STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ORANGE COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 16-2580TTS

KIMBERLY HONAKER,

Respondent.
_____/

RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2016),[1/] on November 15 through 17 and December 9, 2016, by video-teleconference sites in Tallahassee and Orlando, Florida.

APPEARANCES

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

For Respondent: Tobe M. Lev, Esquire
Egan, Lev & Siwica, P.A.
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STATEMENT OF THE ISSUE

Whether just cause exists for Petitioner, Orange County School Board, to terminate Kimberly Honaker's employment contract as a teacher.

PRELIMINARY STATEMENT

On April 16, 2015, the Superintendent for Petitioner, Orange County School Board (the "School Board"), served an Administrative Complaint against Respondent, Kimberly Honaker ("Respondent"), notifying Respondent of her intent to recommend that the School Board terminate Respondent's employment.

On May 9, 2016, Respondent timely requested an administrative hearing to challenge her termination. On May 10, 2016, the School Board referred the matter to the Division of Administrative Hearings ("DOAH") and requested the assignment of an Administrative Law Judge to conduct a chapter 120 evidentiary hearing.

The final hearing was initially held on November 15 through 17, 2016.[2/] The hearing was not completed on the scheduled dates. Therefore, the final hearing was continued to December 9, 2016, at which time the final hearing was completed.

At the final hearing, the School Board presented the testimony of K.H., Brandon Adkins, Sherri Pruitt, Jefferson Werts, Mike Ganio, Sr., and Kelly Pelletier. School Board's Exhibits 1 through 36 were received into evidence.[3/] Respondent

testified on her own behalf. Respondent also presented the testimony of C.H., Scott Honaker (Respondent's husband), Judy Babb, Debbie Cook, and Vivian Duff (Respondent's mother). Respondent's Exhibits 7 through 9, 11 through 13, 15 through 20, and 31 were received into evidence. Respondent also proffered Exhibits 29 and 30, which were not admitted into evidence.

A court reporter recorded the final hearing. A seven-volume Transcript of the final hearing was filed with DOAH on December 27, 2016. At the close of the hearing, the parties were advised of a ten-day timeframe following receipt of the hearing transcript at DOAH to file post-hearing submittals. The parties agreed to a deadline for filing their post-hearing submissions more than ten days after the filing of the transcript. Both parties filed Proposed Recommended Orders which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. The School Board is the duly-constituted governing body charged with the duty to operate, control, and supervise public schools within Orange County, Florida. See Art. IX, § 4(b), Fla. Const.; and §§ 1001.30 and 1001.33, Fla. Stat.

2. At all times material to this matter, Respondent was employed by the School Board as a classroom teacher at Apopka Memorial Middle School ("Apopka Middle School"). Respondent holds a professional service contract with the School Board.

3. The School Board brings this action pursuant to section 1012.33, Florida Statutes. The School Board asserts that "just cause" exists to terminate Respondent's employment contract based on misconduct in office, immorality, crimes involving moral turpitude, conduct unbecoming a public employee, violations of the Principles of Professional Conduct for the Education Profession in Florida, and violation of her employment agreement.

4. The School Board initiated this action following a series of arrests Respondent experienced in 2014. Respondent's arrests were based on the actions of Robert Pruitt, a family friend who Respondent allowed to stay in her home in May 2014. On November 18, 2014, Mr. Pruitt plead guilty to lewd or lascivious molestation of Respondent's daughter, K.H.[4/] That same day, Respondent plead nolo contendere to the charge of neglect of a child.

5. In May 2014, Mr. Pruitt was 58 years old. K.H. was 13 years old.

6. The events which culminated in Respondent's arrests and plea to the charge of neglect of a child began in March 2014. That month, Respondent and her twin daughters, K.H. and C.H., encountered Mr. Pruitt while vacationing in Melbourne, Florida. Respondent, Mr. Pruitt, K.H. and C.H. spent at least a night and a day in each other's company.

7. Mr. Pruitt was well `known to Respondent. She had known him since childhood when they grew up in Miami together. At some point, Respondent and Mr. Pruitt may have dated. Mr. Pruitt eventually married Respondent's older sister.

8. At the time of their trip to Melbourne, Mr. Pruitt had long since divorced Respondent's sister. He was remarried to Sherri Pruitt for approximately 18 years. (Mr. Pruitt and Sherri have been divorced since May 2014.)

9. Respondent testified that she had not seen or spoken to Mr. Pruitt for at least ten years prior to March 2014. While in Melbourne, they reconnected. (As set forth below, testimony differs as to whether this meeting was a chance rendezvous or a planned liaison between Respondent and Mr. Pruitt.)

10. When Mr. Pruitt returned from Melbourne, Sherri confronted him about his trip. She was not pleased that he left her to spend time with Respondent and her daughters. At the final hearing, Sherri testified that during an argument several days after the trip, Mr. Pruitt told her that he had stayed with Respondent and K.H. in a hotel in Melbourne. Mr. Pruitt also told her that he had sex with both Respondent and K.H.

11. On April 16, 2014, Sherri Pruitt filed a Petition for Injunction for Protection Against Repeat Violence against Respondent. Ms. Pruitt's petition was denied that same day for failing to allege an act of violence.

12. Mr. Pruitt has a history of mental illness and hospitalizations. Sherri Pruitt reported that around 2000, her husband was diagnosed as bipolar, severely depressed, and suffering from a borderline personality disorder. He had been hospitalized numerous times based on his mental health issues and stroke symptoms. Mr. Pruitt had been prescribed anti-psychotic medication.

13. Sherri Pruitt had frequently initiated Baker Act proceedings against Mr. Pruitt.[5/] On April 16, 2014, Sherri had Mr. Pruitt readmitted under the Baker Act into Springbrook Hospital in Brooksville, Florida. Springbrook Hospital is a private psychiatric hospital and a designated Baker Act receiving facility.

14. On April 29, 2014, Sherri Pruitt filed a Petition for Injunction for Protection Against Domestic Violence against Mr. Pruitt for repeated violence. Ms. Pruitt alleged that Mr. Pruitt had threatened to commit violence against her. On May 12, 2014, Ms. Pruitt's petition was denied due to insufficient evidence.

15. Also on April 29, 2014, Respondent received an e-mail on her personal cell phone from the e-mail account of robertpruitt@hotmail.com. The e-mail contained a recording of an audio message. Respondent listened to the recording on her classroom computer at Apopka Middle School. On the recording,

Respondent heard a heated discussion between Mr. Pruitt and Sherri. Respondent recognized the voice of Mr. Pruitt who made the following statements: "I am a pedophile. Who do I care that knows that?" "We had [sex] together, me, [Respondent], and [K.H.]. The same day. How about that?" (Ms. Pruitt testified that she recorded the statement during the argument with her husband after he returned from Melbourne.)

16. On or about May 1, 2014, while still admitted to Springbrook Hospital, Mr. Pruitt called Respondent's mother, Vivian Duff, and asked her to come get him out of the hospital. Mr. Pruitt's psychiatrist agreed to discharge Mr. Pruitt to Ms. Duff. Mr. Pruitt's Discharge Instruction noted that he was diagnosed as bipolar. The Discharge Instruction also recorded that Mr. Pruitt had been prescribed medications, including Seroquel, Ativan, Lithium, Lamicta1, and Wellbutrin.

17. Ms. Duff picked up Mr. Pruitt on May 1, 2014, from Springbrook Hospital. She drove him to Respondent's home. Sherri Pruitt testified that Ms. Duff took Mr. Pruitt out of Springbrook Hospital against her wishes.

18. On the drive from Springbrook Hospital to Respondent's house, Mr. Pruitt announced that he wanted to stop by his home and "get rid" of his wife.

19. In May 2014, Respondent lived with her husband, Scott Honaker, her mother (Ms. Duff), as well as her twin, 13-year-old daughters (K.H. and C.H.).

20. Respondent lived in a two-story house. Respondent and her husband's bedroom was on the first floor. Mr. Pruitt was moved into a bedroom on the second floor. Ms. Duff's bedroom was in the next room. Respondent's daughters shared a bedroom which was also on the second floor.

21. When Mr. Pruitt arrived at Respondent's home, he was very frail. Respondent testified that Mr. Pruitt stayed mostly in his bedroom. She relayed that he could not climb up or down the stairs without assistance.

22. After Mr. Pruitt moved into Respondent's home, he purchased iPhones for both K.H. and C.H. Mr. Pruitt told the girls that they had to share their passwords with him, which they did. Respondent was aware and approved of Mr. Pruitt's gift to her daughters.

23. While Mr. Pruitt was living at Respondent's home, Sherri Pruitt discovered Facebook exchanges, text messages, and e-mails between Mr. Pruitt, Respondent, and K.H. Ms. Pruitt believed that these messages implied a sexual relationship between Mr. Pruitt and K.H. Ms. Pruitt also became concerned that Respondent was aware of and condoned this relationship.

