

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

THE SCHOOL BOARD OF  
SARASOTA COUNTY,

Petitioner,

Case No. 20-4794

vs.

BETTY REGISTER,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, on December 7, 2020, Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (DOAH) conducted an evidentiary hearing via Zoom conference from Tallahassee, Florida.

APPEARANCES

For Petitioner: Robert K. Robinson, Esquire  
Rob Robinson Attorney, P.A.  
500 South Washington Boulevard, Suite 400  
Sarasota, Florida 34236

For Respondent: No Appearance

STATEMENT OF THE ISSUES

Whether Petitioner, the School Board of Sarasota County (the Board),<sup>1</sup> proved Respondent, Betty Register (Ms. Register), committed misconduct in

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<sup>1</sup> The Board's official name is The School Board of Sarasota County. § 1001.40, Fla. Stat. (2020). The case style has been amended accordingly.

her employment as alleged in the Administrative Complaint (AC) dated November 17, 2020,<sup>2</sup> and if so, the appropriate discipline.

PRELIMINARY STATEMENT

The Board's Superintendent Brennan W. Asplen, III, Ed.D., issued a letter dated October 23, 2020,<sup>3</sup> notifying Ms. Register that he intended to recommend that the Board terminate her employment because of the results from a random drug test:

During a random drug test, you have tested positive for the use of illegal substances. Following a thorough investigation of this matter, we have concluded you have committed the following offenses among others: Misconduct in office. Therefore, based upon the substantial information presented to me as a result of this investigation, I have found just cause to terminate your employment with the Sarasota County School Board.

Accordingly, I will recommend to the School Board that your employment be terminated effective November 11, 2020. The School Board will vote to accept or reject my recommendation at its November 10, 2020 meeting. Meeting will be held at 1960 Landings Boulevard, Sarasota, Florida at 6:30 p.m.

If you wish to contest this recommended termination/discipline, you must submit a written request for a hearing pursuant to Florida Statutes

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<sup>2</sup> This case originated when the Board's Superintendent issued a letter advising Ms. Register that her employment would be terminated based on a positive drug test. After the matter was referred to DOAH, and without complying with Florida Administrative Code Rule 28-106.202, the Board filed the AC. Ms. Register never objected to the filing of the AC, and the case proceeded to hearing.

<sup>3</sup> This October 23, 2020, letter was sent to Ms. Register advising her that the date of the Board meeting was changed to November 10, 2020. An earlier letter provided the Board meeting would be held on November 3, 2020.

Section §120.569 within 21 calendar days of the date of this letter.

Ms. Register timely requested a hearing. On October 27, 2020, the General Counsel for the Board forwarded Ms. Register's hearing request to DOAH. On November 17, 2020, the Board filed the AC<sup>4</sup> setting forth that Ms. Register's positive drug test constituted just cause, specifically misconduct in office, for her employment termination.

The final hearing was scheduled for and completed on December 7, 2020.

At the final hearing, the Board called: Lynn Peterson, the Board's supervisor of risk management; Teresa Clarke, the Board's transportation operations supervisor; Joanna Hutchinson, the Board's transportation operations secretary; and Regina Doural, FSSolutions' general manager of compliance services. The Board's Exhibits 1 through 10 were admitted into evidence. Ms. Register did not appear for the hearing.<sup>5</sup>

The one-volume Transcript of the proceeding was filed with DOAH on December 23, 2020. Later that day, a Notice of Filing Transcript was issued advising the parties that the Transcript had been filed. The Board timely submitted its proposed recommended order (PRO), which has been considered in the preparation of this Recommended Order. To date, Ms. Register has not

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<sup>4</sup> At the start of the hearing, the Board asked to correct a date found in paragraph 12 of the AC. The allegation is amended to reflect that September 22, 2020, is the date Ms. Register was notified of her selection to provide a sample. Two additional errors are noted in paragraph 22: the Superintendent sent correspondence to Ms. Register on October 6, 2020, and October 23, 2020, not September 15, 2020; and Ms. Register is a female, and thus the pronoun "her" should have been used in the last sentence.

<sup>5</sup> Ms. Register did not appear in the Zoom conference waiting room when the hearing was called to order. The undersigned recessed the hearing, and asked DOAH staff to contact Ms. Register. The telephone call went straight to Ms. Register's voice mail, and a message was left. After waiting until 9:15 a.m., the undersigned proceeded to conduct the hearing. Throughout the hearing, the undersigned watched the Zoom conference waiting room for Ms. Register to appear, however she never did.

submitted a PRO. To the extent that the Board's PRO contained hearsay evidence not supported by direct testimony or evidence, that information has not been considered.

