

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 06-2398
)
 ROBERT KUSE, JR.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on November 20, 2006, by video teleconference with connecting sites in Miami and Tallahassee, Florida, before Errol H. Powell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jean Marie Middleton, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 400
Miami, Florida 33132

For Respondent: David H. Nevel, Esquire
Nevel & Greenfield, P.A.
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Davie, Florida 33328

STATEMENT OF THE ISSUES

The issues for determination are whether the conduct of Respondent was in violation of the employment practices and policies of the Miami-Dade County School Board; and whether the

conduct of Respondent, taken in light of his prior employment record and the requirements of progressive discipline, constituted just cause for termination.¹

PRELIMINARY STATEMENT

By letter dated June 15, 2006, the Miami-Dade County School Board, hereinafter School Board, notified Robert Kuse, Jr., among other things, that the School Board, at its scheduled meeting on June 14, 2006, took action to suspend him from employment and commence dismissal proceedings against him. By letter dated June 17, 2006, Mr. Kuse contested the School Board's action and requested a hearing. On July 10, 2006, this matter was referred to the Division of Administrative Hearings.

On July 26, 2006, the School Board filed a Notice of Specific Charges, consisting of two counts. The School Board charged Mr. Kuse as follows: Count I, violation of School Board Rule 6Gx13-4A-1.21, Responsibilities and Duties in that his criminal history and actions fail to reflect credit upon himself or the community and that his violation of School Board Rule 6Gx13-4A-1.21 constitutes misconduct in office and is just cause for termination; and Count II, violation of the Code of Ethics/Lack of Good Moral Character in that his criminal history and actions demonstrate a lack of good moral character, that his actions violate Sections 1012.32 and 1012.33, Florida Statutes (2004), and Florida Administrative Code Rules 6B-1.001, 6B-

1.006, and 6B-4.009, and that his violation of the ethical rules constitutes misconduct in office and is just cause for termination.

This matter was originally scheduled for hearing, after consultation with the parties, for two days on October 18 and 19, 2006. A continuance was requested by the parties and was granted. The matter was re-scheduled. Prior to hearing, the parties filed a Joint Pre-Hearing Stipulation and, subsequently, an Amendment to Joint Pre-Hearing Stipulation on November 15, 2006. The Amendment limited the issues and evidence in this matter to "(A) Whether the conduct of Respondent [Mr. Kuse] was in violation of the employment practices and policies of the Miami Dade County School Board of the Miami Dade County School Board [sic]; and (B) Whether the conduct of the Respondent [Mr. Kuse], taken in light of his prior employment record and the requirements of progression discipline, constituted just cause for his termination." Moreover, the parties agreed that any allegation or evidence concerning the publicity in the case at hand would not be presented to or considered by the undersigned in the determination of the case at hand.

At hearing, the School Board presented the testimony of five witnesses, including Mr. Kuse, and entered 11 exhibits (Petitioner's Exhibits numbered 1, 3-4, 8-9, 11-12, and 17-20) into evidence.² Mr. Kuse testified in his own behalf and

presented the testimony of one witness and entered no exhibits into evidence.

A transcript of the hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was set for more than ten days following the filing of the transcript. The Transcript, consisting of two volumes, was filed on March 6, 2007. Subsequently, on April 12, 2007, Mr. Kuse requested an extension of time to file post-hearing submissions, to which the School Board agreed; the request was granted. The parties timely filed post-hearing submissions, and their post-hearing submissions have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. No dispute exists that, at all times material hereto, the School Board was a constitutional entity charged with the duty to operate, control and supervise the public schools within the school district of Miami-Dade County, Florida.

2. No dispute exists that, since February 21, 1986 and at all times material hereto, Mr. Kuse was employed full-time with the School Board as an electrician and assigned to Facilities and Operations-Maintenance. Hence, Mr. Kuse has been employed with the School Board in the same position for more than 20 years.

3. Except for the case at hand, Mr. Kuse has only been disciplined once in his more than 20-year employment with the School Board. As to the prior disciplinary action, in essence, in 1999, Mr. Kuse had, what he considered, an emergency involving his minor child at school and left his work assignment, in a School Board vehicle and without notifying his supervisor, to attend to his child, who was in kindergarten and who was ill. He received a written reprimand, in which he was advised, among other things, that he was not to use a School Board vehicle for personal use; that he was to notify his supervisors if he needed emergency leave or to deviate from his work assignment; and that he needed to adhere to the proper completion of Daily Status Forms (he failed to properly indicate on his Daily Status Form his whereabouts and his work time regarding the emergency with his child).