24. On May 30, 2014, Ms. Pruitt contacted the Florida Department of Children and Families ("DCF") and the Apopka Police Department ("APD") to report her misgivings about the relationship between Mr. Pruitt, Respondent, and K.H. Ms. Pruitt divulged that she suspected Mr. Pruitt was sexually molesting at least one of Respondent's daughters. APD requested DCF participate in their investigation of the complaint.

25. Based on Sherri Pruitt's report, around midnight on May 30, 2014, APD, along with Brandon Adkins, a Child Protective Investigator with DCF, converged on Respondent's home. APD made contact with Respondent, as well as her daughters. Respondent volunteered to ride to the Apopka police station with APD detectives. At that same time, Mr. Adkins drove K.H. and C.H. to the police station. Mr. Pruitt was not present at Respondent's home that night. He had been admitted to a hospital several days earlier.

26. At the Apopka police station, Respondent was separated from her daughters. APD detectives then questioned Respondent about the relationship between Mr. Pruitt and K.H. and allegations of sexual misconduct. Respondent admitted to APD that Mr. Pruitt and K.H. began communicating through Facebook in January 2014. Respondent also told APD that occasionally she and K.H. had fallen asleep in the same bed with Mr. Pruitt after he moved into their home, usually when they were watching TV

together. However, Respondent vigorously denied that Mr. Pruitt had committed any misconduct, sexual or otherwise, with either of her children.

27. APD completed their interview with Respondent early on the morning of May 31, 2014, and released her.

28. After APD detectives questioned Respondent, they then interviewed K.H. and C.H. The daughters denied that Mr. Pruitt molested either of them or engaged in any other sexual misconduct.

29. Brandon Adkins participated in the APD questioning of K.H. and C.H. Mr. Adkins did not detect any behavior indicating abuse or neglect. However, he thought K.H. was lying during the interview.

30. Mr. Adkins decided that K.H. and C.H. should be temporarily placed in a shelter away from their parents' custody. Mr. Atkins drove K.H. and C.H. to Greater Oaks Village. They arrived at the shelter around 7:00 a.m.

31. After they arrived at the shelter, Mr. Adkins approached K.H. one last time to discuss the allegations that Mr. Pruitt inappropriately touched her. He asked her if she was ready to tell the truth. K.H. said that she was. Referring to his Investigative Summary report, Mr. Adkins relayed that K.H. told him that Mr. Pruitt touched her vagina at least three times and her breasts at least 20 times. In addition, Mr. Pruitt made

K.H. watch him ejaculate. K.H. also stated that Mr. Pruitt held her down on his bed against her will and kissed and licked her face. K.H. confessed that she did not admit the truth to the APD detectives because Mr. Pruitt prepared her to lie to them.

32. Later on May 31, 2014, K.H. and C.H. were returned to the police station for another interview with APD detectives and the DCF Child Protective Team. During this interview, K.H. conveyed that she first began communicating with Mr. Pruitt through their personal Facebook accounts. K.H. detailed that they talked every day through Facebook messenger.

33. K.H. also recounted to the interviewers that after Mr. Pruitt moved into her home, he wanted her to sleep in his bedroom with him. K.H. divulged that her mother (Respondent) told Mr. Pruitt that K.H. was too young, but this sleeping arrangement would be acceptable if Respondent also slept in the bedroom with them.

34. During the interview, K.H. revealed that Mr. Pruitt had touched her inappropriately. K.H. declared that Mr. Pruitt "touched my butt like three times. He tried to touch my private areas. He has touched my boobs at least twenty times." K.H. expressed that on one occasion Mr. Pruitt pinned her arms to her sides and began licking and kissing her breasts. K.H. also disclosed that, "While we were sleeping, he would . . . try and stick his hand down my pants and underwear." K.H. relayed that

Mr. Pruitt would force her hand to his private area and say "touch it, squeeze it." K.H. stated that on one occasion Mr. Pruitt pulled down his underwear in front of her and ejaculated. Finally, K.H. voiced that every time her mother (Respondent) left her alone in the room with Mr. Pruitt, her mother would tell her "don't let [Mr. Pruitt] touch you in your private areas."

35. K.H. expressed that Mr. Pruitt's nickname for her was "Anne." Mr. Pruitt would refer to himself as "Aramis."

36. APD concluded that K.H.'s statements constituted sufficient evidence to believe that at least one of the children (K.H.) was being sexually abused by Mr. Pruitt, and Respondent knew about it. More specifically, after Respondent moved Mr. Pruitt into her home, she became aware that he desired to have an inappropriate sexual relationship with her 13-year-old daughter, K.H. Thereafter, Respondent did not exercise reasonable care to protect her daughter from Mr. Pruitt's sexual advances. Later that day, on May 31, 2014, APD arrested Respondent and charged her with neglect of a child under section 827.03, Florida Statutes (2014).[6/]

37. Also on May 31, 2014, after taking Respondent and her daughters in for questioning, APD searched Respondent's home. APD found several letters which appeared to be written by Mr. Pruitt. One of these letters was addressed to "Anne My

Beloved" and stated, "I love you, baby. I am so totally in love you with you that your [sic] all I think about. However, I too love another person too and I am in love with Kim. I sometimes confuse the two of you but you both are different in so many ways. I want to marry Kim but that would mean your parents getting a divorce." In these letters, Mr. Pruitt also wrote "I love you and I'm in love with you [K.H.]"; "I loved you and wanted you. Still do"; and "I love you [K.H.] and I know its [sic] real."

38. On June 3, 2014, APD arrested Mr. Pruitt at the hospital in which he was staying. He was charged with lewd or lascivious exhibition in violation of section 800.04, Florida Statutes (2014). After he was arrested, Mr. Pruitt was transported to the Apopka police station. There, after waiving his Miranda rights, he willingly participated in a video-recorded interview. Mr. Pruitt did, however, warn the APD detectives that he is bipolar, schizophrenic, and takes anti-psychotic medication.

39. Initially, Mr. Pruitt denied that he was a pedophile. However, as the interview progressed, Mr. Pruitt admitted to sexual conduct with K.H. He knew K.H. was 13 years old at the time.

40. Mr. Pruitt stated that he began communicating with both K.H. and C.H. online through their Facebook accounts. Soon

thereafter, he wanted to see Respondent again. Mr. Pruitt relayed that he and Respondent set up the trip to Melbourne, Florida, in March 2014. Respondent's daughters accompanied her on the trip. Mr. Pruitt stated that he stayed with Respondent in a hotel room. The girls stayed together in an adjoining room. Mr. Pruitt declared that he had sex with Respondent in Melbourne.

41. Mr. Pruitt told the APD detectives that after his trip to Melbourne he had a "sexual fantasy" about K.H.

42. Mr. Pruitt expressed that Respondent encouraged his developing relationship with K.H. because it brought them closer together. Mr. Pruitt explained that Respondent "wanted me to marry [K.H.] and be the father of her children." Mr. Pruitt remarked that Respondent "encouraged the whole thing" and "allowed me to get close to [K.H.] as long as she could be close to me."

43. Mr. Pruitt declared that when he stayed at Respondent's home, he slept in the same bed with K.H. and Respondent. Mr. Pruitt disclosed that Respondent "brings her child into my bedroom." He articulated that "as long as [Respondent] was sleeping next to me with her child over here and me right here, she was fine with that."

44. Mr. Pruitt described more sexually explicit activity while Respondent and K.H. were with him in bed. Specifically, Respondent would touch his penis while he would touch K.H.'s

breast. Mr. Pruitt later added, "When I was doing it [to K.H.], [Respondent] was doing something to me, you know, at the same time. She put my hand on [K.H.'s] breasts several time[s]. You know, [Respondent] would pick my hand up and put it on [K.H.'s] breasts several times." He also offered that, "Maybe I did kiss [K.H.'s] vagina." But, he "really hope[d] that didn't happen." Mr. Pruitt also described an occasion when K.H. walked in on him "playing with myself."

45. Mr. Pruitt voiced to the APD detectives, "My psychosis and, you know, the fantasies that you get when you're bipolar. Its [sic] just so vivid. You act upon them, you know." Mr. Pruitt added, "You know, maybe, it was a fantasy. I don't know if I did it or not though. To be honest with you, I don't know if I did it or not though. Probably not."

46. At one point, Mr. Pruitt expressed to the APD detectives that, "The whole thing was sick, very sick."

47. After Mr. Pruitt concluded his interview with APD, he requested to write a letter to K.H. After he was provided a pencil, Mr. Pruitt wrote on an APD Witness Statement form:

> My Beloved Anne, I am so sorry for all of this. I want you to know that none of this is your fault. Your mother and I take full responsibility. I was the adult. I should have known better. I let my emotions for you allow my physical actions take over. I love you Anne.

* * *

> Take care and if you ever need anything – Please do not hesitate to call. I'll be around. Aramis."

Mr. Pruitt confirmed for the APD detectives that his pet name for K.H. was "Anne." He referred to himself as "Aramis."

