

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LEE COUNTY SCHOOL BOARD,                    )  
  )  
          Petitioner,                            )  
  )  
vs.    )     Case No. 08-5409  
  )  
COLLIN HALL,                                    )  
  )  
          Respondent.                         )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER

A formal hearing was held in this matter before Daniel M. Kilbride, Administrative Law Judge, Division of Administrative Hearings, on April 2, 2009.

APPEARANCES

For Petitioner: Robert Dodig, Jr., Esquire  
School District of Lee County  
2855 Colonial Boulevard  
Fort Myers, Florida 33966-1012

For Respondent: Robert J. Coleman, Esquire  
Coleman & Coleman  
Post Office Box 2089  
Fort Myers, Florida 33902-2089

STATEMENT OF THE ISSUE

Whether Petitioner has just cause to terminate Respondent's employment as an educational support employee.

PRELIMINARY STATEMENT

On October 21, 2008, Petitioner suspended Respondent without pay and benefits and notified Respondent that Petitioner intended to seek termination of Respondent's employment. Respondent timely requested an administrative hearing. Thereafter, this matter was referred to the Division of Administrative Hearings (DOAH) to conduct the administrative hearing. Following discovery, this matter was set for final hearing.

At the hearing, certain facts contained in the Joint Pre-Hearing Stipulation were officially recognized. Petitioner presented the testimony of two witnesses: Craig Baker and Robert Morgan. Petitioner's exhibits numbered 1 through 12 were admitted into evidence. Respondent presented the testimony of four witnesses: Steve Lucas, Tammy Black, Kelia Wallace and Collin Hall. Respondent also testified on his own behalf. Respondent's exhibits numbered 1 through 11, 13 and 14 were admitted into evidence. The two-volume Transcript of the hearing was filed with DOAH on May 4, 2009. Petitioner and Respondent each timely-filed their respective Proposed Recommended Orders, which have been carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent, Collin Hall, has been employed with the Lee County School District since August 13, 2001. He is currently assigned as a Bus Operator in Petitioner's Transportation Department.

2. Respondent is a member of the Support Personnel Association of Lee County ("SPALC") and has been a member during all times relevant to this matter.

3. Respondent was assigned as an unassigned regular (UAR) bus operator during the 2007-2008 and 2008-2009 school year. A UAR is available each day to be assigned to a bus when the regular driver is out sick or if the bus route is challenging. The District considers a UAR bus operator as its most professional bus operator.

4. The allegations against Respondent are set forth in the Petition for Termination of Employment filed with DOAH (the Petition). In relevant part, the Petition charges Respondent with the following:

a. failing to control students on the bus Respondent was operating;

b. failing to protect students on the bus if an emergency should develop due to the conduct of the students;

c. failing to ensure that each passenger on the bus was wearing a safety belt;

d. failing to maintain order and discipline, require all passengers remain seated and keep the aisles clear, and immediately report to the designated official student misconduct occurring on the bus in violation of Florida Administrative Code Rule 6A-3.017;

e. grabbing a student in violation of Board Policy 5.26;

f. failing to adhere to the highest ethical standards and to exemplify conduct that is lawful and professional and contributes to a positive learning environment for students in violation of Board Policies 5.02 and 5.29; and

g. failing to call a dispatcher for assistance if a discipline problem is not resolved in a few minutes as outlined in the Lee County School District's Handbook for bus operators.

5. Respondent attended various trainings during his tenure with the District, including training entitled, "Wolfgang Student Management," "All Safe in their Seats," "Dealing with Difficult Students/Seatbelts," "Bully on Bus," "ESE Behavior" and "First Line of Defense." All of these classes provided training in student management or student discipline on a school bus.

6. In addition to receiving yearly and periodic training, Respondent was provided a manual entitled "School Bus Driver's Manual, Critical Incident Procedures" published by the Florida Department of Education (FDOE) and distributed by the District

to all bus operators. Page 14 of the manual outlines the procedures to be used for disruptive students.

7. The Bus Driver's Manual further provides in its Introduction that:

The procedures outlined in this document are guidelines (emphasis added) and should be reviewed and tailored by each school district to conform to local policies - always (emphasis theirs) adhere to the district emergency procedures.

Although these guidelines reflect the best practices of several Florida school district transportation departments, no one can foresee the details of every emergency. Many emergencies require the driver's best judgment, keeping in mind the priorities of life safety (sic), protection of property and the environment.