4. As to the instant case, in 2005, the School Board investigated an allegation that, on or about January 20, 2005 through January 29, 2005, Mr. Kuse failed to adhere to his work schedule by not being present at his assigned worksite during the period of time that he was assigned to be at the worksite. During its investigation, the School Board was able to confirm only one instance, January 28, 2005, that Mr. Kuse did not adhere to his work schedule. The School Board determined that Mr. Kuse was out of his assigned work area without

authorization; had misrepresented his whereabouts and times on his Daily Status Forms; and had used a School Board vehicle without authorization. By memorandum dated May 17, 2005, Ignacio Palacio, Director of Region Maintenance Center II, recommended terminating Mr. Kuse's employment with the School Board. By memorandum dated May 20, 2005, Robert Brown, Administrative Director of Facilities Operations, Maintenance recommended termination of Mr. Kuse's employment.

5. By letter dated June 15, 2006, the School Board notified Mr. Kuse, among other things, that the School Board, at its scheduled meeting on June 14, 2006, took action to suspend him from employment and commence dismissal proceedings against him, effective at the close of the work day on June 14, 2006, "for just cause, including but not limited to: non-performance and deficient performance of job responsibilities; misconduct in office; and violation of School Board Rule 6Gx13-4A-1.21, Responsibilities and Duties. . . ."

6. Mr. Kuse's hours of work, as an electrician with the School Board, were 7:00 a.m. to 3:30 p.m. He was aware of his break time and the time allotted for break time; that a School Board's vehicle is not to be used for personal errands; and that he needs his supervisor's permission to use a School Board's vehicle for personal errands. Also, Mr. Kuse was aware of the Daily Status Form, its purpose, and how to complete it.

7. At hearing, Mr. Kuse admitted that he was at a restaurant during the period of time that he was assigned to a worksite but did not admit to the dates or the number of times that such action had occurred. He further admitted that he was taking a coffee break or having coffee at the restaurant before he reached his assigned worksite; that he did not contact a supervisor to obtain permission to do so; that he did not reflect the break on his Daily Status Forms; and that he had not contacted a supervisor to obtain permission to use the School Board vehicle to take the break.

8. The School Board's "Breaktime and Mealtime Policy for Employees" states in pertinent part:

BACKGROUND

Employees shall not deviate from their assigned schedules without first acquiring permission from their supervising administrators who are to be informed of the reasons for leaving, the destination, and the estimated return time to assignments. If the employees cannot locate their supervising administrator(s), a detailed message is to be left with another administrator or clerical personnel from the administrator's office. . .

To insure that all employees are informed of when the break time shall be taken, the following information is published.

* * *

First Shift

* * *

9:15 - 9:30 a.m. Break (Approx.)

* * *

1:45 - 2:00 p.m. Break (Approx.)

* * *

Note: The break time is listed as an approximated time that is contingent upon the work being completed. The break time can be adjusted, within reason, to accommodate avoiding an interruption in the flow of work.

* * *

The following standards are published to guide employees in the use of this benefit:

BREAKTIME

a. Breaks shall be taken at the scheduled times, and AT THE WORK LOCATION SITE. Employees are not to leave the worksite during break time with the exception that, if several employees are assigned to a worksite, one employee may leave the site during the break time to obtain refreshments for the others. . . Board [School Board] owned vehicles may NOT be used for this purpose.

* * *

c. If an employee reaches a scheduled break time while traveling from one work location to another, s/he SHALL NOT stop enroute, but shall wait until arrival at the destination to take a break.

d. The use of Board-owned vehicles to travel to restaurants for breaks, or to pick up refreshments to bring back to the work

location is considered to be personal business, and is expressly FORBIDDEN.

[emphasis in original]

9. The School Board's policy regarding "Daily Status Forms" provides in pertinent part:

DEFINITION

The Daily Status Form is used to document and record actual travel and labor hours for every tradesperson. The form must be completed entirely and accurately in order to properly document not only the tradespersons [sic] daily activities but to RECORD those activities and their corresponding labor costs to the specific project where the work took place. Once properly completed and endorsed by the tradesperson, the daily status form [sic] becomes an official document thus creating an auditable representation of the tradespersons [sic] activities. . .