48. Following the interview with Mr. Pruitt, on June 3, 2014, APD arrested Respondent for a second time and charged her with lewd or lascivious molestation. On July 1, 2014, the State Attorney's Office formally charged both Respondent and Mr. Pruitt with four counts of lewd or lascivious molestation and one count of lewd or lascivious exhibition pursuant to section 800.04. Respondent was also charged with one count of neglect of a child pursuant to section 827.03.

49. Respondent was released on bail pending trial. At her initial appearance in circuit court in June 2014, Respondent was ordered not to have any unsupervised contact with her daughters.

50. K.H. and C.H. remained at Greater Oaks Village for approximately two weeks. At that time, they were released to the custody of Respondent's sister. Respondent's mother, Vivian Duff, moved in with Respondent's sister to be with the children.

51. On June 3, 2014, due to the seriousness of the charge, the School Board placed Respondent on relief of duty with pay. On June 10, 2014, the School Board placed Respondent on relief of duty without pay pending resolution of her criminal charges.

52. At the final hearing, to reveal further insight into the alleged sexual relationship between Mr. Pruitt, Respondent, and K.H. during May 2014, the School Board produced a voluminous record of Facebook messages in the personal Facebook accounts of Mr. Pruitt, K.H., and Respondent. The messages between Mr. Pruitt and K.H. include the following[7/]:

a. May 17, 2014: Mr. Pruitt writes to K.H., "When was the last time I told you that you are [the] sweetest girl I've ever known."

b. May 18, 2014: Mr. Pruitt writes to K.H., "Can we kiss and hold each other tonight." K.H. responds, "sure." Mr. Pruitt later tells K.H., "Don't wear any underwear." K.H. responds, "ok."

c. May 18, 2014: Mr. Pruitt writes to K.H., "We'll do all our playing at night in bed." K.H. responds, "ok." Mr. Pruitt then writes to K.H., "I'll get your mom to come up as soon as she puts Scott to bed. Then be ready to come over. Please don't fall asleep."

d. May 19, 2014: Mr. Pruitt writes to K.H., "I love you, Anne." K.H. responds, "I love you aramis. I leave this class at 3:09 I will message u at 3:15."

e. May 19, 2014: Mr. Pruitt writes to K.H., "Are you going to kiss me tonight?" K.H. responds, "Yes."

f. May 19, 2014: Mr. Pruitt writes to K.H., "Tell me where you like me to touch you." K.H. responds, "I love when you touch my heart. <3 is my mom still there."

g. May 19, 2014: Mr. Pruitt writes to K.H., "Did you know I put my hand down your pants last night?" K.H. responds, "no."

h. May 19, 2014: K.H. writes to Mr. Pruitt, "i had on a really long gown." Mr. Pruitt replies, "I know, I had to pull it up three feet to get under it to feel your breast."

i. May 21, 2014: Mr. Pruitt writes to K.H., "I try to find the words or phrases to label our relationship and love. . . . I hope we do get married it would be the most defined moment of my

life. . . . You truly are my best friend and in 20 months I hope lovers." K.H. responds, "I love you. I feel the same way of what you said. You are my best friend and lovers."

j. May 22, 2014: Mr. Pruitt writes, "If your [sic] willing to live with your mom hating you every time she sees or hears us making love then I'll stay. I will do anything for you for us." K.H. responds, "I'm willing to."

k. May 23, 2014: Mr. Pruitt writes to K.H., "I'm going to touch you everywhere but you can't move too much or you'll wake up [Respondent] and she'll want to join our private party."

l. May 23, 2014: Mr. Pruitt writes to K.H., "Will you make love to me tonight?" K.H. responds, "Yes."

m. May 27, 2014: K.H. writes to Mr. Pruitt, "Did you touch my mom under her underwear at 13? If you did you can touch me under mine."

n. May 29, 2014: Mr. Pruitt writes K.H., "I think Sherri [Pruitt] is up to something. I think she's going to have me and [Respondent] arrested for the e-mails. You promise you wouldn't say anything we've dine [sic]."

53. The personal Facebook accounts of Respondent and Mr. Pruitt also record active communications in May 2014. The Facebook accounts of Respondent and Mr. Pruitt regarding K.H. include the following:

a. May 6, 2014: Respondent writes to Mr. Pruitt, "I NEVER thought you would openly love someone more." Mr. Pruitt responds, "She's not just someone. She's a piece of you." Respondent replies, "You LOVE making me jealous."

b. May 10, 2014: Mr. Pruitt writes to Respondent, "She fell asleep next to me. Ok?" Respondent responds, "She gets all of your affection." (Respondent specifically acknowledged this exchange and explained that she thought that Mr. Pruitt was referring to one of her dogs who had fallen asleep next to him.)

c. May 10, 2014: Mr. Pruitt writes to Respondent, "She's as attached as I am." Respondent responds, "Duh. As long as its not more." Mr. Pruitt replies, "Might be. I'm not leaving her.

I want to marry her. I need her in my life. It's the only life I have now."

d. May 11, 2014: Mr. Pruitt writes to Respondent, "Are you and K. going to sleep with me." Respondent responds, "Yes." Mr. Pruitt replies, "Can I kiss her boob." Respondent responds, "Can you find them."

e. May 13, 2014: Mr. Pruitt writes to Respondent, "I guess I am one saying I love [K.H.] and she's only 13."

f. May 13, 2014: Mr. Pruitt writes to Respondent, "Where are you and [K.H.] sleeping tonite." Respondent responds, "Wherever you want us to." (Respondent admitted she wrote this Facebook message to Mr. Pruitt. Respondent stated that she was joking.)

g. May 16, 2014: Mr. Pruitt writes to Respondent, "I've given everything up for a 13 year old."

h. May 17, 2014: Mr. Pruitt writes to Respondent, "If I give you 15 minutes of personal time in bed doing what you want can I continue to touch her breasts?" Respondent responds, "No way forget it." Mr. Pruitt replies, "Too late."

i. May 21, 2014: Mr. Pruitt writes to Respondent, "You don't think that if I wanted to I could get her to have sex with me." Respondent responds, "Of course you could you better realize your power . . . take it from her mom."

j. May 21, 2014: Mr. Pruitt writes to Respondent, "There is or was no couple who had a closer lifelong relationship than you and me. Next is what [K.H.] and I think we have." Respondent responds, "Love." Mr. Pruitt later writes, "I'm in love with her. . . . I'll take care of your baby. . . . Love her, not cheat on her and commit. This is it for me. I found who I want to grow old with." Respondent responds, "So nice of you to lovd [sic] her that much." Then, she writes, "You're not trying to make me jealous, are you."

k. May 22, 2014: Mr. Pruitt writes to Respondent, "Your actions last night with me and [K.H.] are inexcusable. But I forgive you but I wish you would knock before coming into my room. You probably should apologize to K.H." Respondent responds, "One time I didn't knock because I thought [K.H.] was in there. I am sorry. You know I have been knocking."

54. Respondent also described a Facebook exchange with Mr. Pruitt not long before APD appeared at her home. On this occasion, Mr. Pruitt sent Respondent a message about having anal sex with her and "K." Respondent testified that she believed that Mr. Pruitt was talking about a friend of hers who was also named "Kim." Respondent confronted Mr. Pruitt about the message and demanded to know why he was saying crazy things. Respondent expressed that Mr. Pruitt had never previously sent her a message that crude. At that point, Respondent began to suspect that Mr. Pruitt was up to something objectionable on Facebook. Respondent also began to realize that Mr. Pruitt's mental illness may have presented more difficulties than she could handle. However, she asserted that she never suspected that Mr. Pruitt had involved her daughter in a sexual relationship.

55. On September 30, 2014, Respondent was arrested for a third time related to this incident. On that day, an APD Sergeant observed Respondent eating lunch in a restaurant with both K.H. and C.H. Neither Respondent's mother nor any other supervising adult was present with them. Respondent's meeting alone with her daughters violated the conditions of her pretrial release not to have contact with K.H.

56. After leaving the restaurant, Respondent was arrested for violation of a pretrial condition, pursuant to section 741.29(6), Florida Statutes (2014). APD also charged Respondent

with possession of a controlled substance pursuant to section 893.13(6)(a), Florida Statutes (2014).

57. Following her third arrest, the State Attorney moved to revoke Respondent's bail. The bail revocation hearing was held on October 3, 2014. K.H. testified at the hearing. K.H. denied that Mr. Pruitt had ever sexually molested her. K.H. acknowledged that she told APD detectives in May 2014 that Mr. Pruitt touched her, slept in the same bed with her, and was a pedophile. However, K.H. announced to the court that she was not telling the truth when she made those statements. K.H. asserted that she offered that information because Mr. Adkins had threatened to take her to jail if she told APD that nothing happened between Mr. Pruitt and her. K.H. also explained that the meeting with her mother (Respondent) at the restaurant for lunch was unplanned.

58. At the conclusion of the hearing, the court revoked Respondent's bond. The court commented that Respondent's meeting with her daughters appeared "to be a ruse to allow [Respondent] to have contact with her child." Respondent was sent to jail to await trial.