All references to Florida Statutes, administrative rules, or the Board's policies are to the versions in effect at the time of the allegation, except as otherwise indicated.

### FINDINGS OF FACT

Based on the competent substantial evidence adduced at the final hearing, the following Findings of Fact are made:

#### I. The Parties

1. The Board is responsible for operating the public schools in the Sarasota County School District and for hiring, firing, and overseeing both instructional employees and non-instructional "educational support" employees within Sarasota County, Florida. The Board employs approximately 300 school bus drivers each school year, each is considered an educational support employee.

2. On or about September 22, 2020, Ms. Register was employed by the Board as a school bus driver. As a school bus driver Ms. Register was required to and did possess a Florida issued Commercial Driver's License (CDL).

#### II. Other Entities

3. The Florida Department of Transportation (DOT) requires that anyone who holds a CDL to drive a commercial vehicle is subject to quarterly random drug and/or alcohol testing. Currently, DOT requires that fifty percent of the CDL holders be tested quarterly randomly.

4. FSSolutions (FSS) is a third-party administrator that handles drug, alcohol, and other testing services for multiple clients. FSS has a contract with the state of Florida to provide these services, and individual entities

may purchase the FSS services using the statewide contract. FSS also provides each entity with a list of companies that are approved collection agents.

5. When an entity contracts with FSS to facilitate the testing, that entity will send a list of all its eligible employees to FSS. FSS will then generate a random list of the employees to be tested. The randomly selected employees are notified of the date, time, and location for a sample to be provided. The selected employees report to the collection site and provide a sample for testing. That sample is sent to a certified laboratory for analysis, and a test report is created for each sample tested.

6. Each test report is reviewed by a trained medical doctor, who has been qualified to be a DOT medical review officer (MRO). The MRO will speak to “any donor whose laboratory result is not negative.” A non-negative test result could mean that the sample was positive, adulterated, or substituted.

7. The test reports are then provided to the entity that ordered the test.

### III. The Board’s Process

8. The Board requires quarterly random drug tests of its CDL holders, specifically its school bus drivers. Beginning in 2020, the percentage of the Board’s school bus drivers to be randomly drug tested rose from approximately 20 percent to 50 percent.

9. The Board has a contract with FSS to administer the DOT required quarterly random drug and/or alcohol testing. FSS provided the Board a list of approved collection companies. The Board selected an approved collection company. Once the samples are collected, they are sent to a certified laboratory for testing.

10. Each quarter, Ms. Peterson, the risk management supervisor, sends Ms. Clarke, the transportation and operations supervisor, an initial list of the Board’s school bus drivers. Ms. Clarke reviews that list and removes the names of school bus drivers who are no longer employed by the Board. Then Ms. Clarke adds the names of all newly hired school bus drivers to the list.

That list is then sent to FSS. FSS then provides the Board with the randomly selected names of the school bus drivers to be tested.

11. Once the randomly selected school bus drivers are identified, the Board's transportation department sends out the notice to those employees to be tested. The notice contains the date, time, and location for each employee to report for testing.

#### IV. September 22, 2020, through October 6, 2020

12. The alleged conduct giving rise to this proceeding occurred on or about September 22, 2020.

13. The Board's quarterly testing period was July 1, 2020, through September 30, 2020. Ms. Peterson followed the routine set forth in paragraph 11 above. Ms. Register's name was included in the initial list of school bus drivers sent to Ms. Clarke for her review. Following her review and necessary edits, Ms. Clarke returned the revised list, which included Ms. Register's name, to Ms. Peterson. Ms. Peterson sent the revised list to FSS. FSS programmed its random generator to select the requisite percentage of names required by DOT and the Board. FSS then provided the Board with the randomly generated list of employees to be tested. Ms. Register's name was on that randomly generated list of employees to submit for the quarterly drug testing.

14. Ms. Register was notified of her selection for the testing to be provided on September 22, 2020, at 10:30 a.m. Ms. Register reported to the collection location and provided a sample. Ms. Register's sample was sent to the LabCorp location in Research Triangle Park, North Carolina, for testing.

15. On October 6, 2020, the test reports were made available to Ms. Peterson, and she became aware that Ms. Register's sample was positive for marijuana and opioids, specifically: "marijuana, hydrocodone, and hydromorphone."