NOTE

It is MANDATORY that Daily Status Forms are properly completed and turned in on the same day the work is performed. Failure to follow this note, any of the steps outlined in this procedure, or providing false information on the DSF may result in disciplinary action.

PROCEDURES

General Conditions:

1. All Daily Status Forms (DSF's) must be dated and then signed by all tradespersons reporting time on the DSF.
2. Arrival and departure times, at the school site or other work location, must be completed before obtaining the principal's signature. . .
3. In cases when the principal is not available, the principal may specifically authorize a representative to sign on his/her behalf. However, under no

circumstances can this representative be the Custodian or Zone Mechanic.

4. Upon arrival at the school site, the trades person [sic] will time stamp the back of the DSF . . .

5. Upon Departure from the school site, the trades person [sic] will time stamp the back of the DSF

[emphasis in document]

10. Mr. Kuse's supervisor, during the time that the allegations were pending before the School Board, was Gary Spake, who testified at the hearing. Mr. Spake testified that he had been employed with the School Board for approximately 24 years and that he had heard of employees stopping for coffee before reaching their assigned worksite but had never witnessed or confirmed such conduct and that he did not consider such conduct common practice. Also, he testified that, approximately 10 times, he had stopped for coffee before reaching a worksite and had not been disciplined for doing so. Moreover, Mr. Spake testified that he is not aware of any employee who had been terminated for stopping for coffee before reaching an assigned worksite. Furthermore, he testified that he did not recommend terminating Mr. Kuse. The undersigned finds Mr. Spake's testimony to be credible and persuasive.

11. One of Mr. Kuse's former supervisors, Michael Swackhammer, testified at hearing. Mr. Swackhammer has been employed with the School Board for over 20 years and had

supervised Mr. Kuse, off and on, for approximately 18 years. Mr. Swackhammer testified that it was "customary" for workers to stop for coffee, without obtaining permission, before reporting to a worksite, but that the workers, who he had observed engaging in such conduct, were not supervised by him and he did not report them even though they were violating the School Board's policy. However, he further testified that he had not observed such conduct by employees since 1999. Furthermore, Mr. Swackhammer testified that he was aware of two employees being disciplined, i.e., suspended, for violating the School Board's policy regarding break time and unauthorized use of a School Board vehicle, but that he was not aware of any employee being terminated for such conduct. Mr. Swackhammer's testimony is found to be credible and persuasive.

12. Mr. Palacio, who has been employed with the School Board for approximately 25 years, testified at hearing. He testified that employees are expected to abide by the break time policy and that it was not common knowledge that employees stopped for coffee before they reached their assigned worksite. As to Daily Status Forms, he testified that the employee was responsible for making sure that it was accurate and that Mr. Kuse's Daily Status Forms were not accurate. Further, Mr. Palacio admitted that only one day, January 28, 2005, was confirmed that Mr. Kuse failed to adhere to his work schedule.

Moreover, he testified that he was not aware of any employee who was terminated for stopping for coffee before reaching the assigned worksite and not putting such information on the Daily Status Form. Further, Mr. Palacio was aware of Mr. Kuse's reprimand in 1999 when he (Mr. Palacio) recommended termination of Mr. Kuse's employment. The undersigned finds Mr. Palacio's testimony credible and persuasive, except for his testimony that it was not common knowledge that employee's stopped for coffee before reaching their assigned worksite.

13. Mr. Brown, who has been employed with the School Board for more than 20 years, testified at hearing. He testified that he was not aware that employees stopping for coffee, before reaching their worksite, was customary or a common practice. However, he testified as to a practice of some employees stopping for breakfast: a group of employees, referred to as the "Breakfast Club," were meeting for breakfast, as a common practice, and, when administrators discovered it, the employees were suspended and the practice ceased. Regarding the Daily Status Form, he testified that the employee is responsible for its accuracy and that, as to the Daily Status Form for January 28, 2005, it reflected an insufficient description of time, thereby, leaving unaccounted time.³ Regarding the penalty for using School Board vehicles for personal use and improperly maintaining time and Daily Status Forms, Mr. Brown testified

that the usual penalty imposed for a first offense was suspension from 5 to 15 days. Furthermore, Mr. Brown testified that, had it not been for Mr. Kuse's reprimand in 1999, he (Mr. Brown) would not have recommended termination. Mr. Brown's testimony is found to be credible and persuasive. As to Mr. Brown's testimony concerning his awareness of a customary or common practice of employees stopping for coffee before reaching their worksite, the undersigned finds it reasonable for administrators not being aware of such conduct by employees unless and until employees are reported for disciplinary action, as in the case of the Breakfast Club. Further, an inference is drawn and a finding of fact is made that Mr. Brown's reference to suspension as a disciplinary action refers to suspension without pay.

