

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 EDC 04419

Donald R Heath Jr. v. Office of the State Superintendent, Department Of Public Instruction	Petitioner Respondent	FINAL DECISION
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THIS MATTER came on for hearing before the Honorable Donald W. Overby, Administrative Law Judge, on October 23, 2014, presiding in Halifax, North Carolina.

APPEARANCES

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ISSUE

Whether Respondent failed to act as required by law or rule or acted in an arbitrary and capricious manner when Respondent suspended Petitioner's teaching license for one year.

APPLICABLE STATUTES AND RULES

N.C. Const., art. IX, §5
N.C. Gen. Stat. §115C-296
16 NCAC 06C.0312
16 NCAC 06C.0601
16 NCAC 06C.0602

EXHIBITS

For the Petitioner, Exhibits 1 – 7

For the Respondent, Exhibits 1 – 5; 7 – 15

WITNESSES

1. Donald R. Heath, Jr. (Petitioner)
2. Carol F. Manning (For the Petitioner)
3. Toni Ms. Campbell (For the Petitioner)
4. Janarde Mr. Cannon (For the Respondent)
5. Robert E. Hunt (For the Respondent)
6. Joseph G. (“Glen”) Buck (For the Respondent)
7. Katie Ms. Cornetto (For the Respondent)
8. James Mr. Kirkpatrick (For the Respondent)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the undersigned makes the following findings of fact and conclusions of law. In making the findings of fact, the undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witnesses may have, the opportunity of the witnesses to see, hear, know or remember the facts or occurrences about which the witnesses testified, whether the testimony of the witnesses is reasonable, and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner is employed at E.B. Aycock Middle School, in the Pitt County School District, in Greenville, N.C. as a seventh grade social studies teacher. Petitioner was first licensed as a North Carolina teacher in 2008. He received career status in 2012. T p 10.
2. Petitioner has performed his duties as a teacher satisfactorily. Petitioner’s principals for the past four years have rated Petitioner’s performance as either “proficient” or

“accomplished” in all areas measured. Pet. Exs. #1, #2, #3, #4; T pp 25-26. On the end of grade examinations for the 2013-2014 school year, Petitioner's students had an 87% passing rate, which was higher than the average at Petitioner's school. T p 30. Petitioner’s current principal, Janarde Cannon, wrote at the end of the 2014 school year that Petitioner has “worked well with the students this year.” T p 25. Mr. Cannon characterized Petitioner as "a good guy," who was liked by the students and who did "a good job.” T p 79. Mr. Cannon does not have any issues with Petitioner’s performance. T p 95.

3. On February 6, 2014, Petitioner arrived on time to school, performed his morning hall duties. He then went into his homeroom, took attendance and collected students’ report cards. An intern, Ms. Denton, was with him in homeroom. After the bell rang for the first class period, Petitioner was reminded by Ms. Denton that he had an Individualized Educational Plan (“IEP”) meeting. Petitioner went to the meeting which lasted fifteen to twenty minutes and then Petitioner returned to his classroom. T pp 11-13.
4. Mr. Cannon is the principal at E.B. Aycock Middle School where Petitioner teaches. T p 69. T p 81. Mr. Cannon also attended the IEP meeting which was chaired by Carol Manning, an Exceptional Children’s teacher at Aycock Middle School. T pp 71, 81, 83.
5. At the IEP meeting, Petitioner may have greeted Principal Cannon but did not otherwise engage in conversation with him before or during the IEP meeting. T pp 18-19; 77. Petitioner was seated immediately to Mr. Cannon’s left. T p 83.
6. The participants at the IEP meeting sat at a rectangular conference table. Ms. Manning was on an opposite end of the table from Mr. Cannon because she was "chairing the meeting." T p 83. As chair, Ms. Manning did most of the talking and the other participants' attention was directed toward her.
7. Mr. Cannon believed that he smelled alcohol on Petitioner’s breath. Mr. Cannon did not see Petitioner exhibiting any signs that he was impaired by alcohol and did not believe that Petitioner was impaired by alcohol or any narcotic substance. T pp 71; 103-105; 109; 113.
8. No other teachers, staff members, students or parents complained to Mr. Cannon or anyone else about smelling alcohol on Petitioner's breath. T pp 76; 107.
9. Ms. Manning recalled nothing "eventful" at the IEP Meeting and did not smell alcohol on Petitioner’s breath. Ms. Manning had a long relationship with the parents whose child was the subject of the IEP meeting and was confident that the parents would have expressed to her any concerns with the Petitioner's conduct if there had been some. Neither parent reported smelling alcohol on Petitioner's breath. T pp 82-83; 85.
10. Toni Campbell is an eighth-grade science and social studies teacher at E.B. Aycock Middle School. Ms. Campbell had hall duty with Petitioner on the morning of February 6, 2014. Before beginning hall duty Ms. Campbell, Petitioner, and two other teachers

