State Office of Administrative Hearings

Lesli G. Ginn
Chief Administrative Law Judge

January 10, 2017

Merle Dover
Associate Deputy Counsel
Texas Education Agency
1701 Congress Avenue, 2nd Floor
Austin, TX 78701

VIA INTERAGENCY

RE: SOAH Docket No. 701-16-4719.EC; Texas Education Agency, Educator Leadership and Quality Division v. Maryam Roland

Dear Ms. Dover:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code §155.507(c), a SOAH rule which may be found at www.soah.texas.gov.

William G. Newchurch
Administrative Law Judge

WG/dk
Enclosure
xc: SBEC Legal, TEA, Educator Certification & Standards, Travis Building, 2nd Floor, 1701 N. Congress, Austin, TX 78701 – **VIA INTERAGENCY**
Mark Duncan, Staff Attorney, Texas Education Agency, 1701 N. Congress Ave., 2nd Floor, Austin, TX 78701 – **VIA INTERAGENCY**
Nicolas Enoch, Lubin & Enoch, P.C., 221 North Kansas St., Ste. 700, El Paso, TX 79901 – **VIA REGULAR MAIL**

SOAH DOCKET NO. 701-16-4719.EC

TEXAS EDUCATION AGENCY, EDUCATOR LEADERSHIP AND QUALITY DIVISION, **Petitioner**	§	**BEFORE THE STATE OFFICE**
v.	§	**OF**
MARYAM ROLAND, **Respondent**	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

I. INTRODUCTION

The staff (Staff) of the Texas Education Agency, Educator Leadership and Quality Division, asks the State Board for Educator Certification (Board) to take disciplinary action against Maryam Roland (Respondent), who holds a Texas educator certificate. Staff alleges Respondent has violated policies of the district that employed her, state and federal law, and the Educators' Code of Ethics[1] (Code of Ethics). Staff also claims that Respondent lacks good moral character and is unworthy to instruct or supervise the youth of this state (collectively, "unworthy to instruct"). Staff recommends a two-year suspension of Respondent's teacher certificate.

Respondent argues that she did not commit the alleged violations and is not unworthy to instruct. Respondent asks the Board not to take action against her certificate.

The preponderant evidence does not show the Respondent committed the alleged violations or is unworthy to instruct. The Administrative Law Judge (ALJ) recommends that the Board take no action against Respondent's certificate.

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[1] 19 Tex. Admin. Code § 247.2.

II. JURISDICTION, PROCEDURAL HISTORY, AND NOTICE

The Board regulates and oversees all aspects of the certification and standards of conduct of public school educators.[2] The Board may adopt rules that regulate educators and provide for disciplinary proceedings, including the suspension or revocation of educator certificates.[3] The Board may take disciplinary action based on satisfactory evidence that "the person is unworthy to instruct or to supervise the youth of this state,"[4] or "has violated a provision of the Code of Ethics."[5]

State Office of Administrative Hearings (SOAH) has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision (PFD) with proposed findings of fact and conclusions of law.[6] The hearing on the merits convened on October 6, 2016, before ALJ William G. Newchurch at SOAH in Austin, Texas. Attorney Mark Duncan represented Staff. Respondent was represented by attorney Nicholas Enoch. The hearing concluded the same day, and the record closed on November 11, 2016, the deadline for parties to reply to written closing arguments.

The parties did not contest either notice or jurisdiction. Findings of fact and conclusions of law concerning those matters are set out at the end of the PFD.

III. APPLICABLE LAW

Staff contends that the Board may take disciplinary action against Respondent because she has violated the following standards in the Code of Ethics:

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[2] Tex. Educ. Code § 21.031(a).

[3] Tex. Educ. Code § 21.041(a), (b)(1), (7).

[4] 19 Tex. Admin. Code § 249.15(b)(2).

[5] 19 Tex. Admin. Code § 249.15(b)(3).

[6] Tex. Gov't Code ch. 2003.