59. Ultimately, on November 18, 2014, Respondent pled nolo contendere to the charge of neglect of a child, a third-degree felony under section 827.03(2)(d). The court withheld adjudication. All remaining charges, including the six felony

charges alleging lewd or lascivious molestation, lewd or lascivious exhibition, and possession of a controlled substance were dismissed. The misdemeanor charge of violation of a pretrial condition on domestic violence was also closed as "No Information Noticed."

60. Respondent was sentenced to 54 days in jail with credit for time served. She was placed on probation for two years and had to perform 200 hours of community service.

61. On November 18, 2014, Mr. Pruitt pled guilty to one count of lewd or lascivious molestation, a second-degree felony under section 800.04(5)(c)2. Mr. Pruitt was sentenced to 30 months in jail and required to register as a sex offender.

62. At the final hearing, Respondent professed that she greatly desires to return to teaching. She maintains that she can still be an effective teacher and make a difference in her students' lives. Outside of this incident, Respondent represented that the School Board has never disciplined her. Respondent suggests that if the School Board has any reservations about her teaching capabilities following the underlying events, she is aware of other teaching positions she can fill within the school district which do not require direct contact with children.

63. Respondent testified that prior to this matter, she taught for the Orange County School District for 17 years. She

has taught in both elementary and middle schools for the School Board.

64. Respondent began teaching at Apopka Middle School in 2012. Her daughters entered Apopka Middle School that year, and Respondent transferred to be with them.

65. Respondent testified that in January 2014, Respondent's sister asked K.H. to use Facebook and find out about Mr. Pruitt's current situation. Respondent personally reunited with Mr. Pruitt on her trip to Melbourne in March 2014. Respondent claimed that her meeting with Mr. Pruitt was unexpected and unplanned. Respondent denied that they stayed together during the trip. Respondent testified that she and her daughters lodged with her sister, not in a hotel with Mr. Pruitt.

66. While in Melbourne, Respondent learned from Mr. Pruitt that he was experiencing marital problems with his wife. In April 2014, Respondent became aware that Sherri had filed several injunctions against both her and him alleging domestic violence.

67. Respondent fully acknowledged receiving the audio recording on April 29, 2014, from the robertpruitt@hotmail.com e-mail account. Respondent recognized Mr. Pruitt's voice. She heard the declaration he made to being a pedophile and having sex with both her and K.H. Respondent expressed that she dismissed the audio recording as the result of a marital tiff between Mr. Pruitt and his wife. Respondent asserted that Mr. Pruitt's

statements were not true. Respondent believed that Mr. Pruitt was just "messing" with Sherri Pruitt. Respondent surmised that he was angry with Ms. Pruitt and was trying to hurt her.

68. Respondent testified that in her long association with Mr. Pruitt, she had never known him to show signs of pedophilia. She had never received any information that he could be a threat to her daughters.

69. Respondent further expressed that she believed that her family's living arrangements precluded the possibility of Mr. Pruitt abusing K.H. Mr. Pruitt could be observed in her home by members of her family at all times.

70. Respondent declared that she never observed Mr. Pruitt make any physical or sexual advances on K.H. Respondent never saw him touch her daughter in an improper manner or do anything suspicious with his hands or body. Furthermore, Respondent never noticed any changes in K.H.'s behavior that would indicate that she was being sexually abused or exploited. K.H. never complained to her about any inappropriate actions on the part of Mr. Pruitt.

71. Respondent testified that she was aware that Mr. Pruitt was communicating with K.H. through Facebook both before and after he moved into her home. She also knew that he bought iPhones for his daughters to facilitate their communications. However, she conceded that she was not aware of the extent of

their exchanges on social media. Respondent stated that she did not check her daughter's Facebook account to review the conversations between Mr. Pruitt and K.H.

72. At the final hearing, Respondent admitted that she frequently communicated with Mr. Pruitt through Facebook during May 2014. However, Respondent vehemently denied that she ever sent or received any sexually related or inappropriate comments on Facebook to or from Mr. Pruitt regarding her daughters.

73. Respondent speculated that Mr. Pruitt created the Facebook conversations all by himself. Respondent opined that Mr. Pruitt would sign on to both his, K.H.'s, and Respondent's Facebook accounts and then send the offensive messages back and forth between the accounts. Thereafter, he would delete all the messages so that neither Respondent nor K.H. could see them. Respondent explained that Mr. Pruitt had access to K.H.'s cell phone. He also knew her passwords. Respondent offered that while Mr. Pruitt was alone in Respondent's home, he had ample opportunity to construct (and then delete) these sexually explicit conversations. Consequently, neither Respondent nor K.H. had ever seen, or were aware of, the sexual fantasy Mr. Pruitt was living out through Facebook. Respondent also suggested that Sherri Pruitt, who knew Mr. Pruitt's Facebook passwords and had access to his Facebook accounts, may have

authored the messages in an attempt to discredit or incriminate Mr. Pruitt and Respondent.

74. When confronted with the sexual statements K.H. made to DCF and APD regarding Mr. Pruitt, Respondent opined that APD either took K.H.'s words out of context or flatly made them up. Respondent also asserted that APD altered the Facebook messages. Respondent suggested that the APD twisted K.H.'s testimony and the Facebook exchanges so that they would support a criminal action against Respondent and Mr. Pruitt.

75. Respondent testified that she was not aware of Mr. Pruitt's handwritten letters that were found in her home. Respondent pointed out that there was no indication that Mr. Pruitt had actually delivered the letters to K.H. or that K.H. physically received them.

76. Respondent declared that she never left K.H. alone with Mr. Pruitt. However, Respondent conceded that she and K.H. watched television with Mr. Pruitt in his bedroom. Respondent admitted that on several occasions they fell asleep for about an hour while watching television.

77. Regarding the September 30, 2014, meeting with her daughters, Respondent testified that she randomly encountered her mother and her daughters. Respondent also asserted that she believed that she was authorized to see her children with another

adult present. Respondent claimed that her mother was in the restaurant's vicinity during their meal.

78. At the final hearing, Respondent explained that she elected to plead nolo contendere to the criminal charge so that she could leave jail and return to her family. She was facing felony charges and the possibility of a lengthy jail sentence. Therefore, she believed pleading nolo contendere to the single charge of neglect of a child was in her best interests.

79. K.H. testified at the final hearing. She unwaveringly declared that Mr. Pruitt never communicated with her or touched her in an inappropriate or sexual manner.

80. K.H. conveyed that she first contacted Mr. Pruitt in January 2014, when she sent a friend request to his Facebook account. She also communicated with him through text messages from the cell phone he purchased for her.

81. K.H. stated she did not personally encounter Mr. Pruitt until their trip to Melbourne in March 2014. K.H. corroborated her mother's statement that she and her mother stayed at her aunt's house while in Melbourne.

82. K.H. admitted that she frequently communicated with Mr. Pruitt through her Facebook account after he moved into their home. K.H. accessed Facebook through her cell phone. However, K.H. denied ever reading or receiving any sexually suggestive Facebook messages that originated from Mr. Pruitt's Facebook

account. K.H. also denied drafting or sending any sexually explicit messages to Mr. Pruitt.

83. K.H. offered that if the sexually explicit messages appeared on her Facebook account, someone must have opened her account and deleted them before she saw them. K.H. relayed that she left her cell phone at home during school days. (K.H. stated that Apopka Middle School did not permit students to use cell phones while at school.) K.H. surmised that if Mr. Pruitt sent the messages to her, he must have accessed her Facebook account, possibly through her cell phone, and deleted the message he sent before she read them. K.H. also posited that Mr. Pruitt used her cell phone to send messages back to himself.

84. At the final hearing, K.H. persistently testified that she never slept in Mr. Pruitt's bedroom overnight. She specifically denied that she and her mother ever slept with Mr. Pruitt in his bed. K.H. did recount that on one occasion she did fall asleep in his room watching television. But, she was asleep for no more than an hour. She also stated she was never alone in his bedroom. A family member was always present with her.

85. Regarding the letters allegedly written from Mr. Pruitt to her, K.H. testified that she had no memory of ever receiving the letters introduced into evidence. However, she did concede that she received other letters from Mr. Pruitt.

86. At the final hearing, K.H. announced that the story she told Mr. Adkins, the DCF Child Protection Team, APD, and later, a State Attorney, alleging that Mr. Pruitt molested her was not the truth. K.H. explained that she made up her graphic accusations because Mr. Adkins coerced her. K.H. testified that Mr. Adkins threatened her with jail time unless she provided some incriminating testimony against Mr. Pruitt and her mother. Because Mr. Adkins threatened not to let her return home from the shelter, she felt compelled to tell him something. K.H. expressed that the story she told was not her words, but Mr. Adkins'. (At the final hearing, Mr. Adkins denied that he coerced K.H. into making a statement. He asserted that K.H. came up with the number of times Mr. Pruitt touched her vagina and breasts.)

