

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

INDIAN RIVER COUNTY SCHOOL )  
BOARD, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 07-0194  
 )  
ANDREA MCGRIFF, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on March 14, 2007, in Vero Beach, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Amy J. Pitsch, Esquire  
Brown, Garganese, Weiss & D'Agresta, P.A.  
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Post Office Box 2873  
Orlando, Florida 32802-2873

For Respondent: Andrea McGriff, pro se  
3479 44th Street  
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STATEMENT OF THE ISSUE

Whether the Petitioner should terminate the Respondent's employment as a school bus driver for the reasons set forth in correspondence dated December 14, 2006.

PRELIMINARY STATEMENT

In a letter dated December 14, 2006, Duncan N. P. Pritchett, Jr., the Indian River County Superintendent of Schools, notified Andrea McGriff that he intended to recommend to the Indian River County School Board ("School Board") that Ms. McGriff's employment as a bus driver with the School Board be terminated. As explained in the letter, Dr. Pritchett based his recommendation on his conclusion that she had "endangered the health, safety, and welfare of students by failing to take appropriate action and encouraging a fight between two students on your bus." On December 19, 2006, Ms. McGriff requested a hearing, and the School Board transmitted the matter to the Division of Administrative Hearings for assignment of an administrative law judge.<sup>1</sup> Pursuant to notice, the final hearing was held on March 14, 2007.

At the hearing, the School Board presented the testimony of Frank Harmer, Daniel McIntyre, and Duncan N.P. Pritchett; Petitioner's Exhibits 1, 2, 4 through 6, and 8 through 11 were offered and received into evidence. Ms. McGriff testified in her own behalf, and Respondent's Exhibits 1 and 2 were offered and received into evidence. On March 5, 2007, the School Board filed a Motion to Protect Student-Identifying Information Pursuant to Florida Statutes Section 1002.22. This motion was granted at the hearing as a preliminary matter.

The one-volume transcript of the proceedings was filed with the Division of Administrative Hearings on April 12, 2007, and the parties timely filed proposed findings of fact and conclusions of law.

#### FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. At all times material to this proceeding, Ms. McGriff was employed as a school bus driver by the School Board. She was hired for this position in 2003, and is on a continuing contract. In the four years since she began working as a bus driver for the School Board she has had no disciplinary action taken against her.

2. As a bus driver, Ms. McGriff is classified as an educational support employee of the School Board's Department of Transportation pursuant to Section 1012.40, Florida Statutes (2006).<sup>2</sup>

3. Ms. McGriff is a member of the Communication Workers of America for Professional Support Employees ("CWA"), and the School Board and the CWA have entered into a Collective Bargaining Agreement ("Bargaining Agreement") that is effective from July 1, 2005, through June 30, 2008.

4. Article 13C.2. of the Bargaining Agreement provides in pertinent part:

**Discipline and Termination of Professional Support Staff on Annual or Continuous Employment Status**

Suspension and dismissal of professional support staff personnel shall be conducted in accordance with the procedures contained below except that the Superintendent may suspend members of the professional support staff in an emergency.

a. With School Board approval, an employee may be suspended without pay, discharged and/or returned to annual status, for reasons including but not limited to the following:

\* \* \*

9. Endangering the health, safety or welfare of any student or employee of the District.

5. At the times material to this proceeding, Ms. McGriff was assigned as the driver of school bus number 69, and she regularly drove students attending Vero Beach High School to and from school. Students C.C., P.K., and E. were among the students who regularly rode on Ms. McGriff's school bus.

6. On October 27, 2006, Ms. McGriff prepared a bus referral to the assistant principal for student C.C., in which she stated that he had used inappropriate language while riding school bus number 69.

7. Frank Harmer, one of the assistant principals in charge of discipline at Vero Beach High School, received the referral and met with student C.C. on October 31, 2006, to discuss his conduct on the school bus on October 27, 2006. Mr. Harmer told C.C. to stop using inappropriate language on the bus.

8. During this conversation, C.C. told Mr. Harmer that he had been previously harassed by students on the bus. Mr. Harmer urged C.C. to report any future harassing behavior by students to the school bus driver.

9. In preparing for the meeting with C.C., Mr. Harmer consulted the School Board's computer system and learned that C.C. is a child with an emotional handicap and that he receives exceptional student education services from the School Board.

10. On October 31, 2006, after speaking with student C.C., Mr. Harmer spoke with Ms. McGriff about the October 27, 2006, referral and about his conversation with C.C. During this conversation, Mr. Harmer told Ms. McGriff that C.C. was a student with an emotional handicap and that she should ensure that the other students did not harass him in the future. Ms. McGriff indicated to Mr. Harmer that she would prevent any future harassment.

11. On the afternoon of November 3, 2006, at approximately 1:30 p.m., Ms. McGriff was waiting on school bus number 69 for the end of classes and the arrival of the students who would

ride the bus home that afternoon. The conversation and ensuing events that took place on school bus number 69 were recorded on a surveillance video that was installed in the bus in accordance with School Board policy to record the activities of the bus driver and students.

12. Student P.K. came onto the school bus before any of the other students, and P.K. initiated a conversation with Ms. McGriff about student C.C. During this conversation, which took place at approximately 1:31 p.m., Ms. McGriff referred to C.C. as a "dumb ass," and she complained to P.K. that C.C. got away with "murder." Ms. McGriff also told P.K. that she did not believe that C.C. was emotionally handicapped and that she wanted him off of her bus.