> Standard 1.7. The educator shall comply with state regulations, written local school board policies, and other state and federal laws;[7] and
>
> Standard 1.10. The educator shall be of good moral character and be worthy to instruct or supervise the youth of this state.[8]

Under the Board's rules, "[u]nworthy to instruct or to supervise the youth of this state" means:

> [a]bsence of those moral, mental, and psychological qualities that are required to enable an educator to render the service essential to the accomplishment of the goals and mission of the State Board for Educator Certification policy and [the Code of Ethics] . . . . A determination that a person is unworthy to instruct does not require a criminal conviction.[9]

"Unworthy to instruct or to supervise the youth of this state" is a broad concept.[10] Moral fitness of a person to instruct the youth of this state must be determined from an examination of all relevant conduct, is not limited to conduct that occurs while performing the duties of a professional educator, and is not limited to conduct that constitutes a criminal violation or results in a criminal conviction.[11] Qualities, or lack of qualities, that render one unworthy are numerous, varied, and difficult to completely enumerate; violation of a specific rule is not required; and the Board has broad discretion to determine who is unworthy.[12] Certain conduct or conditions that may demonstrate that an educator lacks good moral character, is a negative role model to students, and does not possess the moral fitness necessary to be a certified educator includes, but is not limited to, habitual impairment through drugs.[13]

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[7] 19 Tex. Admin. Code § 247.2(1)(G).

[8] 19 Tex. Admin. Code § 247.2(1)(J).

[9] 19 Tex. Admin. Code § 249.3(59).

[10] 19 Tex. Admin. Code § 249.5(b)(2)(E).

[11] 19 Tex. Admin. Code § 249.5(b)(2)(E).

[12] *Marrs v. Matthews*, 270 S.W. 586, 588–89 (Tex. Civ. App. 1925, writ ref'd). *See also State Bd. for Educator Certification v. Monialvo*, No. 03-13-00370-CV, 2015 WL 7708947, at *4-5 (Tex. App. Austin, Nov. 24, 2015 no pet. h.).

[13] 19 Tex. Admin. Code § 249.5(b)(2)(D)(iii).

If the Board determines that Respondent should be disciplined, the Board may take any of the following actions:

> (1) place restrictions on the issuance, renewal, or holding of a certificate, either indefinitely or for a set term;
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> (2) issue an inscribed or non-inscribed reprimand;
>
> (3) suspend a certificate for a set term or issue a probated suspension for a set term;
>
> (4) revoke or cancel, which includes accepting the surrender of, a certificate without opportunity for reapplication for a set term or permanently; or
>
> (5) impose any additional conditions or restrictions upon a certificate that the [Board] deems necessary to facilitate the rehabilitation and professional development of the educator or to protect students, parents of students, school personnel, or school officials.[14]

IV. EVIDENCE

Respondent holds Texas Educator Certificate No. XXX-XX-11-36. She currently holds a standard certificate in science, grades 8-12. Her certificate was in full force and effect at all times relevant to this case. In February 2015, Respondent was employed with the Ysleta Independent School District (District), as a teacher at Parkland High School (Parkland). On February 20, 2015, Respondent resigned from her position with the District, but she was paid until the end of the school year. Respondent had worked as a teacher from 2008 to February 20, 2015, without any alleged misconduct.

On February 18, 2015, Olaya Calanche, a then-former bookkeeping clerk for the District, sent an email[15] to the District alleging that "Mr. Villareal," a Parkland teacher, was "the distributer . . . always has cocaine on him . . . on campus." This statement in the email was followed by a series of names of employees at Parkland, and added the words "every payday

[14] 19 Tex. Admin. Code § 249.15(a), (b).

[15] Staff Ex. A.

both monthly and semi[-]monthly." The email did not say what, if anything, the listed people had done. Ms. Calanche continued, in the rambling email, to say that her son had tried to kill her because "god told him I had demons" and that one of the named employees "removed a student because she was the devil." Ms. Calanche ended the email by reporting that she "no longer [did] cocaine . . . ecstasy, or marijuana."

At hearing, Respondent testified that Ms. Calanche had been a disgruntled employee. Craig Lahrman is the District's director of secondary personnel and testified at the hearing. Mr. Lahrman stated that one of the Parkland employees named in the February 18, 2015 email tested positive for cocaine and a second employee resigned rather than submit to a drug test.

In the February 18, 2015 email, Ms. Calanche did not list Respondent's name or write anything about Respondent. However, on February 20, 2015, Ms. Calanche sent another email in which she wrote only the names of Respondent and another person. Mr. Lahrman testified that he understood that Ms. Calanche had implicated Respondent during a telephone call to District personnel, but he could not say who for the District participated in the alleged phone call. Mr. Lahrman has never supervised or spoken with Ms. Calanche.