would regularly meet in the hallway for a discussion before assuming their hall duty posts. Ms. Campbell did not smell alcohol on Petitioner's breath that day. Ms. Campbell's classroom was next to Petitioner's classroom at that time and she interacted with him on a daily basis for the entire school year. She did not smell alcohol on Petitioner's breath at any time when she was standing close to him. T p 91.

11. Following the IEP meeting, Mr. Cannon called Petitioner to his office and questioned him. Petitioner denied that he had been drinking that morning. Mr. Cannon asked Petitioner to submit to a "breathalyzer" test. Petitioner told Mr. Cannon that he had eaten a sausage, had an electronic cigarette ("e-cigarette"), and was chewing gum. Petitioner denied that he had been drinking that morning. Petitioner initially denied to Mr. Cannon that he had been drinking the previous evening, then admitted it. T pp 13-14; 39; 41;138; 152-153.
12. Corporal Robert E. Hunt, the school resource officer, was called into Mr. Cannon's office after the Petitioner left to retrieve his e-cigarette and chewing gum. Mr. Cannon told Cpl. Hunt that he smelled alcohol on Petitioner's breath. Cpl. Hunt claimed that he smelled alcohol in Mr. Cannon's office after Petitioner left. There is no evidence that Cpl. Hunt smelled alcohol on Petitioner while in Petitioner's presence. T p 106; 115; 117.
13. Mr. Cannon asked Cpl. Hunt to arrange for Petitioner to take a "breathalyzer" test. A Greenville police officer was summoned to administer the test. T pp 71-72.
14. This trier of fact has spent in excess of 25 years as a criminal defense lawyer and as a district court judge. Having participated in hundreds if not thousands of alcohol related cases, I am especially well informed on alcohol testing devices and the methods used in criminal courts for determining impairment. A trier of fact is not called upon to have a blank slate when listening to evidence but to use his or her experience and knowledge in fairly adjudicating the case based upon the evidence presented.
15. Generally, the courts rely on the Intoxilyzer 5000, which is the state of the art breath testing device currently being used in this state. It is fairly large and cumbersome and not such that can easily be transported for field use. Therefore, field officers generally will rely upon a "portable breath test" (PBT) device, the "Alco-sensor." The "Alco-sensor" is not as accurate or reliable as the Intoxilyzer.
16. Acknowledging the fallibility of machines, the state has set standards for use of the Intoxilyzer and the Alco-sensor. Those standards require that there be two sequential breath samples tested which have to be within .02% of each other to be valid and then the lower of the two readings will be used. Although not a common occurrence, it is not unheard of for the readings to be more than .02% apart, and it may happen more than once in testing for the same person, invalidating the tests. It is not unheard of for a particular machine to have to be taken off-line because of such malfunctions.
17. State standards also dictate that the Intoxilyzer's and Alco-sensors must have regular and valid maintenance and a log must be kept for each machine's maintenance.