13. In this conversation, student P.K. told Ms. McGriff that student C.C. had written P.K. a note telling P.K. that he wanted to fight him. P.K. indicated that he might try to pick a fight with C.C. on the bus that day and told Ms. McGriff to hold a clipboard in front of the video camera so the fight couldn't be seen. Ms. McGriff told P.K. that she would hold a clipboard up and would just continue driving if P.K. and C.C. got into a fight.

14. Student P.K. had with him a stack of signs containing derogatory statements about student C.C. that he had prepared and wanted to post on the bus. Ms. McGriff laughed and

encouraged P.K. to hang the signs on the windows of the bus, which he did. When P.K. asked if Ms. McGriff had any tape, she told him that she did not but that she would give tape to him if she had any. Ms. McGriff also told P.K. that she would try to drive without laughing but that it would be difficult.

15. At approximately 1:35 p.m., student E. came onto the bus with a sign she had prepared that contained a derogatory remark about student C.C. P.K. and E. finished hanging the signs, gave each other a "high five," and Ms. McGriff laughed.

16. The other students began entering the school bus at approximately 1:38 p.m. When student C.C. boarded the bus, he saw the signs and tore down two of them. Student P.K. re-hung one sign and gave the other to C.C. C.C. sat in his seat with his head down. P.K. took pictures of C.C. with his camera phone, and Ms. McGriff chuckled.

17. Ms. McGriff pulled the bus away from Vero Beach High School at approximately 1:43 p.m. and began dropping off students at their bus stops. When student C.C. rose to exit the bus at his stop, student P.K. called out to him, "Bye Charles." C.C. turned, walked back to P.K., and struck P.K. several times, very quickly. C.C. then quickly left the bus.

18. Ms. McGriff called and reported the fight to her supervisor. She also thanked P.K. and told him: "I needed that."

19. Both students C.C. and P.K. received punishment in the form of out-of-school suspensions as a result of the altercation on the bus.

20. Ms. McGriff admitted to having said things she should not have said and to using poor judgment with regard to the November 3, 2006, incident.

21. Ms. McGriff endangered the safety and welfare of student C.C. on November 3, 2006, by allowing student P.K. to harass and humiliate C.C. on school bus number 69; by encouraging P.K. to harass and humiliate C.C. by laughing at P.K.'s plans to hang derogatory signs and to start a fight with C.C.; by making derogatory remarks to P.K. about C.C. herself; and by appearing to approve of P.K.'s plan to start a fight with C.C. by promising to cover the video camera when the fight started.

#### CONCLUSIONS OF LAW

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

23. Because this case is a proceeding to terminate Ms. McGriff's employment with the School Board and does not involve the loss of a license or certification, the School Board has the burden of proving the factual basis for termination by a



preponderance of the evidence. McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996); Allen v. School Board of Dade County, 571 So. 2d 568, 569 (Fla. 3d DCA 1990); Dileo v. School Board of Lake County, 569 So. 2d 883 (Fla. 3d DCA 1990).

24. Section 1012.40, Florida Statutes, provides in pertinent part:

(1) As used in this section:

(a) "Educational support employee" means any person employed by a district school system who is employed as a teacher assistant, an education paraprofessional, a member of the transportation department, a member of the operations department, a member of the maintenance department, a member of food service, a secretary, or a clerical employee, or any other person who by virtue of his or her position of employment is not required to be certified by the Department of Education or district school board pursuant to s. 1012.39. This section does not apply to persons employed in confidential or management positions. This section applies to all employees who are not temporary or casual and whose duties require 20 or more hours in each normal working week.

(b) "Employee" means any person employed as an educational support employee.

(2)(a) Each educational support employee shall be employed on probationary status for a period to be determined through the appropriate collective bargaining agreement or by district school board rule in cases where a collective bargaining agreement does not exist.

(b) Upon successful completion of the probationary period by the employee, the employee's status shall continue from year to year unless the district school superintendent terminates the employee for reasons stated in the collective bargaining agreement, or in district school board rule in cases where a collective bargaining agreement does not exist, or reduces the number of employees on a districtwide basis for financial reasons.

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

25. Article 22C.2.9. permits the School Board to suspend an employee without pay, discharge an employee, or return an employee to annual status for "[e]ndangering the health, safety or welfare of any student or employee of the District." Based on the findings of fact herein, the School Board has proven by a preponderance of the evidence that Ms. McGriff endangered the safety and welfare of student C.C.

26. In considering the appropriate penalty to be imposed for Ms. McGriff's conduct, it is noted that Ms. McGriff has had no other disciplinary action taken against her in the four years she has been employed by the School Board as a school bus driver.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Indian River County School Board enter a final order finding that Andrea McGriff endangered the safety and welfare of student C.C. and terminating her employment as a school bus driver.

DONE AND ENTERED this 14th day of June, 2007, in Tallahassee, Leon County, Florida.



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PATRICIA M. HART  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of June, 2007.

ENDNOTES

<sup>1/</sup> It is noted that, in the transmittal letter to the Division of Administrative Hearings dated January 15, 2007, the School Board's attorney expanded the charge set forth in the Superintendent's December 14, 2006, letter to Ms. McGriff to include "misconduct in office." The December 14, 2006, letter stands as the statement of the charges against Ms. McGriff, and, because this charge was not included in the Superintendent's notice to Ms. McGriff, it will not be addressed in this Recommended Order.

<sup>2/</sup> All references to the Florida Statutes herein are to the 2006 edition unless otherwise noted.

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.