

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF  
EDUCATION,

Petitioner,

vs.

Case No. 16-5124PL

EMILY RANDALL,

Respondent.

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RECOMMENDED ORDER

On February 7, 2017, Administrative Law Judge Lisa Shearer Nelson of the Division of Administrative Hearings (Division) conducted a disputed-fact hearing pursuant to section 120.57(1), Florida Statutes (2016), in Viera, Florida.

APPEARANCES

For Petitioner: Ron Weaver, Esquire  
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Ocala, Florida 34477-0088

For Respondent: Scarlett G. Davidson, Esquire  
Culmer & Davidson, P.A.  
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STATEMENT OF THE ISSUE

The issue to be determined is whether Respondent, Emily Randall, is guilty of violating section 1012.795(1)(f), (g), and (j), Florida Statutes (2014), and Florida Administrative Code Rule 6A-10.081(5)(a), as alleged in the Administrative Complaint;

and, if so, what penalty should be imposed for the violations proven.

PRELIMINARY STATEMENT

On January 27, 2016, Pam Stewart, as Commissioner of Education (Petitioner or the Commissioner), filed an Administrative Complaint against Respondent, Emily Randall, alleging that Respondent violated section 1012.795(1)(f), (g), and (j), and rule 6A-10.081(5)(a). Respondent filed a Revised Election of Rights and on September 8, 2016, the case was referred to the Division for assignment of an administrative law judge.

The case was originally scheduled for a two-day hearing to be held November 14 and 15, 2016, in Viera, Florida. However, due to health issues experienced by counsel for Respondent, the matter was rescheduled twice and ultimately commenced and completed on February 7, 2017.

Petitioner requested and received Official Recognition of court records in State of Florida v. Emily Martin Randall, Case No. 2014-MM-010473A (Seminole County Court), by Order dated November 29, 2016. The parties filed a Joint Pre-hearing Stipulation that contained stipulated facts needing no further evidence at hearing that have been incorporated into the Findings of Fact below. On January 30, 2017, Petitioner filed a Notice of Filing Additional Undisputed Facts based upon responses to

Requests for Admissions, and at the commencement of the hearing, the parties stipulated to the following paragraphs from the Recommended Order in Brevard County School Board v. Emily M. Randall, Case No. 15-0051 (Fla. DOAH Dec. 30, 2015; Fla. BCSB Mar. 17, 2016): 1, 2, 5, 8, 21 through 23, a portion of 26, 27, 29, 31 through 35, a portion of 37, 38, 41, 42, 45, 46, and 51 through 53. The parties further agreed that references to "Petitioner" in the findings from Case No. 15-0051 refer to the Brevard County School Board, and those references would be amended to reflect the school board as opposed to Petitioner in this case.

At hearing, Petitioner presented the testimony of Mary Kathryn Krell, James Hickey, Magali (Maggie) Drake Balado, and Elizabeth Thedy, and Petitioner's Exhibits 1, 4, 8, 9, 12 through 18, 20, 22, 24 through 26, 32, and 34 were admitted into evidence. Respondent testified on her own behalf and presented the testimony of Daniel Fisher, Susan Sheppard, Enas Lahdo-Messick, and Joan Adamson. Respondent's Exhibits numbered 2, 3, and 24 were also admitted into evidence.

The one-volume Transcript of the hearing was filed with the Division on February 21, 2017, and Petitioner's Proposed Recommended Order was filed March 3, 2017. On Monday, March 6, 2017, Respondent filed a Motion for Extension of Time to File Proposed Recommended Order, citing a misunderstanding regarding

the filing of the Transcript. Petitioner did not file an objection to the extension, and Respondent was afforded until March 21, 2017, to file its proposed recommended order. Respondent's Proposed Recommended Order was then timely submitted, as was Petitioner's Supplement to its Proposed Recommended Order, which was permitted by Order issued March 14, 2017. Both parties' submissions have been considered in the preparation of this Recommended Order. All references to Florida Statutes are to the 2014 codification, unless otherwise specified.

#### FINDINGS OF FACT

1. Respondent holds Florida Educator's Certificate 701488, covering the area of school psychologist, which is valid through June 30, 2018.

2. The Brevard County School Board (BCSB) is the entity charged with governing and administering the school district and is responsible for the supervision of the employees of the school district. The Commissioner of Education, as Petitioner in this case, is the state agency charged with the licensing and regulation of educators in the State of Florida.