On February 20, 2015, based on the above emails, Mr. Lahrman asked Respondent to report for an interview.[16] During the interview, Respondent stated that she "occasionally did smoke marijuana;" had not for "one and one-half months" because "that was [her] New Year's resolution," "was in rehab," "was trying to get her life together," and "never did it with anyone at work."[17] She never specifically admitted to using marijuana in Texas.

On the same day, Mr. Lahrman asked Respondent to submit samples of her breath, hair, and urine for testing. Although she had already resigned, Respondent complied with the request for samples. The results of the breath test indicated no trace of alcohol on her breath.[18] The

[16] Staff Ex. H.

[17] Staff Ex. H, audio 1 at 01:38-03:00.

[18] Respondent Ex. 1 at 2.

results of the urine test indicated that Respondent had not consumed marijuana or the other drugs for which she was tested.[19] However, the results of the hair test indicated that Respondent had consumed marijuana in the past, but not other drugs for which she was tested.[20]

During the hearing before the ALJ, Respondent testified that she had gone to counseling for an eating disorder, and that substance abuse was also covered during the counseling. As evidence of her participation in counseling, Respondent offered a March 3, 2015 document from her counselor.[21]

She also testified that she had consumed an edible product containing marijuana during Christmas break 2014-2015, while on vacation in the state of Colorado. She believed that consumption of marijuana was not prohibited in Colorado. Respondent denied consuming marijuana elsewhere. She admitted that she had consumed marijuana several years before, while in college, but denied doing so since then, except during her vacation in Colorado. She specifically denied ever consuming any other illicit drug while employed by the District.

At the hearing, Respondent denied ever selling, buying, possessing, consuming, or being under the influence of any illicit drug or alcohol while on District property, during work hours, or during a school-related activity. She has never been convicted of or arrested for any criminal offense. Respondent testified, without contradiction, that she was told during the February 20, 2015 testing that the sample of her hair would be tested for drug use three to six months earlier. There is no evidence to contradict Respondent's testimony on these points.

Mr. Lahrman testified that, aside from the emails he received from Ms. Calanche, he had no reason to believe Respondent had ever consumed an illicit drug, while on duty or elsewhere. He had no reason to think Respondent was under the influence of alcohol or any drug when he interviewed her or at any other time while she was at school or a school-related activity.

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[19] Respondent Ex. 1 at 3; Respondent Ex. 4.

[20] Staff Ex. D.

[21] Respondent Ex. 2.

He confirmed that Respondent had not previously been disciplined or investigated by the District for misconduct.

V. ANALYSIS

A. Alleged Violations Of District Policies

District policy DH (Local) states, in pertinent part:

> An employee shall not . . . possess, use, or be under the influence of any of the following substances during working hours while at school or at school-related activities during or outside of usual working hours: . . . [a]ny controlled substance or dangerous drug as defined by law, including . . . marijuana . . . . An employee need not be legally intoxicated to be considered "under the influence" of a controlled substance.[22]

The ALJ does not conclude that Respondent violated the above District policy. Respondent specifically denied ever possessing, using, or being under the influence of a controlled substance or dangerous drug, including marijuana, while at school or at school-related activities. Respondent admits that she legally consumed marijuana during Christmas Break of 2014-2015 while she was in Colorado. There is no evidence, however, that Respondent remained under the influence of marijuana when she subsequently was at her school or school-related activities in Texas. The test of her urine sample given on February 20, 2015, shows that she was not under the influence of marijuana then. There is no evidence that Respondent's behavior on February 20, 2015, or any other date, suggested she was under the influence of marijuana or any other controlled substance or dangerous drug while a school or school-related activities. Mr. Lahrman had no reason to believe that she had been.

Evidence of marijuana was detected in a sample of Respondent's hair given on February 20, 2015, but the evidence shows that marijuana residue can remain in hair samples for

[22] Respondent Ex. 3 at 2-3.

up to six months. The ALJ does not find that Respondent was under the influence of marijuana while at school or school-related activities just because marijuana residue remained in her hair.