87. At the final hearing, C.H. adamantly testified that nothing inappropriate or sexual occurred between Mr. Pruitt and her sister, K.H, during his stay at their home. She never saw Mr. Pruitt do any improper physical act or make any statement involving K.H. C.H. stated that she and her twin sister were constantly in each other's presence. C.H. and K.H. shared the same bedroom. She never observed, nor had any knowledge of, any sexual activity between Mr. Pruitt and her sister. Neither did she see Mr. Pruitt and her mother engage in any sexual activity.

88. Furthermore, C.H. stated that she and K.H. kept no secrets from each other. C.H. never heard anything from K.H. about a relationship with Mr. Pruitt.

89. C.H. relayed that Mr. Pruitt began contacting her and K.H. in January 2014, through Facebook. C.H. stated that she first met Mr. Pruitt on the trip to Melbourne with her mother and K.H. Contrary to K.H. and Respondent, however, C.H. testified that Mr. Pruitt picked them up on their way to Melbourne, and they stayed at a hotel together.

90. C.H. agreed with K.H.'s testimony that the sisters would watch television in Mr. Pruitt's bedroom. C.H. also relayed that K.H. was never in Mr. Pruitt's room alone.

91. Regarding her interview with DCF and APD on May 31, 2014, C.H. recounted that the APD detectives screamed and yelled at K.H. and her and called them "liars." C.H. further testified that prior to K.H. talking to Mr. Adkins after he drove them to the shelter, Mr. Adkins indicated they would not see their mother again unless they gave him a statement.

92. At the final hearing, Scott Honaker, Respondent's husband and the father of K.H. and C.H., determinedly testified that nothing sexual or inappropriate happened between Mr. Pruitt and his daughter, K.H. He never saw Mr. Pruitt make any improper contact with or comments to K.H. Mr. Honaker relayed that he has known Mr. Pruitt most of his life and has never had a problem

with him. In April 2014, he and Respondent discussed how to help Mr. Pruitt after he called Respondent's mother from Springbrook Hospital. Mr. Honaker agreed that Respondent could bring him into their home to help him get his life together.

93. Mr. Honaker did not have any concerns regarding the well-being of his daughters when Mr. Pruitt moved in. Mr. Honaker relayed that when Mr. Pruitt arrived, he was in bad shape. He was weak, frail, and on medication. Mr. Honaker did not believe that Mr. Pruitt posed any threat to anyone.

94. Furthermore, Mr. Honaker never saw his daughters or wife sleep in Mr. Pruitt's bedroom.

95. When asked about his daughters' graphic statements to APD and Mr. Adkins, Mr. Honaker believes that the APD detectives harassed and screamed at them to say that Mr. Pruitt sexually molested K.H. He believes that K.H. made up a story to tell APD what they wanted to hear.

96. At the final hearing, Respondent's mother, Vivian Duff, resolutely testified that nothing sexual or inappropriate happened between Mr. Pruitt and K.H. Ms. Duff relayed that she has known Mr. Pruitt since he was three years old. She was not aware of any past behavior on his part that would cause her to be concerned with his relationship with K.H. or C.H.

97. Ms. Duff described her outing to pick up Mr. Pruitt from Springbrook Hospital on May 1, 2014. When Ms. Duff arrived

at the hospital, she spoke with Mr. Pruitt's treating physician. She relayed that he had no concerns with releasing Mr. Pruitt into her care. He believed that staying with her family in their home would help Mr. Pruitt straighten himself out.

98. At Respondent's home, Ms. Duff stayed in the bedroom right next to the one Mr. Pruitt used. Ms. Duff stated that Mr. Pruitt mostly stayed in his room. Ms. Duff testified that she never saw or observed Mr. Pruitt have any sexual interest in K.H.

99. Also at the final hearing, Respondent produced two witnesses, Judy Babb and Debbie Cook, who were fellow teachers with Respondent in the Orange County School District. Both witnesses knew Respondent and her daughters and have observed them in their school environments. The witnesses relayed that Respondent had a very healthy relationship with her daughters. They also described Respondent as a very protective mother. Ms. Babb called Respondent a "wonderful mother" and a "wonderful teacher." Ms. Cook characterized Respondent as "very nurturing, caring, very attentive." In addition, Ms. Cook personally selected Respondent to teach her son in middle school. Ms. Babb asserted that Respondent can still be an effective teacher at Apopka Middle School.

100. Apopka Middle School Principal, Kelly Pelletier, testified at the final hearing regarding the impact of this

matter on Respondent's teaching position at Apopka Middle School. Principal Pelletier stated that Honaker's ability to perform her teaching duties has been unacceptably impaired, regardless of whether she was actually convicted of the charges brought against her. Principal Pelletier did not want Respondent returning to her school. According to her, the extensive press publicity alone made it impossible for Respondent to teach. Local, national, and international media covered the story of Respondent's arrest. Multiple news trucks stationed themselves around the campus after Respondent's arrest.

101. Principal Pelletier also expressed reluctance to return Respondent to a classroom teaching position because of the negative parental reaction. Principal Pelletier stated that a number of parents contacted her and requested that she not place their children in Respondent's class. Principal Pelletier explained that, right or wrong, these parents were very uncomfortable with the thought of Respondent teaching their children. Principal Pelletier did not believe she could reassign Respondent to another position in the school based on the same reason.

102. The School Board also asserts that Respondent's employment contract should be terminated because she failed to self-report her arrests within 48 hours after the arrest. As a member of the School Board's instructional staff, Respondent's

employment is governed by Florida law, as well as a contract between the School Board and the Orange County Classroom Teachers Association. The School Board's Management Directive A-10, Guidelines on Self-Reporting of Arrests and Convictions by Employees ("Directive A-10"), states that:

> 1. The security and safety of our employees, students and guests is of paramount importance. To this end, all employees shall adhere to the following directives. All arrests and convictions (with the exception of minor traffic offenses) of all employees shall be self-reported within 48 hours to the district. Such notice shall not be considered an admission of guilt nor shall such notice be admissible for any purpose in any proceeding, civil or criminal, administrative or judicial. The appropriate authority to self-report arrests and convictions is the Office of Employee Relations. A phone message can be left 24 hours a day at (407)317-3239, and the employee must provide a written follow-up statement within five business days of leaving the message. Failure to self-report may result in discipline, up to and including, dismissal.
>
> 2. Arrests shall include cases in which the employee was taken into custody, as well as charges of criminal misconduct for which the employee was not taken into custody. Convictions shall include any conviction, finding of guilt, withholding of adjudication, commitment to a pretrial diversion program, or entering of a plea or Nolo Contendere for any criminal offense other than a minor traffic offense.

103. The School Board argues that Respondent did not notify the Office of Employee Relations within 48 hours of her arrest on

Saturday, May 31, 2014. Therefore, Respondent violated Directive A-10.

104. Respondent acknowledged that she had a responsibility to report her May 31, 2014, arrest. However, Respondent asserts that she made a good faith attempt to comply with the self-reporting requirement and should be shown leniency under the circumstances. Respondent explained that she was booked into jail early Sunday morning, June 1, 2014, at 12:37 a.m. On Monday morning, June 2, 2014 (within 48 hours of the arrest), Respondent called Principal Pelletier's office and reported that she had experienced a family emergency. Respondent received a call back from the school and was advised to set up an appointment to meet with Mike Ganio in the Office of Employee Relations. Mr. Ganio was unavailable that Monday because he was attending a graduation. Therefore, Mr. Ganio offered to meet with Respondent on Tuesday, June 3, 2014, at 9:30 a.m. Respondent met Mr. Ganio at the appointed time. Prior to their meeting, Mr. Ganio received a copy of Respondent's arrest affidavit from the Florida Department of Law Enforcement ("FDLE"). Based on these circumstances, Respondent asserts that she constructively complied with the 48 hour self-reporting requirement for the May 31, 2014, arrest. Therefore, she should not be considered to have violated Directive A-10.

105. Principal Pelletier confirmed that she received a phone message from Respondent on Sunday, June 2, 2014. However, Principal Pelletier stated that Respondent only relayed that she had a family issue and did not specifically report her arrest. Principal Pelletier contended that reporting a "family emergency" is not sufficient to meet the self-reporting requirement under Directive A-10. Directive A-10 clearly requires the employee to call the Office of Employee Relations and that the employee should actually report the arrest.

106. The School Board charges that Respondent also failed to self-report her arrest for lewd or lascivious molestation on June 3, 2014, within 48 hours of her arrest.

107. Respondent conceded that she did not report this arrest to the Office of Employee Relations within 48 hours. However, Respondent argues that she should be excused from violating Directive A-10 because she was in jail without access to a phone, which prevented her from calling the Office of Employee Relations. Respondent explained that after she was arrested on Tuesday, June 3, 2014, she was booked into jail about 8:00 p.m. There, she was placed in isolation, for 48 hours, during which she was unable to make a phone call. Respondent was released from jail on Thursday, June 5, 2014, at 6:00 p.m. Respondent met with Mr. Ganio on Friday morning, June 6, 2014, at 9:30 a.m. In addition, when Respondent arrived for her meeting,

she saw that Mr. Ganio had documentation from FDLE of her second arrest on his desk. Respondent asserts that based on these circumstances, as well as the fact that she was only a day late, she should not be disciplined for violating the 48-hour reporting requirement.