3. At all times relevant to these proceedings, Respondent was employed as an itinerant school psychologist for BCSB. Employment in an itinerant position means that Respondent was not assigned to a particular school, but rather worked at multiple

worksites within the District. Respondent had an office at the north area office complex and also would report to three schools, including Coquina Elementary School (Coquina Elementary) in Titusville.

4. BCSB employed Respondent as a school psychologist in 1992. Since that time, Respondent performed her responsibilities in an acceptable manner until the 2013-2014 school year.

5. In practical terms, Respondent's duties included performing student evaluations; designing intervention strategies with teachers, administrators, and parents; and attending meetings with those involved.

6. Dr. Maggie Balado became the coordinator of psychological services in August of 2013. As the coordinator, she became Respondent's supervisor. At the beginning of both the 2013-2014 and the 2014-2015 school years, Dr. Balado provided to the school psychologists, including Respondent, her personal contact information and that of her assistant, Ms. Beyer, so that absences from work could be reported.

7. On October 30, 2014, Respondent was assigned to be at Coquina Elementary in Titusville. Coquina Elementary is located approximately 40 miles from Respondent's home, and Respondent was scheduled to be there to watch a meeting with Enas Messick, Coquina Elementary's guidance counselor. After the meeting with Ms. Messick, Respondent had planned to evaluate a student. Due

to technical difficulties unknown to Respondent, the meeting with Ms. Messick was canceled.

8. Respondent did not timely report to work at Coquina Elementary on October 30, 2014. She also did not timely report her absence from work on October 30, 2014, to Dr. Balado or Ms. Beyer.

9. On Thursday, October 30, 2014, Respondent drove to Coquina Elementary in Titusville, Florida, at approximately 7:30 a.m. After sitting in the parking lot at Coquina Elementary for approximately an hour doing paperwork, Respondent drove home.

10. Respondent had adequate leave available to her to be absent from work that day. Failure to report her absence from work was a violation of a reasonable directive.

11. During the afternoon of October 30, 2014, Dr. Laura Rhinehardt, north area superintendent, contacted Dr. Balado regarding an evaluation for a child at Coquina Elementary. During the conversation, Dr. Rhinehardt mentioned that Respondent was not at Coquina Elementary that day. Dr. Balado then telephoned Respondent to ask where she was. Respondent told Dr. Balado that she was in the parking lot at Coquina Elementary when she was not. Respondent reported to Dr. Balado that she was performing her duties at Coquina Elementary that day, when in fact she was at home.

12. Dr. Balado was suspicious of this statement and directed that Respondent go into the school office and call her back on the landline at the school. Although Respondent stated that she would do so, she did not. She told Dr. Balado that she went into the school's office as directed, but did not feel comfortable using the school's telephone to call Dr. Balado back. Respondent did not go into the school's office.

13. Respondent lied to Dr. Balado when she told Dr. Balado she was at Coquina Elementary when she was not.

14. Dr. Balado then contacted Dr. Elizabeth Thedy, the assistant superintendent for student services, and related to her the events of the day. Dr. Thedy placed Respondent on paid administrative leave on October 31, 2014.

15. On November 4, 2014, Respondent, Dr. Thedy, and Jim Hickey, director of Human Resources and Labor Relations, attended a meeting to discuss the events of October 30, 2014.

16. Respondent told Dr. Thedy and Mr. Hickey that she was at Coquina Elementary on October 30 and that she could prove it. She indicated that Ms. Messick would verify that she had been at Coquina Elementary. Ms. Messick did not see Respondent at Coquina Elementary on October 30, 2014, but did corroborate that Respondent had telephoned her to advise that she would not be at the school.

17. Respondent later stated that she sat in her car in the parking lot at Coquina Elementary all day on October 30, 2014. Mr. Hickey asked Respondent to provide a written statement setting forth the events of October 30, 2014. At that point, Respondent admitted that she had not stayed at Coquina Elementary all day as she previously stated.

18. Following Respondent's admission and Mr. Hickey's further consideration of her behavior, a pre-termination meeting was scheduled for November 12, 2014, to discuss Respondent's conduct. Dr. Balado, Respondent's supervisor, recommended termination for Respondent, because she felt she could no longer trust Respondent to be truthful with respect to either her whereabouts or her work product. Because of her status as an itinerant employee, Dr. Balado needed to be able to trust that she was where she was supposed to be and performing her assigned tasks, which are often time-sensitive. Dr. Balado no longer trusted Respondent.