18. There is no evidence of the maintenance of the Alco-sensor used to test Petitioner.
19. Although Cpl. Hunt is not currently certified on either the portable breath test or the more accurate Intoxilyzer 5000, he was familiar with both the Alco-sensor and the Intoxilyzer 5000 and at one point in his career served as an instructor on the Intoxilyzer 5000. Cpl. Hunt testified that two readings are required for both kinds of machines and field sobriety tests are required to corroborate either machine's result. Furthermore, there can be significant variance between two readings and only two consecutive readings within .02 establish a valid reading. T pp 127-128.
20. Cpl. Hunt testified that neither the odor of alcohol nor a .04 reading on a portable breath test indicate that someone is "under the influence" of alcohol. T p 123.
21. Petitioner submitted to a breath test on the Alco-sensor, the less accurate of the two machines. Petitioner was not asked to remove his chewing gum before blowing into the Alco-sensor machine and he was only asked to blow into the machine once. T p 17; 19; 52; 61; 129.
22. Gum is not likely to cause a false reading but it could because of other contaminants the gum may absorb. Petitioner's other rationalizations as to what may have caused an odor of alcohol are without merit.
23. Mr. Cannon is the only person who testified who contends he saw the reading on the Alco-sensor. He states that the officer showed it to him and that it read .04. Neither Petitioner nor Cpl. Hunt actually saw the reading but were told what it read. T pp 19-20; 119.
24. Petitioner was not asked to submit a second breath sample for analysis, so there is no way to test the validity of the reading. No other test was performed to analyze Petitioner's blood alcohol content on Feb. 6, 2014. T p 54.
25. Neither Cpl. Hunt nor the officer who administered the portable breath test required the Petitioner to perform any field sobriety tests to demonstrate any degree of impairment.
26. On February 6, 2014, Petitioner was not "under the influence" of an alcoholic beverage or controlled substance while on school premises, nor did he possess or consume an alcoholic beverage or a controlled substance while on school premises. T p 11; 38; 103-105; 109; 113; 123.
27. On February 5, 2014, Petitioner did go out with friends and did consume alcohol until about one or two in the morning. T p 20; 38. Petitioner has told varying stories of what happened the evening of February 5, 2014, but there is no question that he drank a substantial amount of alcohol that evening. Petitioner did not drive while under the influence of alcohol, did not commit any illegal or immoral acts on this evening. On February 5, 2014, he did not engage in any conduct that drew negative attention to his

activities or that negatively impacted his ability to teach. T p 21. In North Carolina, it is not against the law to consume alcohol, even to excess.

28. Following the Alco-sensor test results of February 6, 2014 being reported to Pitt County Schools' personnel director, Glenn Buck, Petitioner was suspended with pay pending evaluation by a qualified counselor. T p 46. Petitioner's return to teaching was conditioned upon engaging in counseling and the counselor's report that Petitioner was complying with the requirement to get counseling. T p 134-135.
29. Pitt County was satisfied that it had addressed the problem with Petitioner and that he had successfully complied with their conditions to return to the classroom.
30. Once he returned to teaching, Petitioner was required to comply with certain conditions relative to continued counseling and random testing for alcohol and controlled substances. T p 144. There is no evidence of Petitioner's noncompliance with his employer's requirements. T pp 145-146; 151.
31. Petitioner has continued to teach since returning to work after the February 6, 2014 incident and there has been no conduct that has reflected negatively on Petitioner's performance as a teacher. T p 26
32. Petitioner has had difficulties with alcohol in the past. Petitioner was convicted for driving while impaired in 2003 and 2005, as well as in 1985, 1990, and 1997. T pp 22-23; 33-35. His driver's license has been and continues to be revoked. T p 36.
33. Following his conviction in 2005, Petitioner completed a six month alcohol treatment program through Potter's Wheel Ministries. T p 23; Pet. Ex. #5. There have been no arrests for driving while impaired or for any other alcohol-related incidents since 2005. T p 24.
34. After enrolling in the program through Potter's Wheel Ministries, Petitioner was accepted into a program of study at East Carolina University and graduated from that program of study in 2008.
35. As a result of his convictions prior to applying for a teaching license, Petitioner was given a probationary teaching license in 2008. Resp. Ex. #5; T p 156. Petitioner's license has since been converted to a Standard Professional License II, which authorizes Petitioner to teach on an ongoing basis, subject to renewal every five years. There are currently no restrictions on his teaching license. In particular, there are no stipulations that would have proscribed Petitioner's activities on February 5, 2014. T pp 10; 52; 59; Resp. Ex. #14. 16 NCAC 06C.0304(c)(2).
36. On two separate occasions, Petitioner has cited the breakup of a relationship as a primary cause for alcohol related incidents and/or depression. Petitioner was suffering from depression prior to February 6, 2014. Petitioner sought medical treatment for the effects of stress and depression in December 2013. T p 27-28; p 63. Pet. Ex. #7. Petitioner had

a follow-up doctor's appointment set for Feb. 6th, even before the incidents of the 6th which led to the licensure action. Pet Ex #6