108. The School Board claims that Respondent failed to self-report her arrest on September 30, 2014, for violation of the pretrial condition within 48 hours of her arrest.

109. Respondent testified that when she was arrested, she was once again jailed without access to a telephone from which to make a timely call. Respondent also insists that she was under no duty to report this third arrest because she was on administrative leave from her teaching position and did not consider herself a School Board employee at that time. (Mr. Ganio responded that Respondent was still considered an employee of the School Board on September 2014. While the School Board had placed Respondent on leave without pay status in June 2014, Respondent had not been terminated from Apopka Middle School.)

110. Finally, the School Board asserts that Respondent failed to self-report her November 18, 2014, plea of nolo contendere to the charge of neglect of a child within 48 hours. Respondent concedes that she did not self-report her plea deal.

However, Respondent testified that she did not believe she was required to report a plea of nolo contendere.

111. Based on competent substantial evidence in the record, the preponderance of the evidence establishes that Respondent committed "misconduct in office" in violation of Florida Administrative Code Rule 6A-5.056(2). The evidence and testimony presented during the final hearing demonstrate that Respondent's behavior, which led to her plea to the charge of neglect of a child, reduces her ability to effectively perform her duties at Apopka Middle School. Accordingly, the School Board met its burden of proving that "just cause" exists to terminate Respondent's employment pursuant to section 1012.33(1)(a).

CONCLUSIONS OF LAW

112. DOAH has jurisdiction over the subject matter and parties to this proceeding pursuant to sections 120.569, 120.57(1), and 1012.33(6)(a)2., Florida Statutes.

113. The School Board brings this matter under sections 1012.33(1)(a) and 1012.315 and rule 6A-5.056(1), (2), and (8). Specifically, the School Board asserts that "just cause" exists pursuant to section 1012.33(1)(a) and as defined in rule 6A-5.056 to terminate Respondent's employment contract based on misconduct in office, immorality, crimes involving moral turpitude, conduct unbecoming a public employee, violations of the Principles of

Professional Conduct for the Education Profession in Florida, and for violation of her employment agreement.

114. Respondent is an "instructional personnel" as defined in section 1012.01(2). A district school board in Florida, such as the School Board, is authorized to suspend or dismiss instructional personnel pursuant to sections 1012.22(1)(f), 1012.33(1)(a), 1012.33(6)(a), and 1012.335(4).

115. Pursuant to sections 1012.33(1)(a), 1012.33(6)(a), and 1012.335(4), the School Board may only dismiss Respondent during the term of her employment contract for "just cause." Section 1012.33(1)(a) states, in pertinent part:

> 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, . . . or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

See also § 1012.335(5), Fla. Stat.

116. Section 1001.02(1) grants the State Board of Education authority to adopt rules pursuant to sections 120.536(1) and 120.54 to implement provisions of law conferring duties upon it. Consistent with this rulemaking authority, the State Board of Education adopted rule 6A-5.056 to establish the charges upon which "just cause" to dismiss specified school personnel may be pursued.

117. Rule 6A-5.056, entitled "Criteria for Suspension and Dismissal," defines "just cause" as "cause that is legally sufficient." Rule 6A-5.056 also provides the following definitions:

> (1) "Immorality" means 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.
>
> (2) "Misconduct in Office" means one or more of the following:
>
> (a) A violation of the Code of Ethics of the Education Profession in Florida as adopted in Rule 6A-10.080, F.A.C. [8/];
>
> (b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6A-10.081, F.A.C.;
>
> (c) A violation of the adopted school board rules;
>
> (d) Behavior that disrupts the student's learning environment; or
>
> (e) Behavior that reduces the teacher's ability or his or her colleagues' ability to effectively perform duties.
>
> * * *
>
> (8) "Crimes involving moral turpitude" means offenses listed in Section 1012.315, F.S.

118. Rule 6A-5.056(2)(b) incorporates by reference Florida Administrative Code Rule 6A-10.081, which is titled: "Principles

of Professional Conduct for the Education Profession in Florida."

Rule 6A-10.081 provides in pertinent part:

> (2) Florida educators shall comply with the following disciplinary principles. Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.
>
> * * *
>
> (c) Obligation to the profession of education requires that the individual:
>
> * * *
>
> 13. Shall self-report within forty-eight (48) hours to appropriate authorities (as determined by district) any arrests/charges involving the abuse of a child or the sale and/or possession of a controlled substance. Such notice shall not be considered an admission of guilt nor shall such notice be admissible for any purpose in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory. In addition, shall self-report any conviction, finding of guilt, withholding of adjudication, commitment to a pretrial diversion program, or entering of a plea of guilty or Nolo Contendere for any criminal offense other than a minor traffic violation within forty-eight (48) hours after the final judgment.

119. School Board Directive A-10.1 provides that, "The appropriate authority to self-report arrests and convictions is the Office of Employment Relations."

120. Section 1012.315, entitled "Disqualification from employment," states, in pertinent part:

> [I]nstructional personnel and school administrators, as defined in s. 1012.01, are ineligible for employment in any position that requires direct contact with students in a district school system . . . if the person, instructional personnel, or school administrator has been convicted of:
>
> (1) Any felony offense prohibited under any of the following statutes:
>
> * * *
>
> (kk) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

121. To terminate Respondent's employment, the School Board has the burden of proving, by a preponderance of the evidence, that Respondent committed the alleged violations and that such violations constitute "just cause" for dismissal. § 1012.33, Fla. Stat.; Cropsey v. Sch. Bd., 19 So. 3d 351 (Fla. 2d DCA 2009); and Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

122. Preponderance of the evidence is defined as "the greater weight of the evidence," or evidence that "more likely than not" tends to prove a certain proposition. S. Fla. Water Mgmt. v. RLI Live Oak, LLC, 139 So. 3d 869, 872 (Fla. 2014); see also Dufour v. State, 69 So. 3d 235, 252 (Fla. 2011) ("Preponderance of evidence is defined as evidence 'which as a whole shows that the fact sought to be proved is more probable than not.'").

123. Whether Respondent committed the alleged misconduct is a question of ultimate fact to be determined by the trier of fact in the context of each alleged violation. See Holmes v. Turlington, 480 So. 2d 150, 153 (Fla. 1985); McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

124. Turning to the matter at hand, the undersigned concludes that "just cause" exists to terminate Respondent's employment contract with the School Board under section 1012.33(1)(a). The competent substantial evidence in the record establishes that Respondent committed "misconduct in office" in violation of rule 6A-5.056. Specifically, the evidence and testimony adduced at the final hearing demonstrates that Respondent violated:

(1) Rule 6A-5.056(2)(b) for a breach of the Principles of Professional Conduct for the Education Profession in Florida as adopted in rule 6A-10.081; and

(2) Rule 6A-5.056(2)(e) for "behavior that reduces the teacher's ability . . . to effectively perform duties."

125. Respondent's "misconduct in office" is based on three episodes. These include: 1) Respondent's "behavior" while allowing Mr. Pruitt to live in her home in May 2014; 2) Respondent's "behavior" in violating a court's pretrial order not to have unsupervised contact with her daughters in September

2014; and 3) Respondent's failure to self-report her arrests, charges, and plea of nolo contendere to crimes involving abuse of a child within 48 hours to the appropriate School Board authority.

126. Respondent's unacceptable "behavior" in May 2014:

a. At the final hearing, Respondent stated that if she was "neglectful for having no knowledge of things, then I can't dispute that. . . . I had no knowledge [Mr. Pruitt] was doing these things." Respondent's statement succinctly sets forth the poor judgment she exercised in May 2014, and why her decisions concerning Mr. Pruitt, which involved the welfare of her two middle school-aged children, reduces her ability to effectively perform her duties.

b. On May 1, 2014, Respondent invited a man to live in her home. She had not seen this man for over 10 years outside of one brief encounter. In the interim, this man had struggled with mental health issues. He had been Baker Acted on several occasions due to presenting a danger to himself or others. This man had been diagnosed as bipolar, severely depressed, and schizophrenic. This man was taking a number of anti-psychotic medications. This man was retrieved directly from a hospital at which he had been admitted following his latest Baker Act proceeding. This man was in a contentious relationship with his wife. So much so that, just two days before Respondent brought

him into her home, his wife filed a petition against him alleging domestic violence. And, most significantly, two days before Respondent allowed this man to live with her, she heard an audio recording in which he stated that he was a pedophile and that he had sex with Respondent and her daughter, K.H. Respondent placed this man in a bedroom in her home just a few feet away from her daughters' bedroom.

c. Furthermore, Respondent knowingly permitted Mr. Pruitt free, unrestricted, and unmonitored communications with her daughters. Respondent cannot excuse her judgment by claiming "no knowledge Robert was doing these things." The warning signs that the situation would end badly were clearly evident even before Mr. Pruitt was released from Springbrook Hospital. Yet, Respondent made a conscious and deliberate decision to allow Mr. Pruitt into her home where he had direct and daily contact with her 13-year-old daughters.