Another District policy, DHE (Local), states, in pertinent part:

> The District reserves the right to conduct searches when the District has reasonable cause to believe that a search will uncover evidence of work-related misconduct. . . .
>
> Based on reasonable suspicion of the school administrator or District official, an employee shall be required to submit to a test for alcohol and/or controlled substances. . . .
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> . . .
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> The following constitute drug-related violations:
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> . . .
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> 4. Testing positive for controlled substances in a postaccident test.
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> . . .
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> 6. Testing positive for controlled substances in a random test.
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> . . .
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> 8. Testing positive for controlled substances in a reasonable suspicion test.[23]

It is true that Respondent's hair sample of February 20, 2015, tested positive for marijuana. However, the District's policy does not simply say that any positive test for a controlled substance under any circumstance is a violation. Instead, under the policy, the positive result must occur in one of three types of test: "postaccident," "random," or "reasonable suspicion." There is no evidence that Respondent was tested randomly or after an accident.

As quoted above, DHE (Local) first states "The District reserves the right to conduct searches when the District has reasonable cause to believe that a search will uncover evidence of

[23] Staff Ex. B. at 1.

work-related misconduct." It subsequently uses the phrase "reasonable suspicion" when referring to testing for alcohol and/or controlled substances. Given this context,[24] the ALJ concludes that "reasonable suspicion" is synonymous with "reasonable cause to believe that a search will uncover evidence of work-related misconduct."

Respondent argues that the District did not have reasonable suspicion to believe a test of Respondent's hair would uncover evidence of work-related misconduct when Mr. Lahrman asked Respondent for a hair sample to test. The ALJ agrees with Respondent.

When Mr. Lahrman interviewed Respondent on February 20, 2015, and first asked for a sample of her hair for testing, the District had no reasonable suspicion, or cause, to believe the test would uncover evidence of work-related misconduct by Respondent. At the time, the only information Mr. Lahrman had concerning Respondent were the emails from Ms. Calanche. The first email, on February 18, 2016, did not even mention Respondent. Also, it showed that Ms. Calanche was not a reliable source of information. The first email was disjointed, rambling, and incoherent. It suggested that Ms. Calanche was paranoid and delusional, because she stated she was scared for her life and referred to the devil and demons. Further undermining her credibility, Ms. Calanche admitted in the first email that she had abused cocaine, ecstasy, and marijuana in the past.

The second email from Ms. Calanche, on February 20, 2016, gave Respondent's name, but said nothing else about Respondent. It did not even indicate it was related to the first email. In the absence of more information, there was no reasonable basis for the District to consider the emails together. Mr. Lahrman testified that he understood that Ms. Calanche had implicated Respondent during a telephone call to another District employee, but could not say which District employee had participated in the call. Under these circumstances, his understanding that Respondent was implicated was not reasonable.

[24] Words and phrases must be read in context. Tex. Gov't Code § 311.011(a).

Even if the emails did not establish reasonable suspicion, Staff contends that the District later gathered additional information that gave the District reasonable suspicion to test Respondent's hair. Staff notes that one Parkland employee named in the first email tested positive for drugs and a second resigned rather than submit to a drug test. But this ignores the fact that Respondent was not named in the first email and the second includes her name but nothing else about her. Given the lack of connection to Respondent, the evidence concerning the other employees did not provide the District with reasonable suspicion concerning Respondent.

Of course, during the February 20, 2015 interview with Mr. Lahrman, Respondent admitted that she "occasionally did smoke marijuana." However, she also stated that she had not smoked it since the New Year, approximately one and one-half months earlier, and "never did it with anyone at work." The ALJ does not find that Respondent's admission gave the District reasonable suspicion to believe Respondent had engaged in work-related misconduct. Her denial of smoking marijuana with anyone at work indicated, at least partially, that she had not consumed it at work and was not under its influence at work. There is no evidence that the District had any information to the contrary. In fact, Mr. Lahrman testified that he had no reason to believe Respondent had consumed or was under the influence of any drug while at work or a work-related activity.

B. Alleged Violations of Law

The ALJ does not conclude that Respondent violated any law. There is no evidence that Respondent has ever been convicted of or charged with violating any law.