14. As to Mr. Kuse's work performance as an employee, when Mr. Swackhammer supervised Mr. Kuse, off and on, for approximately 18 years, he found Mr. Kuse to be a hard worker and consistent in his attendance. When Mr. Spake supervised Mr. Kuse, from May 7, 2006 through around August 7, 2006, Mr. Kuse's accomplished the tasks that were given to him and he (Mr. Kuse) performance was of high caliber. None of the other School Board employees who testified at hearing directly supervised Mr. Kuse and any of their testimony regarding Mr. Kuse's work performance is not found to be credible and

persuasive. The testimony of Messrs. Swackhammer and Spake is found to be credible and persuasive.

15. The evidence demonstrates that Mr. Kuse was out of his assigned work area without authorization in that he stopped for coffee breaks at a restaurant, before reaching his assigned worksite, thereby, deviating from the break requirements of the School Board's policy, without obtaining his supervisor's permission.

16. The evidence demonstrates that Mr. Kuse used the School Board's vehicle for personal use, without authorization, in that he used the School Board's vehicle, without authorization, to take coffee breaks at a restaurant before reaching his assigned worksite.

17. The evidence demonstrates that Mr. Kuse did not properly complete his Daily Status Form for January 28, 2005, by failing to provide sufficient information on his Daily Status Form to indicate his whereabouts and times involved.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2006).

19. The School Board has the burden of proof to show by a preponderance of the evidence that Mr. Kuse committed the

offenses in the Notice of Specific Charges, as modified by the Joint Pre-Hearing Stipulation and Amendment to Joint Pre-Hearing Stipulation. McNeil v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996); Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990).

20. No dispute exists that at all times material hereto, Mr. Kuse was subject to the rules and regulations of the School Board and that his employment was also subject to the terms and conditions of the contract between the School Board and the Dade County Public School Maintenance Employee Committee (Contract).

21. Section 1012.22, Florida Statutes (2004), 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.

22. The Contract provides in pertinent part:

ARTICLE XI - DISCIPLINARY ACTION

* * *

Section 3. Dismissals, Suspensions,
Demotions

Employees dismissed, suspended, or demoted shall be entitled to appeal such action to an impartial Hearing Officer. . . . If the employee is not employed . . . during the time of appeal of such dismissal, suspension, or demotion, and if reinstated by Board action, the employee shall receive payment for the days not worked, or salary not received, and shall not lose any longevity or be charged with a break in service due to said dismissal, suspension, or demotion.

Section 4. Cause for Suspension

In those cases where any employee has not complied with Board policies and/or department regulations, but the infraction is not deemed serious enough to recommend dismissal, the department head may recommend suspension up to 30 calendar days without pay. All suspensions must be approved by the Superintendent.

23. The School Board contends that just cause exists for the suspension and termination of Mr. Kuse.

24. As agreed to by the parties, the first issue in the instant case is whether the conduct of Mr. Kuse was in violation of the employment practices and policies of the Miami-Dade County School Board. By the parties agreeing to limit the issues and the evidence and testimony presented in the instant case, any criminal history of Mr. Kuse was eliminated from the

Notice of Specific Charges and from consideration by the undersigned.

25. The School Board's interpretation of its own rules is given great deference unless it amounts to an unreasonable interpretation or is clearly erroneous. Woodley v. Department of Health and Rehabilitative Services, 505 So. 2d 676, 678 (Fla. 1st DCA 1987).

26. School Board Rule 6Gx13-4A-1.21, Responsibilities and Duties, provides in pertinent part:

I. Employee Conduct

All persons employed by The School Board of Miami-Dade County, Florida are representatives of the Miami-Dade County Public Schools. As such, they are expected to conduct themselves, both in their employment and in the community, in a manner that will reflect credit upon themselves and the school system.