19. A second meeting was scheduled for November 21, 2014, to discuss Respondent's future employment with the school district. Respondent remained on paid administrative leave throughout the procedure of reviewing the allegations and concerns regarding her performance and behavior.

20. In anticipation of the November 21, 2014, meeting, BCSB staff conferred and decided to offer Respondent the opportunity



to be placed on a performance improvement plan, with a freeze on her salary for the next school year, and an unpaid five-day suspension. Had the meeting gone as BCSB staff hoped, Respondent's disciplinary action would have been resolved with Respondent's acceptance of these terms.

21. Respondent, on the other hand, believed that BCSB staff would be informing her that she was being terminated. There was no documentation provided to Respondent that would have indicated to her that termination was the only solution. Nor was there anything provided to Respondent that would have alerted her to the solution staff planned to propose.

22. On the morning of November 21, 2014, Respondent drank two to three glasses of wine before leaving her home to attend the meeting. She then went to the meeting with Mr. Hickey, Dr. Thedy, and Dr. Balado. She was accompanied by her husband and her attorney.

23. Respondent was very emotional during the meeting. She cried and at times appeared to be angry. She asked to be excused within minutes of the beginning of the meeting, and then returned. Meeting participants also described her as being disheveled, having flushed skin and red and watery eyes, and shaking hands. Most importantly, Mr. Hickey, Dr. Thedy, and Dr. Balado all believed that Respondent was emitting the strong

odor of alcohol, giving them reasonable cause to believe that she was under the influence of alcohol.

24. After conferring with one another, Dr. Thedy and Mr. Hickey completed a reasonable suspicion observation form and expressed concern that Respondent was intoxicated.

25. Respondent submitted to a breathalyzer examination conducted by Kathy Krell, the Drug and Alcohol Program Administrator for the school district, after being directed to do so. There was no evidence presented to indicate that she objected to taking the test or to the manner in which it was administered.<sup>1/</sup> Her attorney was present at the time she was asked to submit to the test.

26. Ms. Krell, who is now retired, had conducted breathalyzer tests for the school district for over 20 years. She was certified by Intoxicators, the company that produces the breathalyzer machine used by the school district, to administer the breathalyzer test. The test was performed in accordance with her standard procedure and was completed in the regular course of business for BCSB, and included the statement signed by Respondent that "I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are positive." Respondent also admitted in her letter to the Office

of Professional Practice (Petitioner's Exhibit 32) that "the results confirmed I was under the influence."

27. The results of the breathalyzer test indicate that, as of approximately 2:45 p.m. on November 21, 2014, Respondent's alcohol level as measured by the breathalyzer test was .104. Based upon Respondent's appearance, behavior, and blood test results from the breathalyzer test administered immediately after the meeting, Respondent was under the influence of alcohol at the time she met with Dr. Balado, Dr. Thedy, and Mr. Hickey.

28. Upon receiving the results of the breathalyzer test, BCSB withdrew the disciplinary offer it had presented to Respondent.

29. BCSB staff testified that when someone is on administrative leave, they should be prepared to report to work at any time, and be prepared to adhere to the behavioral standards required in the workplace: in other words, to comply with the zero-tolerance policy observed by the school district in terms of drug and alcohol use while on duty. The letter placing Ms. Randall on administrative leave did not state and Dr. Thedy, who wrote the letter, acknowledged that Respondent was not advised to be prepared to work while on administrative leave. The letter simply instructed Respondent "not to be on school board property while on administrative leave."

30. While the notice provided to Respondent placing her on administrative leave did not expressly state that she should not drink before attending her pre-termination meeting, it is inconceivable that she would think that to do so was appropriate. Moreover, BCSB's Drug-Free Workplace Technical Guide states in pertinent part:

Alcohol, prescription, and over-the-counter drugs are generally safe and acceptable when used according to proper instruction. Abuse of legal drugs over time or used in combination with another substance can result in chemical dependency or poly-drug addiction.

A. Employees will be free of alcoholic or drug intoxication when on duty or on Board property. Employees are prohibited from the manufacture or use of alcoholic beverages while on Board property or while on duty with the Board.