16. Ms. Peterson called Ms. Clarke and notified her of Ms. Register's positive test results. Ms. Clarke "automatically pulled [Ms. Register] from the

route.” Further, Ms. Clarke testified Ms. Register never drove another school bus after that notification.

#### V. District Policies

17. Ms. Peterson testified that the Board is an alcohol and drug-free workplace. Ms. Peterson further testified that the Board’s policies provide that when there is a positive drug test, the employee is subject to an immediate termination of their employment.

18. Ms. Peterson testified that Ms. Register’s employment was terminated based on her positive drug test, which constituted misconduct in office.

19. Ms. Register is no longer employed by the Board.

20. Ms. Register did not appear or testify during the hearing to offer any evidence to the contrary.

21. Based on the greater weight of the evidence, the undersigned finds that the Board had sufficient just cause to terminate Ms. Register’s employment as a school bus driver.

#### CONCLUSIONS OF LAW

22. DOAH has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

23. Ms. Register is an educational support employee. §§ 1012.40(1)(a) and 1012.01(6), Fla. Stat.

24. The Board’s superintendent has the authority to recommend to the Board that an employee be terminated from employment. § 1012.27(5), Fla. Stat.

25. The Board is a duly constituted school board charged with the duty to operate, control, and supervise all free public schools within the school district of Sarasota County, Florida. Art. IX, § 4(b), Fla. Const.; §§ 1001.30 and 1001.33, Fla. Stat.

26. A district school board has the statutory authority to adopt rules governing personnel matters pursuant to sections 1001.42(28), 1012.22, and 1012.23, Florida Statutes.

27. Section 1012.40(2)(c) provides:

In the event a district school superintendent seeks termination of an employee, the district school board may suspend the employee with or without pay. The employee shall receive written notice and shall have the opportunity to formally appeal the termination. The appeals process shall be determined by the appropriate collective bargaining process or by district school board rule in the event there is no collective bargaining agreement.

28. Section 1012.22 provides, in pertinent part:

The district school board shall:

(1) Designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees as follows, subject to the requirements of this chapter:

\* \* \*

(f) Suspension, dismissal, and return to annual contract status.—The district school board shall suspend, dismiss, or return to annual contract members of the instructional staff and other school employees; however, no administrative assistant, supervisor, principal, teacher, or other member of the instructional staff may be discharged, removed, or returned to annual contract except as provided in this chapter.

29. The Board's Policy 6.33 provides in pertinent part:

II. No employee shall unlawfully manufacture, distribute, dispense, possess, use or be under the influence of, on the job or in the workplace, any narcotic, drug, amphetamine, barbiturate,



marijuana or any other controlled substance, as defined in the Controlled Substances Act (21 USC 812) and as further defined by regulations at 21 CFR 1300 or Florida Statutes, Chapter 893, without a valid prescription.

30. In pertinent part, Florida Administrative Code Rule 6A-5.056 provides the following:

Criteria for Suspension and Dismissal.  
Just cause” means cause that is legally sufficient. Each of the charges upon which just cause for a dismissal action against specified school personnel may be pursued are set forth in Sections 1012.33 and 1012.335, F.S. In fulfillment of these laws, the basis for each such charge is hereby defined:

\* \* \*

(2) “Misconduct in Office” means one or more of the following:

\* \* \*

(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.

31. The Board bears the burden of proving by a preponderance of the evidence that Ms. Register violated the Board’s policy. That policy prohibits employees from unlawfully using or being under the influence of, on the job or in the workplace, marijuana or a controlled substance. The unrefuted

testimony and evidence provided Ms. Register failed a properly administered random drug test given to the Board's CDL holders.

32. Preponderance of the evidence is evidence that "more likely than not" tends to prove the proposition set forth by a proponent. *Gross v. Lyons*, 763 So. 2d 276 (Fla. 2000).

33. There is no dispute that the Board has the authority to discipline Ms. Register, up to and including termination, for "just cause."

34. The Board satisfied its burden and proved by a preponderance of the evidence that Ms. Register failed a drug test. Having considered all of the facts set forth above, the undersigned concludes that termination of employment is appropriate.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board of Sarasota County affirm its termination of Ms. Register's employment as a school bus driver.

DONE AND ENTERED this 7th day of January, 2021, in Tallahassee, Leon County, Florida.



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LYNNE A. QUIMBY-PENNOCK  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 7th day of January, 2021.

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.