The preponderant evidence does not show that Respondent ever consumed or possessed marijuana in Texas, where its possession is illegal.[25] While testing showed that she had marijuana residue in her hair on February 20, 2015, the test did not indicate where or when she had consumed it. Because the test of her urine on that date did not indicate she had consumed marijuana, the ALJ concludes that Respondent had not recently consumed it. Thus, the physical

[25] Tex. Health & Safety Code § 481.121.

evidence is consistent with Respondent's testimony that, since college several years before, she had only consumed marijuana during Christmas break 2014-2015, while in Colorado where consumption was legal. Under the constitution of the state of Colorado, consumption of marijuana by persons twenty-one years of age or older is not unlawful.[26]

Staff did not offer proof or even allege in the notice of hearing or petition that Respondent had violated a specific federal law. Thus, any possible violation of federal law is outside the scope of this case because Respondent has received no notice that particular sections of federal statutes or rules are involved in this case.[27]

C. Alleged Unworthiness To Instruct And Supervise

The ALJ does not recommend that the Board find Respondent is unworthy to instruct and supervise the youth of the state. The evidence certainly does not show that Respondent was habitually intemperate through drugs. Aside from her limited marijuana consumption in Colorado, the evidence does not show that Respondent engaged in any other conduct that even arguably would render her unworthy to instruct.

The ALJ does not conclude that Respondent is unworthy to instruct because she legally consumed marijuana in Colorado. Possession of a usable quantity of marijuana is a criminal offense in Texas,[28] but so is gambling.[29] The ALJ would not recommend that the Board find a teacher unworthy to instruct in Texas because she legally gambled in Nevada. Similarly, he does not recommend that the Board find Respondent unworthy to instruct because she legally consumed marijuana in Colorado.

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[26] Colo. Const. art. XVIII, § 16.

[27] Tex. Gov't Code § 2001.052(a)(3).

[28] Tex. Health & Safety Code § 481.121.

[29] Tex. Penal Code § 47.02.

VI. FINDINGS OF FACT

1. Maryam Roland (Respondent) holds Texas Educator Certificate No. XXX-XX-11-36 issued by the State Board for Educator Certification (Board).

2. Respondent's certificate was in full force and effect at all times relevant to this case.

3. In February 2015, Respondent was employed with the Ysleta Independent School District (District) as a teacher at Parkland High School (Parkland).

4. On February 20, 2015, Respondent resigned from her position with the District, but she was paid until the end of the school year.

5. Respondent had worked as a teacher from 2008 to February 20, 2015, without any alleged misconduct.

6. There is no evidence that Respondent has ever been convicted of or charged with violating any law.

7. Craig Lahrman is the District's director of secondary personnel.

8. On February 20, 2015, Mr. Lahrman asked Respondent to submit samples of her breath, hair, and urine for testing.

9. The preponderant evidence does not show that the District had reasonable cause or suspicion to believe that a search of Respondent's hair would uncover evidence of work-related misconduct when it required her to provide a sample of her hair for testing for alcohol and/or controlled substances.

10. There is no evidence that Respondent was tested randomly or after an accident.

11. Respondent complied with the request for samples.

12. The results of the breath test indicated no trace of alcohol on her breath.

13. The results of the urine test indicated that Respondent had not consumed marijuana or the other drugs for which she was tested.

14. The test of her urine sample given on February 20, 2015, shows that she was not under the influence of marijuana then.

15. The results of the hair test indicated that Respondent had consumed marijuana up to six months in the past, but not other drugs for which she was tested.

16. There is no evidence that Respondent's behavior on February 20, 2015, or any other date, suggested she was under the influence of marijuana or any other controlled substance or dangerous drug while at school or school-related activities.

17. Respondent had consumed marijuana several years before, while in college.

18. Respondent had consumed an edible product containing marijuana during Christmas break 2014-2015, while on vacation in the state of Colorado.

19. The preponderant evidence does not show that Respondent ever consumed or possessed marijuana in Texas.

20. The evidence does not show that Respondent was habitually intemperate through drug use.

21. On June 25, 2015, the staff (Staff) of the Texas Education Agency, Educator Leadership and Quality Division, filed a petition seeking disciplinary action against Respondent's educator certificate based on her conduct described above.

22. In the petition, Staff alleged that Respondent had violated the following standards of the Educators' Code of Ethics, 19 Tex. Admin. Code § 247.2:

> Standard 1.7. The educator shall comply with state regulations, written local school board policies, and other state and federal laws; and
>
> Standard 1.10. The educator shall be of good moral character and be worthy to instruct or supervise the youth of this state.