37. Pitt County Schools reported to the Department of Public Instruction's Licensure Section, that Petitioner had been suspended with pay because his principal had smelled alcohol on his breath and had one reading on a portable breath test of .04. T pp 140-141; Resp. Ex. #7.
38. The authority to license teachers is delegated by the State Board of Education to the State Superintendent, who, in turn relies upon the Ethics Advisory Committee, a committee of "educator peers, teachers, administrators, HR directors, [and] folks who work in colleges and universities of North Carolina." T p 158. The committee makes recommendations to the State Superintendent who, in turn, makes the final decision about actions concerning teachers' licenses. T p 199.
39. Petitioner met with the State Superintendent's Ethics Advisory Committee on April 11, 2014. T p 49.
40. Ms. Katie Cornetto is the attorney for the State Board of Education. Her responsibility is to review all applications for a teaching license or renewal with respect to character and fitness. James Kirkpatrick is the director of bands at West Forsyth High School in Clemmons, North Carolina and has served as a member of the Superintendent's Ethics Advisory Committee for two and a half years. T pp 156-157; 188.
41. Ms. Cornetto's and Mr. Kirkpatrick's testimony indicated that the committee's recommendation to the State Superintendent was based on personal and subjective reactions to Petitioner's problems with alcohol prior to being licensed in 2008 and their subjective inferences concerning the implications of Petitioner's drinking on February 5, 2014.
42. Mr. Kirkpatrick testified that the biggest issue revealed in Petitioner's interview with the Ethics Advisory Committee was that "there was a drinking problem in his life," "that he had grappled with for a long time and had continued to work on" and that "there was some growth [since 2008] and there was a lapse in the growth." He also acknowledged that Petitioner had been a good teacher. T pp 156-157; 190; 196.
43. The committee's recommendation to suspend Petitioner's license was in order to "send a clear message to continue working on the recovery process and at the same time 'don't mess up again.'" T p 197.
44. Mr. Kirkpatrick acknowledged that the Committee's meeting with Petitioner was rather chaotic and that at times people were talking over Petitioner while he attempted to explain. Petitioner felt as though he was being interrogated.
45. Mr. Kirkpatrick stated that the alcohol was "discovered on a hunch and then followed up with the Breathalyzer that confirmed." Mr. Kirkpatrick acknowledged that if the breath

test was not before the committee there would have been a completely different result. T p 194; 206; 207.

46. Ms. Cornetto testified that she felt "crestfallen" upon learning of the February 6, 2014 incident. Ms. Cornetto testified that the committee felt that Petitioner "was struggling with and not winning the battle with being an alcoholic." T pp 164-165; 174-175.
47. Ms. Cornetto acknowledged (as professional treatment providers contend) that with substance abusers there is an expectation of relapse, and that there should still be a measure of assistance when the person relapses.
48. Following Petitioner's meeting with the Ethics Advisory Committee, the Ethics Advisory Committee recommended to the State Superintendent that Petitioner's license be suspended for one year. Resp. Ex. #15.
49. Respondent's contention that the sole issue in this case is whether the Petitioner's conduct bears an adverse relationship to his ability to be an effective teacher is erroneous.
50. State Superintendent Dr. June Atkinson relied heavily on the Committee's recommendation, but ultimately it is her decision to make. Thus, Dr. Atkinson's letter dated May 15, 2014 is the official document which states the only basis for suspending his license. (Emphasis added)
51. Dr. Atkinson notified Petitioner that she intended to suspend his professional educator's license. The only reason cited by Dr. Atkinson is that Petitioner violated 16 NCAC 06(c).0602(b)(9)(b) which states that an educator "shall not be under the influence of, possess, use or consume an alcoholic beverage or a controlled substance on school premises or at a school-sponsored activity involving students." T p 170; Resp. Ex #15.
52. Neither the Superintendent's Ethics Advisory Committee nor the State Superintendent had evidence before it that Petitioner was "under the influence" of alcohol while on school premises. Neither the Committee nor this Tribunal had any evidence that Petitioner possessed, used or consumed an alcoholic beverage or a controlled substance on school premises or at a school event on February 6, 2014. T p 172.
53. There has been no evidence introduced in this contested case hearing that Petitioner was "under the influence" of alcohol. Even Mr. Cannon who had smelled the alcohol acknowledges that Petitioner was not under the influence of alcohol.
54. The committee based its determination that Petitioner was "under the influence" on the fact that he had been drinking the night before he came to school, that an employee smelled alcohol on his breath and the .04 reading on the portable breath testing device. T pp 171; 193.
55. Ms. Cornetto admitted that the committee relied on its subjective judgment to determine whether Petitioner was "under the influence" based on the evidence that it had. T p 174.