* * *

II. Records and Reports

All personnel shall maintain, prepare, and submit promptly all reports that may be required by State Law, State Department of Education Rules, School Board Rules, and administrative directives.

* * *

VI. Non-Instructional Personnel

Members of the non-instructional staff shall maintain all certifications, licenses and job requirements as a condition of employment. Failure to do so shall warrant disciplinary action up to and including dismissal from all employment.

Any loss of certification, license or other job requirement shall immediately be reported by the non-instructional staff member to his/her site supervisor. Failure to do so shall constitute a violation of this rule.

27. School Board Rule 6Gx13-4A-1.213, Code of Ethics, provides in pertinent part:

I. INTRODUCTION

All members of The School Board of Miami-Dade County, Florida, administrators, teachers and all other employees of Miami-Dade County Public Schools, regardless of their position, collective bargaining status or role, because of their dual roles as public servants and educators are to be bound by the following Code of Ethics. . .

* * *

Further, nonacademic and elected officials are bound to accept these principles since these groups reflect critical policy direction and support services for the essential academic purpose.

II. APPLICATION

This Code of Ethics applies to all members of The School Board of Miami-Dade County, Florida, administrators, teachers, and all other employees. . .

Employees are subject to various other laws, rules, and regulations, including but not limited to "The Code of Ethics for the Education Profession in Florida and the Principles of Professional Conduct of the Education Profession in Florida," Chapter 6B-1.001 and -1.006, F.A.C., the "Code of Ethics for Public Officers and Employees," found in Chapter 112, Part III of the Florida Statutes, and School Board Rule

6Gx13-4A-1.212, Conflict of Interest, which are incorporated herein by reference and this Code of Ethics should be viewed as additive to these laws, rules and regulations. To the extent not in conflict with any laws, School Board rules or governmental regulations, this Code of Ethics shall control with regard to conduct. In the event of any conflict, the law, regulation or School Board Rule shall control.

III. FUNDAMENTAL PRINCIPLES

The fundamental principles upon which this Code of Ethics is predicated are as follows:

Citizenship - Helping to create a society based upon democratic values; e.g., rule of law, equality of opportunity, due process, reasoned argument, representative government, checks and balances, rights and responsibilities, and democratic decision-making.

Cooperation - Working together toward goals as basic as human survival in an increasingly interdependent world.

Fairness - Treating people impartially, not playing favorites, being open-minded, and maintaining an objective attitude toward those whose actions and ideas are different from our own.

Honesty - Dealing truthfully with people, being sincere, not deceiving them nor stealing from them, not cheating or lying.

Integrity - Standing up for your beliefs about what is right and what is wrong and resisting social pressure to do wrong.

Kindness - Being sympathetic, helpful, compassionate, benevolent, agreeable, and gentle toward people and other living things.

Pursuit of Excellence - Doing your best with the talents you have, striving toward a goal, and not giving up.

Respect - Showing regard for the worth and dignity of someone or something, being courteous and polite, and judging all people on their merits. It takes three major forms: respect oneself, respect for other people, and respect for all forms of life and the environment.

Responsibility - Thinking before you act and being accountable for your actions, paying attention to others and responding to their needs. Responsibility emphasizes our positive obligations to care for each other.

Each employee agrees and pledges:

1. To abide by this Code of Ethics, making the well-being of the students and the honest performance of professional duties core guiding principles.

* * *

8. To be efficient and effective in the delivery of job duties.

IV. CONFLICTS OF INTEREST

* * *

Financial Interest. . . .

* * *

Contracting Decisions. . . .

* * *

Honoraria. . . .

* * *

Personal Advertisements. . . .

* * *

Employee Publications. . . .

* * *

Referrals. . . .

* * *

Outside Income. . . .

* * *

General Limitation on Solicitation. . . .

* * *

Gifts and Gratuities. . . .

* * *

V. CONDUCT REGARDING STUDENTS

* * *

VI. PERSONNEL MATTERS

Confidentiality. . . .

* * *

Enforcement. . . .

* * *

Certification. . . .