23. Staff also claimed in the petition that the Board may take disciplinary action against Respondent pursuant to 19 Texas Administrative Code § 249.15(b)(2), because Respondent is unworthy to instruct or to supervise the youth of this state.

24. On July 24, 2015, Respondent filed an answer denying the alleged wrongdoing set forth in Staff's petition and asking for a hearing.

25. On June 20, 2016, Staff referred this case to the State Office of Administrative Hearings (SOAH) for hearing.

26. On or about June 21, 2016, Staff mailed a notice of hearing to Respondent.

27. In the notice of hearing, Staff proposed sanctioning Respondent for the above violations, up to and including revocation of Respondent's educator certificate.

28. The hearing notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a

reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted.

29. Staff did not allege in the notice of hearing or the petition or offer proof at the hearing that Respondent had violated a specific federal law.

30. The notice of hearing indicated that the hearing would be held by a SOAH Administrative Law Judge (ALJ) in Austin, Texas, on September 19, 2016.

31. The hearing was continued at the request of Staff.

32. On September 21, 2016, Order No. 1 was issued setting the hearing on the merits for October 6, 2016.

33. On October 6, 2016, SOAH ALJ William G. Newchurch convened the hearing on the merits at SOAH's hearing facility in Austin, Texas. The hearing was concluded and the record was closed the same day.

34. Respondent appeared at the hearing, and was represented by Nicholas J. Enoch, attorney.

35. Staff was represented at the hearing by Mark Duncan, attorney.

VII. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. Tex. Educ. Code §§ 21.031, .041(b).

2. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.

3. The Board regulates and oversees all aspects of the certification and standards of conduct of public school educators. Tex. Educ. Code § 21.031(a).

4. The Board may adopt rules that regulate educators and provide for disciplinary proceedings, including the suspension or revocation of an educator certificate. Tex. Educ. Code § 21.041(a), (b)(1), (7).

5. Any possible violation of federal law is outside the scope of this case because Respondent had no notice that particular sections of federal statutes or rules were involved in this case. Tex. Gov't Code § 2001.052(a)(3).

6. Respondent otherwise received proper and timely notice of hearing. Tex. Gov't Code §§ 2001.051-.052; 19 Tex. Admin. Code § 249.30; 1 Tex. Admin. Code § 155.401.

7. The Board may take disciplinary action based on satisfactory evidence that an educator is unworthy to instruct or to supervise the youth of this state, or has violated a provision of the Educators' Code of Ethics. 19 Tex. Admin. Code § 249.15(b)(2), (3).

8. Staff had the burden to prove its allegations by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427.

9. District policy DHE (Local) states, in pertinent part:

> The District reserves the right to conduct searches when the District has reasonable cause to believe that a search will uncover evidence of work-related misconduct. . . .
>
> Based on reasonable suspicion of the school administrator or District official, an employee shall be required to submit to a test for alcohol and/or controlled substances . . . .
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> The following constitute drug-related violations:
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> 6. Testing positive for controlled substances in a random test.
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> . . .
>
> 8. Testing positive for controlled substances in a reasonable suspicion test.

10. As used in the context of DHE (Local), "reasonable suspicion" is synonymous with "reasonable cause to believe that a search will uncover evidence of work-related misconduct." Tex. Gov't Code § 311.011(a).

11. District policy DH (Local) states, in pertinent part:

> An employee shall not . . . possess, use, or be under the influence of any of the following substances during working hours while at school or at school-related activities during or outside of usual working hours: . . . [a]ny controlled substance or dangerous drug as defined by law, including

> . . . marijuana . . . . An employee need not be legally intoxicated to be considered "under the influence" of a controlled substance.

12. Under the constitution of the state of Colorado, consumption of marijuana by persons twenty-one years of age or older is not unlawful. Colo. Const. art. XVIII, § 16.

13. The preponderant evidence does not show that Respondent violated DHE (Local), DH (Local), any other written policy of the District, any state or federal law; or Standards 1.7, 1.10, or any other provision of the Educators' Code of Ethics. 19 Tex. Admin. Code § 247.2.

14. The preponderant evidence does not show that Respondent is unworthy to instruct or supervise the youth of this state. 19 Tex. Admin. Code §§ 249.3(59), .5(b)(2)(D), (E), .15(b)(2).

SIGNED January 10, 2017

William G Newchurch

WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS