constitutes just cause for dismissal of an employee. As previously noted, Petitioner's drug-free workplace policy provides that "[e]xcept in extraordinary circumstance, it shall be the policy of the

Superintendent to consistently recommend termination for positive findings of controlled substances or alcohol . . . [and] [a] test result for alcohol at or above .02 will be considered a positive finding for the purpose of discipline." Respondent violated Petitioner's adopted drug-free workplace policy and, under the facts of the instant case, committed misconduct in office as alleged in paragraph 15 of the Administrative Complaint.

D. Misconduct in Office/Code of Ethics

38. Paragraph 13 of the Administrative Complaint alleges that Respondent violated Florida Administrative Code Rule 6A-10.080(2) of the Code of Ethics of the Education Profession in Florida (Code of Ethics). Petitioner, in its PRO, also argues that Respondent's conduct violates rule 6A-10.080(3) of the Code of Ethics. Because Petitioner failed to allege a violation of rule 6A-10.080(3) in the Administrative Complaint, the undersigned will not discuss this provision of the Code of Ethics.

39. Rule 6A-10.080(2) of the Code of Ethics provides that "[t]he 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." Petitioner's specific allegation is that Respondent "did not exercise the best professional judgment."

40. It is undisputed that Respondent, when she reported to work under the influence of alcohol, served as the Title I coordinator for the school board's Title I, Part D, programs for alternative education. In this capacity, Respondent was responsible for writing the Title I grant, which served students in juvenile justice and delinquency programs, ensuring that grant funds were disbursed properly, and ensuring that appropriate documentation related to the grant was maintained by the school board. In Respondent's position as Title I coordinator, she did not have contact with students.

41. Rule 6A-10.080(2) focuses on the educator's commitment to students. While it is true that Respondent, in performing her job functions as Title I coordinator, carried out functions that ultimately benefited students, any nexus between her job duties and being concerned about "the development of . . . student[] potential," as addressed by the rule, is too tenuous to implicate the aspirational standards set forth therein. See generally, Miami-Dade Cnty. Sch. Bd. v. Brenes, Case No. 06-1758, 2007 Fla. Div. Adm. Hear. LEXIS 122 at *42 n.12 (Fla. DOAH Feb. 27, 2007); Miami-Dade Cnty. Sch. Bd. Apr. 25, 2007)("The precepts set forth in the Ethics Code . . . are so general and so obviously aspirational as to be of little practical use in defining normative behavior."). Furthermore, while it is also correct to say that Respondent did not exercise the best professional

judgment when she reported to work under the influence of alcohol, it is incorrect to conclude that Respondent's conduct did not live up to her commitment to students given that at the time of the violation she had continuously worked for a period of approximately five years in a position without student contact. Petitioner failed to prove that Respondent's conduct, as alleged in the Administrative Complaint, violated the Code of Ethics.

E. Misconduct in Office/Principles of Professional Conduct

42. Paragraphs 13 and 14 of the Administrative Complaint, collectively allege that Respondent's conduct violated rule 6A-10.081(3) and (5), Principles of Professional Conduct for the Education Profession in Florida (Principles of Professional Conduct). Although the Administrative Complaint alleges a violation of rule 6A-10.081(3), which sets forth principles of conduct related to a teacher's "obligation to the student," Petitioner makes no argument in its PRO as to this issue. In that Petitioner has abandoned this allegation, apparently for some of the same reasons as discussed in section D above, the undersigned will likewise not address the same. Suffice it to say, however, that Respondent's position as Title I coordinator would likely make it improbable that Petitioner could establish a violation of rule 6A-10.081(3).

43. Rule 6A-10.081(5)(a) provides that an educator's obligation to the profession of education requires that the

educator "maintain honesty in all professional dealings."

Paragraph 10 of the Administrative Complaint alleges as follows:

> On January 5, 2015, Respondent attended the [pre-determination meeting] during which she was informed of the allegations against her, reviewed the documentation being used against her and given the opportunity to respond. At that time Respondent could not explain the reason for the positive EBT or explain the observations of her physical condition and behavior on December 1, 2014.

44. Paragraph 10 of the Administrative Complaint suggests an act of dishonesty that occurred on January 5, 2015. The Administrative Complaint makes no mention of any alleged act of dishonesty by Respondent occurring prior to this date.

45. Petitioner, in support of this allegation, relies on the following testimony of Michael Ganio, who investigates allegations of misconduct for Petitioner.