28. The evidence demonstrates that Mr. Kuse's conduct violated the employment practices and policies of the School Board. Mr. Kuse's following conduct violated the School Board's "Breaktime and Mealtime Policy of Employees" and the School Board's policy regarding "Daily Status Forms": he was out of his

assigned work area without authorization; used the School Board's vehicle for personal use, without authorization; and did not properly complete his Daily Status Form for one day. Further, the evidence demonstrates that Mr. Kuse's conduct violated School Board Rule 6Gx13-4A-1.21, Responsibilities and Duties, as to Employee Conduct and Records and Reports; and School Board Rule 6Gx13-4A1.213, Code of Ethics, as to the fundamental principle of honesty and responsibility and not being efficient and effective in his job duties. Other employees engaging in the same or similar conduct as a practice or as being customary does not excuse Mr. Kuse's conduct from violating the School Board's policies. Further, the practice of the School Board, when such conduct was reported, was to discipline the violators.

29. As agreed to by the parties, the next issue in the instant case is whether the conduct of Mr. Kuse, taken in light of his prior employment record and the requirements of progressive discipline, constituted just cause for termination. Again, by the parties agreeing to limit the issues and the evidence and testimony presented in the instant case, any criminal history of Mr. Kuse was eliminated from the Notice of Specific Charges and from consideration by the undersigned.

30. The evidence demonstrates that Mr. Kuse has been employed with the School Board for more than 20 years; that,

within that more than 20 years of employment, his direct supervisors rated him as being a hard worker and his work performance as of high caliber; that his one and only prior disciplinary action occurred in 1999, approximately 6 years before the instant case, involving an emergency situation with his minor child, who was ill at school, and because of that emergency situation, Mr. Kuse received a reprimand for personal use of a School Board vehicle, without authorization, for deviating from his work schedule, without authorization, and for failure to properly complete his Daily Status Form; that the usual disciplinary action imposed for a first offense of personal use of a School Board vehicle and failure to properly complete Daily Status Forms is suspension from 5 to 15 days; and that no employee had been terminated for stopping for coffee breaks at a restaurant in a School Board vehicle before reaching their assigned worksite--even employees who had been consistently meeting with breakfast, without authorization, were suspended. Further, the evidence demonstrates that, in the instant case, Mr. Kuse stopped for coffee breaks at a restaurant, before reaching his assigned worksite, in a School Board vehicle, without authorization, and he indicated insufficient information on his Daily Status Form for one day.

31. Under the circumstances of the instant case, the imposition of termination of employment is too severe in

relation to, i.e., disproportionately related or not reasonably related to, the seriousness of Mr. Kuse's conduct and his employment record. See Collins v. School Board of Dade County, Florida, 676 So. 2d 1052 (Fla. 3rd DCA 1996); Bell v. School Board of Dade County, Florida, 681 So. 2d 843 (Fla. 3rd DCA 1996). A suspension is more reasonably related to the seriousness of Mr. Kuse's conduct and his employment record. Furthermore, a suspension of 30 days, without pay, is reasonable and comports with the Contract.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Miami-Dade County School Board enter a final order suspending Robert Kuse, Jr. for 30 days without pay and consistent with the terms and conditions of the Contract between the Miami-Dade County School Board and the Dade County Public School Maintenance Employee Committee.

DONE AND ENTERED this 13th day of July 2007, in
Tallahassee, Leon County, Florida.

Errol H. Powell

ERROL H. POWELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of July, 2007.

ENDNOTES

^{1/} The parties filed an Amendment to Joint Pre-Hearing Stipulation specifying the limited issues.

^{2/} As to the exhibits admitted into evidence, Petitioner's exhibits were paginated and the following is applicable: Petitioner's Exhibit 1: admitted only page 23, which was not offered for the truth of the matter asserted; Petitioner's Exhibit 3: admitted only page 27 but disregard the information regarding selling movies, the reporter, and the television station; Petitioner's Exhibit 4: admitted only pages 35, 36, 37, 38, 39, and 40; Petitioner's Exhibit 9: struck video tape and DVD information; Petitioner's Exhibit 12: Mr. Kuse requested it to be admitted and no objection by the School Board; Petitioner's Exhibit 17: admitted only pages 67, 68, 69, 71, 73, 74, 76, 78, 82, 84, 85, 86, 87, 88, and 97; and Petitioner's Exhibit 20: admitted only page 152.

^{3/} Testimony was presented on other Daily Status Forms, which testimony indicated that they too contained insufficient or unclear information to properly establish times.

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.