

THE SCHOOL BOARD OF LEE COUNTY, FLORIDA

FILED

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JAMES W. BROWDER, Ed.D.,)
SUPERINTENDENT OF SCHOOLS)
FOR LEE COUNTY,)

Petitioner,)

v.)

COLLIN HALL,)

Respondent.)

Case No. 09-0005
DOAH Case No. 08-5409

DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

THIS CAUSE came to be heard on this the 22nd day of September, 2009, before the School Board of Lee County, Florida, and said School Board finds as follows:

1. Collin Hall ("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), Florida Statutes, 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), Florida Statutes.

2. On May 22, 2008, the District's Department of Professional Standards and Equity received information from Robert Morgan, the Director of the South Transportation Zone, regarding three incidents involving students that occurred on Bus #999 on May 21, 2008. The Respondent was the driver of Bus #999 on May 21, 2008.

3. On May 21, 2008, Bus #999, driven by the Respondent was delivering students home from school. All of the actions of the students that day were recorded via the school bus video and audio recording system.

4. Student C.M. was acting inappropriately in the back of the bus. The Respondent stopped the bus and proceeded to the back of the bus to deal with C.M. The Respondent, unprovoked, grabbed C.M., lifted him off the floor of the bus and put him into another seat on the bus. This incident was witnessed by the other students on the bus.

5. Approximately six minutes and 15 seconds later, C.M. and another student, J.O., became involved in a physical altercation. The two students continued to fight for approximately 40 seconds before the Respondent stopped the bus and walked to the back of the bus to get a closer look.

6. The fight continued for an entire minute before the Respondent took any action to intervene or break up the fight.

Instead, the Respondent stood nearby and watched the students fight. The Respondent then turned his back on the fight, threw up his hands in disgust and returned to the front of the bus. The Respondent did not contact dispatch or law enforcement regarding the fight.

7. Approximately 30 seconds later student C.M. yelled an expletive at student J.S. J.S. confronted C.M. and battered him to the point that C.M. ended up on the floor of the bus while J.S. kicked him numerous times. The incident continued for approximately 20 seconds before J.S. backed off and the Respondent returned to the back of the bus.

8. While lying on the floor C.M. complained that he was injured. The Respondent waited approximately 15 seconds attempting to assess C.M.'s injuries, Respondent then stated to C.M., "Let me see your nose". Respondent did not provide C.M. any medical attention or care and returned to the front of the bus.

9. C.M. suffered a bloody nose as a result of the attack. The Respondent then drove the bus to the San Carlos Park Fire Department so the student could receive medical attention.

10. The Respondent failed to contact dispatch immediately following the incident.

11. As a result of the allegations on May 22, 2008, the Respondent was suspended with pay and benefits pending the outcome of the District's investigation.

12. In accordance with provision 7.10 of the SPALC Agreement, a predetermination conference for Respondent was scheduled for September 11, 2008.

13. The Respondent attended the predetermination conference, represented by Robert J. Coleman, Esq., his union assigned counsel. The Respondent was advised that the purpose of the conference was to give him an opportunity to respond to the above allegations.

14. On September 16, 2008, the School District concluded its investigation and determined that probable cause existed to impose discipline on the Respondent. A certified letter of the same date was sent to the Respondent advising him of the probable cause determination and that a recommendation would be made to the Superintendent that his employment be terminated.

15. The final hearing took place on April 2, 2009, before Administrative Law Judge Daniel M. Kilbride.

16. The ALJ issued his Recommended Order on June 29, 2009.

17. The ALJ found in his Recommended Order that the School Board established by a preponderance of the evidence that Respondent failed to control students on his assigned school bus

and did not takes the steps necessary to protect students from injury. In addition, it was found that Respondent failed to appropriately respond to multiple student fights in accordance with the FDOE School Bus Driver's Manual and violated §1006.10(4), Florida Statutes, State Board of Education Rules and District policies. The foregoing constitutes "just cause" to terminate Respondent's employment.

18. 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.

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

20. 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. The Administrative Law Judge relied upon direct evidence regarding what occurred on the bus that day. The direct evidence is in the form of an audio and video recording of the events on bus 999 during the afternoon of May 21, 2008. The reliance on the audio and video recording and eye witness testimony demonstrates that the finding of fact

outlined in paragraph 12 of the recommended order was based upon competent substantial evidence.

21. The Board rejects Exception No. 2 as the Respondent's argument is speculative and the finding of fact was based upon competent substantial evidence and the proceeding complied with the essential requirements of law. The Administrative Law Judge found that the student was suspended for one day from the bus. The Judge found that C.M.'s attendance on the bus did not excuse Respondent's misconduct, nor did it provide sufficient mitigation to lessen the recommended penalty. The finding of fact in paragraph 21 was based upon competent substantial evidence.

22. The Board adopts Respondent's Exception No. 3 and rejects the finding of fact contained in paragraph 30, that the Petitioner proved Respondent violated the seatbelt policy. This finding of fact was not based upon competent substantial evidence. The Administrative Law Judge found in paragraph 27 that the District effectively withdrew this charge at hearing.

ACCORDINGLY, the Board rejects Respondent's Exceptions 1 and 2, adopts Exception No. 3 regarding the seatbelt policy contained in paragraph 30 of the Recommended Order and adopts the remainder of the ALJ's findings of fact, conclusions of law and

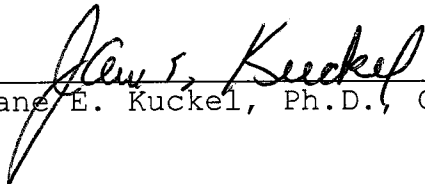
the recommended penalty and incorporates them into this Final Order by reference.

It is ORDERED as follows:

23. Respondent's employment with the School District of Lee County is terminated effective end of the day September 22, 2009.

24. 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 September, 2009.



Jane E. Kuckel, Ph.D., Chairman

Copies to:

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