d. Even if Mr. Pruitt's confession that he molested K.H. was just the product of his (sexual) fantasy, and even if Mr. Pruitt was just "messing" with his wife when he declared that he was a pedophile and had sex with K.H., Respondent did not exercise sound judgment in allowing him unfettered access to her daughters in such a mental state. Evidence of Mr. Pruitt's prurient interest in K.H. was overwhelming, both before and after he moved into Respondent's house. Despite these signs,

Respondent exposed her daughters (who were the same age as the students who attend Apopka Middle School) to Mr. Pruitt without taking any apparent steps to ensure their safety or well-being. Consequently, the poor judgment Respondent used in May 2014 establishes, by a preponderance of the evidence, "behavior" that reduces Respondent's ability to effectively perform her teaching duties at Apopka Middle School.[9/]

127. Respondent's unacceptable "behavior" on September 30, 2014:

a. Respondent next exhibited unacceptable behavior when she willingly participated in an unsupervised meeting with her daughters on September 30, 2014, in direct contravention of a court's pretrial order. Respondent was aware of the order. Respondent was aware of the seriousness of the allegations against her. Respondent was aware that she was facing charges involving the sexual abuse of her daughter. Yet, she intentionally and purposefully violated that order. Respondent does not offer any rational excuse or explanation justifying her decision to meet with her daughters alone. Consequently, Respondent's decision-making process again demonstrates "behavior" that reduces her ability to effectively perform her duties for the School Board.

b. Further, Respondent's decision to violate the court's pretrial order directly led to her incarceration during the 2014

school year. Therefore, even though Respondent had already been placed on administrative leave, the judgment she exercised caused her not to be available to return to the classroom in any capacity until after she resolved her criminal case. Such behavior certainly reduced her ability to effectively teach at Apopka Middle School in the fall of 2014.

128. Respondent's failure to self-report:

a. Respondent does not dispute that she failed to meet the self-reporting requirement set forth in rule 6A-10.081(2)(c)13. and Directive A-10. Instead, Respondent asserts that the circumstances surrounding her failure to comply with the self-reporting requirement do not warrant dismissal from her teaching position.

b. Regarding Respondent's arrests on May 31, 2014, and June 3, 2014, the undersigned is not unsympathetic to the fact that Respondent's reports of those arrests were only a day late. Respondent provided credible excuses for not timely contacting the appropriate School Board authority. Respondent explained that following her arrests, she was placed in jail without access to a telephone for most, if not all, of the next 48 hours. Respondent also demonstrated a good faith effort to comply with the reporting requirement. Respondent called her principal's office within 48 hours of her May arrest to report an "emergency." Thereafter, she met with Mr. Ganio at his soonest

convenience. Following her June 3, 2014, arrest, after she was released from jail on the evening of the second day, Respondent met with Mr. Ganio on the morning of June 6, 2014, to report the incident. No evidence in the record suggests that Respondent attempted to conceal her arrests or mislead the School Board.

c. Unfortunately for Respondent, however, rule 6A-10.081 does not provide any leeway around the 48-hour reporting time period. Rule 6A-10.081(2)(c)13. mandates that a Florida educator "*[s]hall* self-report within forty-eight (48) hours." (Emphasis added). Directive A-10 echoes this requirement instructing that, "All arrests and convictions . . . of all employees *shall* be self-reported within 48 hours to the district." (Emphasis added).

d. The only flexibility authorizing the School Board to consider extenuating circumstances for a failure to self-report appears to be the type of punishment the School Board may impose. Directive A-10 only indicates that failure to self-report "may" result in discipline. Rule 6A-10.081(2), on the other hand, imposes a harsher guideline directing that an educator's violation of the disciplinary principles "shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law."

e. However, Respondent's failure to self-report does not end with the arrests on May 31, 2014, and the June 3, 2014. Respondent was also arrested on September 30, 2014, for violating the court's pretrial condition. Respondent's argument that she did not consider herself an employee of the School Board in September 2014, and, therefore, was not obligated to report the September 30, 2014, arrest, is not persuasive. Following her June 2014 arrest, the School Board informed Respondent that it was placing her on administrative leave. However, the School Board did not terminate her employment contract (and still has not).[10/] No evidence supports Respondent's contention that she was not a School Board employee in September 2014. Neither is there any evidence that Respondent was misinformed that she no longer worked for the School Board on that date.

f. Finally, Respondent failed to report her nolo contendere plea to the charge of neglect of a child on November 18, 2014. Rule 6A-10.081(2)(c)13. specifically directs the educator to "self-report any . . . withholding of adjudication . . . or entering of a plea of guilty or Nolo Contendere for any criminal offense." As with her September 30, 2014, arrest, Respondent's explanation that she did not believe that she was required to report a plea of nolo contendere to the School Board is not persuasive. Both rule 6A-10.081(2)(c)13. and Directive A-10

clearly state that an educator is to self-report nolo contendere pleas in which adjudication is withheld.

g. Therefore, the School Board proved, by a preponderance of the evidence, that Respondent violated the Principles of Professional Conduct for the Education Profession in Florida as set forth in rule 6A-10.081(2)(c)13. by failing to self-report three arrests and a plea of nolo contendere to the School Board within 48 hours of the incidents. Such failures constitute "misconduct in office" under rule 6A-5.056(2)(b).

129. In sum, Respondent's actions and judgment from May through November 2014, when considered in their entirety, were of such an imprudent and irresponsible nature as to reduce her ability to effectively perform her duties as a teacher.[11/] Accordingly, the competent substantial evidence in the record establishes "just cause" to dismiss Respondent from her teaching position at Apopka Middle School pursuant to section 1012.33(1)(a).

130. Notwithstanding the above conclusions, the School Board failed to meet its burden of proving "just cause" to dismiss Respondent under section 1012.33(1)(a) on the basis of either "immorality" or by reason of a "conviction" of a crime involving moral turpitude.

131. Rule 6A-5.056(1) defines "immorality" as "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." The preponderance of the evidence does not establish that Respondent's conduct in May 2014 deviated from the standards of public conscience and good morals to such an extent as to constitute "immorality."

132. Initially, the undersigned finds that Respondent did not offer a convincing reason why Mr. Pruitt confessed to, and then pled guilty to, lewd or lascivious molestation of her daughter. Neither did K.H. satisfactorily explain why she lied to APD and DCF (twice) about being sexually assaulting by Mr. Pruitt.

133. Further, both Respondent's and K.H.'s explanation for presence of voluminous sexually explicit messages to and from Mr. Pruitt on their respective Facebook accounts (and why Mr. Pruitt admitted to sending and receiving such messages) is questionable. The reasoning that Mr. Pruitt surreptitiously obtained K.H.'s cell phone and single-handedly created an extensive record documenting his efforts to sexually molest and solicit a 13-year-old girl is dubious. Similarly, the undersigned is skeptical of both Respondent's and K.H.'s claims that they had absolutely no knowledge of these messages involving Mr. Pruitt's sexual aspirations (real or imagined).

134. However, the testimony at the final hearing denying any actual sexual activity between Mr. Pruitt and either Respondent or K.H. was compelling, earnest, and, ultimately, the more persuasive. When testifying at the final hearing, K.H. did not reveal, in demeanor or expression, that she was lying. She did not blink or falter when describing the underlying circumstances behind these very troubling accusations. She did not display any signs of animosity, disgust, or fear against Mr. Pruitt. She did not harbor any resentment or regret when confirming her mother's statements. In short, K.H. acted and testified in line with her mother's basic narrative that the Honakers invited an old family friend into their home to help him recuperate from an emotional and mental setback. K.H.'s testimony bolstered Respondent's theme that the legal issues which have ensnared her family since May 2014, have resulted solely from Mr. Pruitt's unsound, psychological condition.

135. The undersigned is mindful of K.H.'s bias and motive to protect her mother. Yet, when directly confronted with very forceful evidence that her account was not truthful, she did not vacillate. She did not waiver when describing her relationship with Mr. Pruitt as purely platonic. Nor did she expose her mother's testimony at the final hearing as deceitful.

136. At the final hearing, K.H.'s testimony was followed by testimony from her sister, her father, and her grandmother.

Each, in turn, substantially corroborated her testimony. Each testified with the same conviction. Consequently, the undersigned finds that the more persuasive evidence supports Respondent's version of the facts that neither she, nor K.H., had a sexual relationship with Mr. Pruitt.[12/]

137. Therefore, despite the fact that ample evidence of Mr. Pruitt's unhealthy mental status should have prompted Respondent to take affirmative steps to safeguard her 13-year-old daughters, not enough evidence was produced at the final hearing to extrapolate that Respondent was actually aware of and condoned a sexual relationship between K.H. and Mr. Pruitt (if such a sexual relationship occurred at all). The evidence in the record does not show that Respondent acted with culpable criminal neglect while Mr. Pruitt lived in her home. Consequently, the preponderance of the evidence does not establish that Respondent's conduct rose to the level of "immorality" under rule 6A-5.056(1). Therefore, the School Board did not meet its burden of proving "just cause" under section 1012.33(1)(a) to dismiss Respondent based on "immorality."

