

THE SCHOOL BOARD OF LEE COUNTY, FLORIDA

FILED  
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DIVISION OF  
ADMINISTRATIVE  
HEARINGS

JAMES W. BROWDER, Ed.D., )  
SUPERINTENDENT OF SCHOOLS )  
FOR LEE COUNTY, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
JULIUS BALOGH, )  
 )  
Respondent. )

Case No. 08-0001  
DOAH Case No. 07-5130

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**FINAL ORDER**

THIS CAUSE came to be heard on this the 22nd day of April, 2008, before the School Board of Lee County, Florida, and said School Board finds as follows:

1. Julius Balogh ("Respondent"), is employed by The School Board as a Bus Operator in the Transportation Department, Respondent is an "educational support employee," as defined by § 1012.40(1)(a), Fla. Stat. (2006), and is governed by the collective bargaining agreement between the School Board and the Support Personnel Association of Lee County ("SPALC"). The standard for the discipline of support personnel is "just cause" pursuant to Article 7 of the SPALC Agreement. The Superintendent has authority to recommend dismissal of Respondent, and the School Board has authority to dismiss Respondent from his employment. §§1012.27(5) and 1012.22(1)(f), Fla. Stat. (2006).

2. On May 16, 2007, during work hours, while driving his District assigned school bus the Respondent stopped at the San Carlos Lounge, a liquor store, and purchased two 50 ml. bottles of a product called Jagermeister which contained 35% alcohol by volume.

3. Respondent was wearing his District issued uniform.

4. Following the purchase of the product, the Respondent returned to his bus and continued on with his route.

5. The Respondent was confronted with the allegations and admitted to purchasing the product while returning his bus to the District compound following the completion of his route. The Respondent admitted to bringing the product on the school bus and continuing with his route. There were no occupants on the bus besides the Respondent.

6. Respondent was informed via certified letter dated August 2, 2007, from the Superintendent that he was being suspended with pay pending the outcome of the District's investigation into the matter.

7. A predetermination conference was scheduled with Respondent for August 30, 2007, to review the allegations and to give Respondent an opportunity to respond. Respondent was advised of the conference via certified letter dated August 21, 2007, from Ranice Monroe, Director of Professional Standards and

Equity. The letter included a copy of the District's investigative file.

8. Respondent attended the predetermination conference and was provided an opportunity to respond to the allegations.

9. Subsequent to the predetermination conference, a determination was made that probable cause existed to discipline Respondent for his conduct. A certified letter dated October 11, 2007, was sent to Respondent, advising him of the probable cause determination. The letter also advised that a recommendation would be made to the Superintendent that Respondent be terminated from his employment with the District.

10. On September 27, 2007, Petitioner's attorney was informed via letter from Robert C. Coleman, Esq., that he was retained to represent the Respondent and was requesting a formal administrative hearing.

11. On November 6, 2007, the Petition for Termination was heard by the School Board. The Respondent was suspended without pay at that time. The Petition was then forwarded to the Division of Administrative Hearings.

12. The final hearing took place on January 17, 2008, before Administrative Law Judge Daniel M. Kilbride.

13. The ALJ issued his Recommended Order on March 18, 2008.

14. The ALJ found in his Recommended Order that the School Board established by a preponderance of the evidence that the Respondent committed misconduct in office as defined by Florida Administrative Code Rule 6B-4.009, violated School Board Policy 5.37, Alcohol, Drug and Tobacco-Free Workplace, violated Article 16 of the SPALC Agreement - "Alcohol and Drug Free Workplace", violated School Board Policy 5.33 Personal Business on School Time and violated School Board Policy 7.04 Driving and Replacing District Vehicles. The foregoing constitutes "just cause" to terminate Respondent's employment.

15. On the basis of these findings, the ALJ recommended that the School Board enter a final order dismissing/terminating Respondent from his position as an employee with the Lee County School District.