56. Ms. Cornetto admitted that neither the odor of alcohol nor the .04 reading on the PBT were evidence of being under the influence of alcohol. T p 171.
57. The committee did not examine evidence of whether the PBT results upon which they relied in making their recommendation to the superintendent were reliable or valid results. Neither the committee nor anyone acting on its behalf interviewed the principal or the school resource officer, nor took any steps to determine whether the amount of alcohol alleged to be in Petitioner's body based on the PBT results constituted being "under the influence." T pp 172; 184.
58. A function of a professional educator is to serve as a role model for students. T p 181. Ms. Cornetto testified that Respondent felt Petitioner was not a role model because "he had alcohol on his breath at school." T p 192. However, there is no evidence that any student or staff member other than Mr. Cannon detected alcohol on Petitioner's breath or his person at any time on February 6, 2014. Whether Petitioner knew that he smelled of alcohol before he arrived at school that morning is of no consequence. T p 178-179.
59. Teacher's should be held to the highest ethical and moral standards, but, while the reasons cited by Ms. Cornetto are noble and reasonable expectations as well as essential for a professional educator, Petitioner was not on notice that the State Superintendent intended to suspend his teacher's license for failing to act as an appropriate role model for students, parents, or the community.
60. There is no evidence that Petitioner failed to adequately perform the duties of his job as a teacher. The evidence before the Ethics Advisory Committee indicated that Petitioner" was a very respected professional in the classroom." T pp 175;196.
61. Even assuming the Respondent's contention that the issue is whether or not his conduct bears an adverse relationship to his ability to be an effective teacher, the evidence before this Tribunal and the committee does not support that conclusion.

Based upon the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter under Chapter 150B of the North Carolina General Statutes and 16 NCAC 6C.0312(c). All parties have been correctly designated and there is no question as to misjoinder or non-joinder. The parties received proper notice of the hearing in this matter.
2. To the extent the Findings of Fact contain conclusions of law or that the Conclusions of Law contain findings of fact, they should be so considered without regard to their given labels.

3. The North Carolina Constitution empowers the State Board of Education to “supervise and administer the free public school system” and to “make all needed rules and regulations in relation thereto, subject to the laws enacted by the General Assembly.” N.C. Const. art. IX, §5.
4. The State Board of Education controls teacher licensure requirements pursuant to the authority delegated to it in N.C. Gen. Stat. §115C-296, which provides, in pertinent part, that it “shall adopt rules to establish the reasons and procedures for the suspension and revocation of licenses.” N.C. Gen. Stat. §115C-296(d).
5. Petitioner has the burden to show by the preponderance of evidence that the State Board of Education’s decision exceeds its authority, is erroneous, based on improper procedure, unlawful or arbitrary and capricious. *Peace v. Employment Security Comm’n*, 349 N.C. 315, 507 S.E.2d 272 (1988).
6. The letter from Dr. Atkinson which states the reasons for which Petitioner is being sanctioned affirmatively states that Petitioner had a .04% blood alcohol content at the IEP meeting. Dr. Atkinson’s letter states that the only reason that she is suspending his license to teach is the rule in the North Carolina Administrative Code 16 NCAC 6C .0602(b)(9)(B). (Emphasis added) Dr. Atkinson could have adopted other grounds as now contended by Respondent, but did not do so.
7. Procedural due process “requires that an individual receive adequate notice and a meaningful opportunity to be heard” before being deprived of life, liberty or property. *In re Magee*, 87 N.C. App. 650, 654, 362 S.E.2d 564, 566-7 (1987). The right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them. *Morgan v. United States*, 304 U.S. 1 (1938). Dr. Atkinson’s letter appropriately notifies Petitioner of the grounds upon which she is suspending his license. To suspend or to otherwise sanction Petitioner for any other grounds would violate procedural due process.
8. The only grounds upon which Dr. Atkinson is suspending Petitioner’s license is 16 NCAC 6C.0602(b)(9)(B) which provides that an educator shall not “be under the influence of, use or consume an alcoholic beverage or a controlled substance on school premises or at a school-sponsored activity involving students.”
9. The Ethics Committee’s recommendation to Dr. Atkinson was heavily influenced by the erroneous assumption that a reading of .04 on the Alco-Sensor demonstrated that the Petitioner was “under the influence.”
10. If an agency is going to rely upon a piece of equipment as the primary if not total reason for suspending or revoking a person’s professional license, or otherwise administering punishment, then that piece of equipment should be reliable. The State of North Carolina has long standing and accepted procedures for use of breath testing equipment. In this