31. Subsequent to the November 21, 2014, meeting, Dr. Balado gave Respondent a referral to the school district's employment assistance program (EAP). The EAP is available to employees with problems that adversely impact their ability to perform their work assignments. When an employee in EAP acknowledges his or her issue, participates, and agrees to seek help for his or her problem, the employer typically works to return the employee to the work environment. That did not happen here.

32. On November 22, 2014, the day after the meeting to discuss her employment, Respondent was arrested in Seminole County, Florida, for driving under the influence, with a blood alcohol level of .15 or higher, in violation of section 316.193, Florida Statutes. On December 16, 2014, Respondent entered a plea of nolo contendere in State of Florida v. Emily Martin Randall, Case No. 592014MM010473AXXXXX (18th Jud. Cir., in and for Seminole Cnty.) to the amended charge of driving under the influence with a blood alcohol level of below .15, a misdemeanor. The trial court accepted the plea, found a factual basis for the plea, and adjudicated her guilty of the amended charge.

33. Dr. Binggeli recommended that BCSB terminate Respondent's employment on December 9, 2014.

34. At hearing, Respondent testified that on the evening of October 29, 2014, her adult son was arrested. Respondent believed that the arrest was indicative of a more serious, long-standing issue that her son battled. The news of her son's arrest devastated her, and she did not sleep because of her emotional turmoil. She has, since the events described above, participated in the EAP and sought independent counseling to deal with the emotional issues present in her personal life.

35. The news that Respondent received about her son was troubling, and it is understandable that she would be upset by this development. It does not, however, justify her failure to

simply report to her supervisor that she would not be attending work on October 30, 2014. It was undisputed that she had adequate leave to cover the absence. Under no circumstances does her emotional state justify her repeated fabrications regarding her whereabouts when given numerous opportunities to tell the truth.

36. Respondent was terminated by BCSB on or about December 16, 2014. She is not currently working in the education field, but is instead performing administrative tasks in her son's landscaping business.

#### CONCLUSIONS OF LAW

37. The Division has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1), Florida Statutes (2016).

38. The Florida Education Practices Commission (Commission) is the state agency charged with the certification and regulation of Florida educators pursuant to chapter 1012.

39. This is a proceeding in which Petitioner seeks to impose discipline against Respondent's educator certification. Because disciplinary proceedings are considered to be penal in nature, Petitioner must prove the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

40. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). As stated by the Florida Supreme Court:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)); see also In re Henson, 913 So. 2d 579, 590 (Fla. 2005). "Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous." Westinghouse Elec. Corp. v. Shuler Bros., 590 So. 2d 986, 989 (Fla. 1991).

41. Section 1012.796 describes the disciplinary process for educators, and provides in pertinent part:

(6) Upon the finding of probable cause, the commissioner shall file a formal complaint and prosecute the complaint pursuant to the provisions of chapter 120. An administrative law judge shall be assigned by the Division of Administrative Hearings of the Department of Management Services to hear the complaint if there are disputed issues of material fact. The administrative law judge shall make recommendations in accordance with the

provisions of subsection (7) to the appropriate Education Practices Commission panel which shall conduct a formal review of such recommendations and other pertinent information and issue a final order. The commission shall consult with its legal counsel prior to issuance of a final order.

(7) A panel of the commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

(a) Denial of an application for a teaching certificate or for an administrative or supervisory endorsement on a teaching certificate. The denial may provide that the applicant may not reapply for certification, and that the department may refuse to consider that applicant's application, for a specified period of time or permanently.

(b) Revocation or suspension of a certificate.

(c) Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense.

(d) Placement of the teacher, administrator, or supervisor on probation for a period of time and subject to such conditions as the commission may specify, including requiring the certified teacher, administrator, or supervisor to complete additional appropriate college courses or work with another certified educator, with the administrative costs of monitoring the probation assessed to the educator placed on probation.

\* \* \*

(e) Restriction of the authorized scope of practice of the teacher, administrator, or supervisor.

(f) Reprimand of the teacher, administrator, or supervisor in writing, with a copy to be placed in the certification file of such person.

(g) Imposition of an administrative sanction, upon a person whose teaching certificate has expired, for an act or acts



committed while that person possessed a teaching certificate or an expired certificate subject to late renewal, which sanction bars that person from applying for a new certificate for a period of 10 years or less, or permanently.

(h) Refer the teacher, administrator, or supervisor to the recovery network program provided in s. 1012.798 under such terms and conditions as the commission may specify.