138. Finally, the School Board did not prove that it has "just cause" under section 1012.33(1)(a) to dismiss Respondent based on her "being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude." Respondent's nolo contendere plea,

with adjudication withheld, is not a "conviction" which would allow the School Board to terminate her employment contract.

139. Florida case law has determined that a plea of nolo contendere where the court has withheld adjudication is not a "conviction" of the crime. See Clarke v. United States, 184 So. 3d 1107, 1116 (Fla. 2016)[13/] ("[W]e adhere to our longstanding, consistent definition of 'conviction' to require an adjudication by the court.").

140. Petitioner's reliance on Montgomery v. State, 897 So. 2d 1282 (Fla. 2005), is not persuasive on this issue. On the contrary, Montgomery emphasizes that if the Legislature intended a nolo contendere plea (with adjudication of guilt withheld) to constitute a "conviction" for the purposes of sections 1012.33 and 1012.315, it would have expressly added such language to those statutes.[14/]

141. Therefore, while Respondent did enter a plea of nolo contendere to the charge of neglect of a child, she was not "convicted or found guilty of" a "crime involving moral turpitude." Accordingly, Respondent's nolo contendere plea does not constitute "just cause" to terminate her employment contract under sections 1012.33(1)(a) and 1012.315 or rule 6A-5.056(8).

142. Based on the competent substantial evidence in the record, the preponderance of the evidence establishes that Respondent's actions from May through November 2014, constitute

"misconduct in office" under rule 6A-5.056(2). Therefore, "just cause" exists under section 1012.33(1)(a) to dismiss Respondent from her employment contract with the School Board. Accordingly, the School Board met its burden of proving legally sufficient grounds to terminate Respondent's employment as a teacher at Apopka Middle School.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Orange County School Board, enter a final order dismissing Respondent, Kimberly Honaker, from her teaching contract.

DONE AND ENTERED this 30th day of March, 2017, in Tallahassee, Leon County, Florida.

J. BRUCE CULPEPPER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of March, 2017.

ENDNOTES

[1/] Unless otherwise stated, all statutory references are to the 2016 codification of the Florida Statutes.

[2/] The final hearing was initially scheduled for July 26, 2016. Following Respondent's unopposed Motion For Continuance, the final hearing was reset for September 20 through 22, 2016. Respondent filed a second motion for continuance on September 8, 2016, and the final hearing was rescheduled for November 15 through 17, 2016.

[3/] Following the final hearing, with the undersigned's permission, Respondent filed an interview between Apopka Police Department and Mr. Pruitt that occurred on June 3, 2014, as Mr. Pruitt was transported to the police station. The School Board objected to this late-filed exhibit. The undersigned overrules the School Board's objection and admits the Transcript of the transportation interview with Mr. Pruitt into evidence.

[4/] Respondent's daughters, K.H. and C.H., are minors. Their names are abbreviated to protect their identities.

[5/] See §§ 394.451 – .47891, Fla. Stat. The Florida Mental Health Act, also known as the "Baker Act," allows for involuntary examination or treatment in a medical facility upon evidence that a person may have a possible mental illness or is a harm to self or others.

[6/] Section 827.03(1)(e), Florida Statutes (2014), defines "neglect of a child" to mean:

> 1. A caregiver's failure or omission to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or
>
> 2. A caregiver's failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.
>
> Except as otherwise provided in this section, neglect of a child may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or

mental injury, or a substantial risk of death, to a child.

[7/] The Facebook messages were obtained through a search warrant served on Facebook by APD for the Facebook accounts of Mr. Pruitt, Respondent, K.H., and C.H. APD Detective Jefferson Werts testified that the Facebook messages presented into evidence at the final hearing were obtained from the individual Facebook accounts of Mr. Pruitt, Respondent, and K.H. However, he conceded that he could not verify whether Mr. Pruitt, Respondent, or K.H. actually authored the Facebook messages that were sent from or received in their respective Facebook pages. The undersigned refers to the names of Respondent, Mr. Pruitt, and K.H. to indicate from whose individual Facebook accounts the messages were retrieved.

[8/] Florida Administrative Code Rule 6A-10.080 was repealed on March 23, 2016.

[9/] See Purvis v. Marion Cty. Sch. Bd., 766 So. 2d 492, 498 (Fla. 5th DCA 2000)([A] teacher's impaired effectiveness can be inferred from the nature of the violation.).

[10/] If Respondent was no longer a School Board employee following the School Board's decision to place her on administrative leave, then this administrative matter to determine whether the School Board has just cause to dismiss Respondent would not be necessary.

[11/] See Crews v. State, 183 So. 3d 329, 338 n.11 (Fla. 2015) (citing Purvis, 766 So. 2d at 498-99) ("[T]he conduct of a public school teacher that takes place off of school grounds, outside of school hours, and unconnected with school activities can provide the basis for a finding of "misconduct in office" for purposes of disciplinary action against a public school teacher.").

[12/] See Young v. Dep't of Educ., 943 So. 2d 901, 902 (Fla. 1st DCA 2006)("[I]t is the responsibility of the administrative law judge to evaluate and weigh the testimony and other evidence submitted at the hearing to resolve factual conflicts, and to arrive at findings of fact."); Reily Enters., LLC v. Fla. Dep't of Envtl. Prot., 990 So. 2d 1248, 1251 (Fla. 4th DCA 2008) (Evidentiary matters such as credibility of witnesses and resolution of conflicting evidence are the prerogative of the Administrative Law Judge ("ALJ") as finder of fact in administrative proceedings.); and Resnick v. Flagler Cty. Sch. Bd., 46 So. 3d 1110, 1112 (Fla. 5th DCA 2010)([W]here an employee's conduct is at issue, great weight is given to the

findings of the ALJ, who has the opportunity to hear the witnesses' testimony and evaluate their credibility.).

[13/] As of the date of this Order, the Clarke opinion is not final until time expires to file a rehearing motion, and if filed, determined.

[14/] Montgomery reviewed whether a no contest plea, where adjudication of guilt was withheld, should be considered a "conviction" for the specific purposes of section 921.0014, Florida Statutes (2002). The court observed that section 921.0021(2) provides a definition for "conviction" as "a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld." Based on this precise definition, the court concluded that the Legislature intended for a no contest plea, where adjudication was withheld, to be considered a "conviction" because the statute did not distinguish between guilty pleas and nolo contendere pleas. The court also explained that its interpretation was consistent with the specific purpose behind the sentencing guidelines outlined in chapter 921. See also State v. Finelli, 780 So. 2d 31, 32-33 (Fla. 2001)("[T]he term 'conviction' draws its meaning from the statutory context in which it is used."). Neither section 1012.33 nor section 1012.315 include a definition of "conviction" that grants the School Board the authority to terminate a professional services contract based solely on a teacher's plea of nolo contendere with adjudication of guilt withheld.

Further, the undersigned finds the School Board's reference to Torreya Landrea Davis v. Pam Stewart, as Commissioner of Education, Case No. 13-2501 (Fla. DOAH Dec. 13, 2014; Fla. EPC Mar. 26, 2014) and Palm Beach County School Board v. Cassandre Lawrence, Case No. 01-2850 (Fla. DOAH Feb. 21, 2002), not applicable to the School Board's final agency action in this proceeding. Davis examined a license application denial and did not review whether it was appropriate for the Department of Education to consider the applicant's nolo contendere pleas together with her other convictions. ALJ E. Gary Early did not analyze the definition of "conviction" as the term is used in section 1012.33(1)(a). Nor did he review whether a School Board should treat a nolo contendere plea, with adjudication of guilt withheld, as a "conviction" in the context of a teacher dismissal decision. (The undersigned also notes that ALJ Early recommended that the Department of Education not deny the applicant's application for a teacher certificate based on her criminal history.)

Regarding Lawrence, ALJ John G. Van Laningham's analysis of a School Board employee's confession of guilt to a crime aligns with the undersigned's conclusions of law. ALJ Van Laningham reviewed whether the employee's confession constituted a "conviction" under sections 435.03(2) and 435.04(2), Florida Statutes (2001). In section 435.03(2), the Legislature specifically directed background screening for persons who "have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense." Similarly, section 435.04(2) also requires criminal background screening for persons who "entered a plea of nolo contendere." ALJ Van Laningham concluded that, even in light of an admission of guilt, the employee "has not been convicted of the charge."

Therefore, both Davis and Lawrence support the undersigned's conclusion that, if the Legislature had intended for a plea of nolo contendere to serve as "just cause" to dismiss a School Board employee under section 1012.33(1)(a), it would have specifically included that phrase in the statute. Since the Legislature has not included such designation in section 1012.33(1)(a), the undersigned concludes that a plea of nolo contendere, even to a crime involving moral turpitude, does not constitute "just cause" for Respondent's dismissal from her employment contract.

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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.