contested case, the Alco-Sensor was not even remotely used in accordance with those standards, and there is no way to determine the validity of that reading. Therefore, the Alco-sensor reading is entitled to zero credibility and weight in this contested case.

11. There is no definition of "under the influence" provided anywhere in the State Board's regulations or policies. T p 173.
12. Both criminal law statutes and Worker's Compensation statutes in North Carolina have defined "under the influence" to mean that there is an "appreciable impairment" of the persons faculties. There is no credible evidence in this contested case to demonstrate that Petitioner was "appreciably impaired" or that he was "under the influence" other than the highly subjective assumptions made by the committee, based on the unsubstantiated Alco-sensor reading. All of the evidence at this hearing indicated that Petitioner performed his job duties as he normally did without any adverse impact on his duties as a teacher.
13. Violation of 16 NCAC 06C.0602(b)(2) or other statute or rule is not considered in rendering this decision because Petitioner was not noticed of any violation other than 16 NCAC 06C.0602(b)(9)(B); however, it is noted that a teacher is expected to be a "positive role model for students, parents, and the community," (16 NCAC 06C.0602(b)(2)). The State Board of Education may only revoke or suspend a teacher's license for violation of this standard of professional conduct when the teacher's alleged unethical conduct has "a reasonable and adverse relationship" to "the continuing ability of the person to perform any of his/her professional functions effectively." 16 NCAC 6C .0312.
14. There has not been sufficient credible evidence to support a conclusion that Petitioner would have violated this provision even if it were at issue. There was no evidence that any student or parent, or anyone other than Petitioner's principal, detected the odor of alcohol on Petitioner on February 4, 2014. The evidence at this hearing demonstrated that Petitioner has successfully performed his professional functions before and since February 6, 2014 and that the incident on February 6, 2014 has had no adverse impact on the performance of any professional functions, including his teaching and his students' testing outcomes.
15. However, it is noted that the evidence before this Tribunal is clear that Petitioner admitted to have consumed substantial quantities of alcohol the night before, that he has had a problem with alcohol in the past and that his principal smelled alcohol on his breath. It would be fair to assume that this is Petitioner's last "slip," his last relapse, if he is to be able to keep his teaching license. Rationalizations and justifications will be meaningless, because everyone goes through struggles in life.
16. The decision of the State Board of Education must be reversed if the substantial rights of the Petitioner have been prejudiced because the agency's findings, inferences, conclusions or decisions exceed its authority, are erroneous, based on improper procedure, unlawful, or arbitrary and capricious. N.C. Gen. Stat. §150B-23.
17. Petitioner has carried his burden of proof and demonstrated by a preponderance of

evidence that Respondent erred in suspending his North Carolina teaching license. The State Board of Education's decision to suspend Petitioner's license for one year is erroneous and not in accordance with the law.

18. On February 6, 2014, Petitioner was not "under the influence" of an alcoholic beverage or controlled substance while on school premises, nor did he possess or consume an alcoholic beverage or a controlled substance while on school premises. T p 11; 38; 103-105; 109; 113; 123.
19. The State Board of Education's decision to suspend Petitioner's teaching license for one year based on a violation of 16 NCAC 6C.0602(b)(9)(B) exceeds its delegated authority.
20. The State Board of Education, therefore, exceeded its statutory authority when it determined that Petitioner's license should be suspended for violation of 16 NCAC 6C .0602(b)(9)(B).
21. There is not sufficient evidence to support the contention that the State Board of Education's decision to suspend Petitioner's license for one year was arbitrary and capricious.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned finds that Petitioner has met his burden to prove that Respondent's decision to suspend Petitioner's license for one year, is not in accordance with the law, exceeds its authority, and is not supported by substantial evidence on the record and, therefore, is **REVERSED**.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial

Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 27th day of January, 2015.

Donald W. Overby
Administrative Law Judge