42. Charges in a disciplinary proceeding must be strictly construed, with any ambiguity construed in favor of the licensee. Elmariah v. Dep't of Prof'l Reg., 574 So. 2d 164, 165 (Fla. 1st DCA 1990); Taylor v. Dep't of Prof'l Reg., 534 So. 2d 782, 784 (Fla. 1st DCA 1988). Disciplinary statutes and rules are construed in terms of their literal meaning, and words used by the Legislature may not be expanded to broaden their application. Beckett v. Dep't of Fin. Servs., 982 So. 2d 94, 99-100 (Fla. 1st DCA 2008); Dyer v. Dep't of Ins. & Treas., 585 So. 2d 1009, 1013 (Fla. 1st DCA 1991).

43. With these principles in mind, the Administrative Complaint alleges the following factual bases for imposing discipline against Respondent:

3. On or about October 30, 2014, Respondent reported to the Brevard County School District's School Psychologist coordinator that she was performing her duties at Coquina Elementary School that day, when in fact, Respondent was at home.

4. On or about November 21, 2014, Respondent was required to attend a disciplinary meeting with Brevard County School District staff to

discuss Respondent's absences from work. During the disciplinary meeting, Respondent was under the influence of alcohol. Respondent exhibited characteristics of a person under the influence of drugs or alcohol, including erratic behavior, mood changes, and bloodshot eyes. The Respondent submitted to a reasonable suspicion test for drugs and alcohol.

5. On or about November 22, 2014, in Seminole County, Florida, Respondent was arrested for Driving Under the Influence, With Blood Alcohol of .15 or Higher. Respondent pled nolo contendere to and was adjudicated guilty of the amended charge of Driving Under the Influence, With Blood Alcohol Level Below .15.

6. As a result of Respondent's conduct alleged in paragraph 3 herein, Respondent was terminated from her employment with the Brevard County School District on or about December 16, 2014.

44. Petitioner has proven the allegations in the Administrative Complaint by clear and convincing evidence.

45. Count 1 of the Administrative Complaint charges Respondent with violating section 1012.795(1)(f), by having been "convicted or found guilty of, or entered a plea of guilty to, regardless of adjudication of guilt, a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation." Respondent entered a nolo plea to the amended DUI charge, and the judgement and sentence indicates that the trial judge adjudicated her guilty. Petitioner has proven the charge in Count 1 by clear and convincing evidence.

46. Count 2 of the Administrative Complaint charges Respondent with violating section 1012.795(1)(g), by being "found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board." In this case, Respondent's misconduct impairs a fundamental tenet in any workplace: the ability to rely on the honesty of an employee. It is especially essential where, as here, the employee is one charged with assessing students with disabilities and providing information that is critical to those students' ability to succeed. Respondent's appearance at the pre-termination meeting in an impaired state may have been the final straw, but even without this behavior, Respondent violated the trust placed in her by her absence from work without reporting in and by her repeated lies to Dr. Balado and Mr. Hickey regarding her absence. Petitioner has proven the violation charged in Count 2 by clear and convincing evidence.

47. Count 3 charges Respondent with violating section 1012.795(1)(j), by violating the Principles of Professional Conduct for the Education Profession prescribed by the State Board of Education rules. By necessity, this count is dependent upon a finding that Respondent violated Count 4, discussed below.

48. Finally, Count 4 charges Respondent with violating rule 6A-10.081(5)(a), by "failing to maintain honesty in all professional dealings." Respondent lied to her supervisor, as

well as Mr. Hickey, the director of Human Resources, on multiple occasions, despite having several opportunities to set the record straight. It was only after it became clear that her lies were futile did she acknowledge that she had not been truthful. Petitioner has proven the charges in Counts 3 and 4 by clear and convincing evidence.

49. The Commission has established disciplinary guidelines to provide notice of the typical range of penalties that the Commission will impose when a certificateholder is found guilty of violations of section 1012.795 or the Rules of Professional Conduct for the Education Profession. Fla. Admin. Code R. 6B-11.007. For a violation of section 1012.795(1)(f),<sup>2/</sup> where the underlying charge was a misdemeanor, the range of penalties is a reprimand to suspension. For a violation of section 1012.795(1)(g), the range is probation to revocation, and for a violation of rule 6A-10.081(5)(a), the range is suspension to revocation.