> Q: Okay. And did you ask her what she was drinking?
>
> A: Yes. She said rum. And, you know, to drink for that long a period of time, and as I'm looking at the summary, she did say that she did not stop until she went to bed Sunday night, around midnight.
>
> I thought that would be -- I don't know the rate at which she was drinking, so I just -- I figured I would ask, well, what size bottle was it, and she said it was the large 1.75. And I asked a handle jug or a jug that has a handle, so it would be a large bottle and she said, yes.
>
> Q: Okay. At any point in time, during that -- your PMD, did she indicate that she had

taken anything other than alcohol, like medication or anything of that sort?

A: No. No.

Q: Did she ever indicate to you that she had taken Benadryl the night before?

A: No, not during the PMD.

46. This testimony does not establish that Respondent was dishonest in failing to disclose to Mr. Ganio that she allegedly consumed Benadryl the night before she reported to work on December 1, 2014. Mr. Ganio asked Respondent what she had been drinking, and she told him. At no time did Mr. Ganio ask Respondent to explain her behavior, which would have been a question that would have been more tailored towards eliciting from Respondent a statement related to the alleged consumption of Benadryl. The evidence relied upon by Petitioner does not support the allegation that Respondent violated rule 6A-10.081(5)(a).

F. Immorality

47. Paragraph 15 of the Administrative Complaint also alleges that Respondent committed an act of immorality by reporting to work on December 1, 2014, while under the influence of alcohol. Petitioner argues in its PRO that "Respondent committed immorality when she appeared at work under the influence of alcohol [and that] it is axiomatic that being under

the influence at work is not what the public expects from its school teachers."

48. Pursuant to Florida Administrative Code Rule 64-5.056(1), the term immorality means to "conduct that is inconsistent with the standards of public conscience and good morals. It is conduct that brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual's service in the community."

49. "[I]n order to dismiss a teacher for immoral conduct the factfinder must conclude: a) that the teacher engaged in conduct inconsistent with the standards of public conscience and good morals, and b) that the conduct was sufficiently notorious so as to disgrace the teaching profession and impair the teacher's service in the community." McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996).

50. On the day in question, when Respondent reported to work under the influence of alcohol, there is no evidence that Respondent had contact with any students. Additionally, Petitioner offered no evidence establishing that Respondent's conduct in any way impaired her service in the community. A teacher's service in the community is measured by the teacher's effectiveness in the classroom. McNeill, 678 So. 2d at 477-478. Given that Respondent was working in a non-student contact role where she advised teachers and administrators of their duties

under federal and state grant programs, the evidence does not support a finding that her effectiveness was impaired as a consequence of reporting to work under the influence of alcohol. Petitioner has failed to meet its burden of proof with respect to the allegation that Respondent engaged in immoral conduct.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Orange County School Board enter a final order that:

1. Terminates Respondent's Professional Service Contract for just cause, due to Respondent committing misconduct in office by violating Petitioner's drug-free workplace policy;

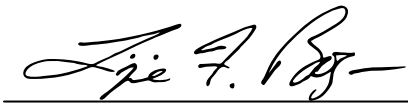
2. Dismisses the allegation(s) that Respondent committed an act of drunkenness;

3. Dismisses the allegation(s) that Respondent committed misconduct in office by violating the Code of Ethics of the Education Profession in Florida;

4. Dismisses the allegation(s) that Respondent committed misconduct in office by violating the Principles of Professional Conduct for the Education Profession in Florida; and

5. Dismisses the allegation(s) that Respondent committed an act of immorality.

DONE AND ENTERED this 7th day of January, 2016, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of January, 2016.

ENDNOTES

[1/] The RBT IV testing device is approved by the United States Department of Transportation. The United States Department of Transportation, Omnibus Transportation Employee Testing Act of 1991, Pub. L. No. 102-143 (OTETA), lists devices that may be used for evidential breath tests on individuals in safety-sensitive positions in commercial transportation, such as truck drivers, airline pilots, vessel navigators, and mass transit and railroad operators. OTETA lists the RBT IV as an evidential breath measurement device. Since the RBT IV is a sufficiently reliable device to test bus drivers, auto pilots and train drivers for the purpose of determining whether such employees are under the influence of an intoxicant, the undersigned finds that the device is a sufficiently reliable for purposes of testing individuals who hold a professional services contract, such as Respondent.

[2/] All subsequent references to Florida Statutes will be to 2015, unless otherwise indicated.

[3/] The referenced collective bargaining agreement is the "Contract between The School Board of Orange County, Florida and The Orange County Classroom Teachers Association, as ratified on May 27, 2014."

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.