16. Respondent, through his attorney, has filed exceptions to the Recommended Order.

17. The Board rejects Exception No. 1 as the finding of fact was based upon competent substantial evidence and the proceedings on which the findings were based complied with the essential requirements of law. Even though the record lacks evidence alleging the Respondent's ineffectiveness, the ineffectiveness of an employee in the District may be inferred when the misconduct speaks for itself. Independent evidence of

the Respondent's ineffectiveness as a bus driver after blatantly violating State Board Rules and Board Policies would be superfluous. In addition, The Board finds that misconduct in office is not the sole basis for Judge Kilbride's recommendation of dismissal/termination. The ALJ also found that Respondent violated School Board Policy 5.37, Alcohol, Drug and Tobacco-Free Workplace; Article 16 of the SPALC Agreement - "Alcohol and Drug Free Workplace"; School Board Policy 5.33 Personal Business on School Time and School Board Policy 7.04 Driving and Replacing District Vehicles.

18. The Board rejects Exception No. 2 as §1012.40 (b), Fla. Stat. (2006), "Educational support employees", provides that termination of an employee shall be for reasons stated in the collective bargaining agreement. Provision 7.10 of the SPALC Agreement provides for discipline during the contract year for just cause. Just cause is not defined in the SPALC Agreement. In the absence of a rule defining just cause the Board has discretion in setting standards subjecting an employee to discipline. The Board has exercised this discretion and has consistently applied the definition of misconduct for instructional employees to non-instructional employees.

19. The Board rejects Exception No. 3 as the Board has provided in Board Policy 5.29, Complaints Relating to Employees,

"All employees are expected to exemplify conduct that is lawful and professional and contributes to a positive learning environment for students. All employees are expected to meet the specific standards described in the Employee Handbook(s), negotiated contracts, the Principles of Professional Conduct for the Education Profession in Florida as described by State Board of Education Rule, and all local, State and federal laws." Under the foregoing Rule and consistent with the Board's discretion to define just cause as outlined above, Rules 6B-1.001 and 6B-4.006, F.A.C. apply to the Respondent.

20. The Board rejects Exception No. 4 as the SPALC Agreement provides in Provision 7.10, "Any discipline during the contract year, that constitutes a reprimand, suspension, demotion or termination shall be for just cause." Just cause is not defined; therefore, the Board has discretion in defining just cause. Provision 7.11 is applicable to the non-reappointment of employees following the first or second year of employment with the District and only pertains to the penalty an employee shall receive and not the definition of just cause. Violation of Board Policy 5.37, Alcohol, Drug and Tobacco-Free Workplace subjects an employee to disciplinary action, including termination, for violation of the Policy. Respondent admits that he violated Board Policy 5.37.

21. The Board rejects the Respondent's assertion that the circumstances surrounding his misconduct and prior employment record should mitigate against his termination and warrants a lesser disciplinary penalty. The ALJ weighed all of the evidence, including the testimony of the Respondent and his wife, and determined otherwise. The Board agrees with Judge Kilbride that Respondent's explanation of his conduct only explains why he may have chosen to purchase alcohol while on District time and bring it on a District school bus. It does not excuse his behavior, nor provide a basis for the Board to continue to employ the Respondent.

**ACCORDINGLY**, the Board rejects the Respondent's exceptions and adopts the ALJ's findings of fact, conclusions of law and the recommended penalty and incorporates them into this Final Order by reference.

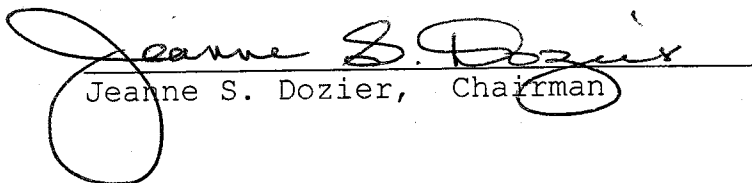
It is ORDERED as follows:

22. Respondent's employment with the School District of Lee County is terminated effective end of the day April 22, 2008.

23. This Order may be appealed to the District Court of Appeal of Florida, Second District, P.O. Box 327, 1005 E. Memorial Boulevard, Lakeland, Florida 33802, telephone number (863) 499-2290. The appeal must be filed within thirty (30)

days of the date of this Order by filing a Notice of Appeal with the School Board and a second copy with the District Court of Appeals. For further information, contact Robert Dodig, Jr., Staff Attorney, 2855 Colonial Boulevard, Fort Myers, Florida 33966, telephone number (239) 335-1447.

ENTERED on this the 22nd day of April, 2008.

  
Jeanne S. Dozier, Chairman

Copies to:

Robert Dodig, Jr., Staff Attorney  
Robert J. Coleman, Attorney for Respondent  
Division of Administrative Hearings  
Personnel File