50. Rule 6B-11.007(3) also provides aggravating and mitigating factors that the Commission may consider should it wish to deviate from the disciplinary guidelines. While there is no need for the recommendation in this case to deviate from the guideline range, the factors listed are helpful in determining where along the guideline range the penalty should fall. Those factors are as follows:

- (a) The severity of the offense;
- (b) The danger to the public;
- (c) The number of repetitions of offenses;
- (d) The length of time since the violation;
- (e) The number of times the educator has been previously disciplined by the Commission;
- (f) The length of time the educator has practiced and the contribution as an educator;
- (g) The actual damage, physical or otherwise, cause by the violation;
- (h) The deterrent effect of the penalty imposed;
- (i) The effect of the penalty on the educator's livelihood;
- (j) Any effort of rehabilitation by the educator;
- (k) The actual knowledge of the educator pertaining to the violation;
- (l) Employment status;
- (m) Attempts by the educator to correct or stop the violation or refusal by the educator to stop the violation;
- (n) Related violations against the educator in another state including findings of guilt or innocence, penalties imposed and penalties served;
- (o) Actual negligence of the educator pertaining to any violation;
- (p) Penalties imposed for related offenses under subsection (2) above;
- (q) Pecuniary benefit or self-gain inuring to the educator;
- (r) Degree of physical and mental harm to a student or a child;
- (s) Present status of physical and/or mental condition contributing to the violation including recovery from addiction;
- (t) Any other relevant aggravating or mitigating factors under the circumstances.

51. In this case, the factors listed in paragraphs (a), (c), (d), (e), (f), (i), (l), (m), and (s) have been considered. Petitioner has recommended Respondent's certificate be suspended

for a period of two years; that she be required to participate in the Network Recovery Program; that following her suspension, that Respondent be placed on probation for a period of two employment years, subject to terms and conditions imposed by the Commission; and that she be fined an administrative fine in the amount of \$1,000. Respondent, on the other hand, suggests that a reprimand would be appropriate.

52. Given the dishonesty that was exhibited in this case, the undersigned fully expected that Petitioner would recommend revocation. She did not. Something less than revocation is appropriate here, where the circumstances giving rise to these unfortunate events were rooted in Respondent's reaction to a family crisis. While her distraught reaction to her son's problems does not excuse her behavior in any way, it makes her behavior more understandable. Respondent has already lost her job as a result of her actions. While something more than a reprimand is appropriate, the penalty must serve both to deter and rehabilitate. Petitioner's recommendation serves these purposes. In light of the significant financial burden that Respondent has already endured, however, a slightly shorter suspension is suggested.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission

enter a final order finding that Respondent violated section 1012.795(1) (f), (g), and (j), Florida Statutes (2014), and Florida Administrative Code Rule 6A-10.081(5) (a), as alleged in the Administrative Complaint. It is further recommended that the Education Practices Commission suspend Respondent's certificate for a period of 18 months; that it require Respondent to participate in the Network Recovery Program; that after the completion of her suspension, she be placed on probation for two employment years, subject to terms and conditions imposed by the Education Practices Commission; and impose an administrative fine of \$1,000.

DONE AND ENTERED this 28th day of March, 2017, in Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of March, 2017.

## ENDNOTES

<sup>1/</sup> Respondent's objections to the alcohol testing form (Petitioner's Exhibit 20) were to whether a proper foundation had been established and whether the document constituted hearsay. There was no motion to suppress the results or any objection based upon improper testing conditions. In any event, the breathalyzer results are but one factor in determining that Respondent was impaired at the meeting. The other factors, such as the smell of alcohol on Respondent's breath, her erratic behavior, including leaving the room almost immediately after the meeting began; her mood swings, from anger to agitation, and anxiety; her disheveled appearance; and her crying outbursts; all support the administrators' conclusion that she was impaired by alcohol during the meeting. Moreover, none of the charges in the Administrative Complaint are dependent on a positive breathalyzer test. Count 1 relates to a separate incident, also involving alcohol; Count 2 charges Respondent with reduced effectiveness, which also is supported by the allegations directly related to her absences; and Count 4 addresses her honesty or lack thereof.

<sup>2/</sup> Although the rule lists this as a violation of section 1012.795(1)(e), it is clear from the text that in 2014, the codification of this substantive violation is at paragraph (1)(f). Other violations are similarly referenced by the description of the substantive violation as opposed to the statutory subsection listed in the rule, which was last amended in 2009.

### 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.