8. In keeping with the FDOE's directive to tailor the guidelines to conform to the District's local policies, the District established a policy for the "Preservation of Order on Special Needs Bus." That policy is outlined in Robert Morgan's August 24, 2008, Memorandum to Professional Standards. It requires the school bus operator "and/or attendant" to preserve order and good behavior on the part of all pupils being transported. It also provides that:

shall an emergency develop due to conduct of the pupils on the bus, the bus driver and/or attendant shall take steps reasonably necessary to protect the pupils on the bus. They are not obligated to place themselves in physical danger; however, they are

obligated to immediately report pupil misconduct to a Transportation Supervisor.

(emphasis supplied)

9. On May 21, 2008, Respondent was assigned to Bus 999, along with bus attendant Kelia Wallace. Bus 999 transported students that attend Royal Palm Exceptional Center. Royal Palm Exceptional Center is a school that educates students with special needs, including those that may have emotional issues that result in disruptive behavior. All Royal Palm students have Individual Education Plans that require special transportation. Bus 999 was equipped with an audio and video recording system, as are all Exceptional Student Education (ESE) busses in Lee County. The audio and video are recorded to a hard drive which can be viewed at a later time.

10. Robert Morgan, Director of Transportation South, was alerted of an issue on Bus 999 on the evening of May 21, 2008. Morgan was informed that Bus 999 made an unscheduled stop at the San Carlos Park Fire Station during its afternoon route earlier that day. As a result, on the morning of May 22, 2008, Morgan viewed the video recording from Bus 999 from the previous afternoon. Following his review of the footage, Morgan directed a member of his staff to copy the relevant portions of the raw footage to a compact disc. The information on the disc was then

forwarded to the District's Department of Professional Standards and Equity for review and further investigation.

11. There was some testimony from Respondent doubting the accuracy of the video and inferring that the video had been altered in some way. However, the record is devoid of any evidence to contradict the audio and video evidence submitted on compact disc by the District. In addition, there was credible eye witness testimony relative to the incident.

12. After Respondent picked up the students at their school and was following the route to deliver them home, Student C.M. was acting inappropriately in the back of the bus. From his driver's seat, Respondent commanded C.M. to sit down, which was ignored. Respondent pulled over, stopped the bus and proceeded to the back of the bus to deal with C.M. Respondent grabbed C.M., lifted him off the floor of the bus, carried him several rows forward, and put him into another seat on the bus. C.M. was not kicking, punching or threatening any other student when Respondent took this action. C.M. continued to carry on a taunting dialogue with students, including J.O., who was in the back of the bus.

13. Respondent then proceeded on the route. After several minutes Respondent noticed some paper sitting in the middle of the aisle. While the bus was moving, Respondent ordered J.O. to come forward in the aisle to retrieve the piece of paper he had

thrown toward the front of the bus. As a result, J.O. walked by C.M. who was still taunting J.O. and other students. The two students then become involved in a physical altercation. Respondent said nothing and continued to drive the bus. The two students continued to fight for approximately 40 seconds before Respondent stopped the bus and walked toward the back of the bus to get a closer look.

14. The fight continued for an entire minute before Respondent took any action to intervene or break up the fight. Instead, Respondent instructed his bus attendant to write up a disciplinary referral (students fighting), but stood nearby and watched the students fight. Respondent said nothing to the students. Respondent then turned his back on the fight, threw up his hands in disgust and returned to the driver's seat to resume driving the bus. Respondent did not contact dispatch or law enforcement regarding the fight.

15. Approximately 30 seconds later, student C.M. yelled an expletive at student J.S. J.S. came forward, confronted C.M., and battered him to the point where C.M. ended up on the floor of the bus, where J.S. punched and kicked him numerous times. Respondent said nothing. The incident continued for another 20 seconds before J.S. backed off.

16. Respondent again walked down the aisle toward the students. While lying on the floor between the seats, C.M.



complained that he was injured. Respondent waited several seconds prior to attempting to assess C.M.'s injuries. Respondent then stated to C.M., "Let me see your nose." Respondent observed that C.M. suffered a bloody nose as a result of the altercation.

17. Respondent did not provide any immediate medical attention or care to C.M. Respondent returned to the driver's seat and began to drive. Respondent drove the bus to the San Carlos Park Fire Department station where C.M. received first aid from an Emergency Medical Technician. C.M.'s father was also notified and responded to the scene.

18. Respondent attempted to defend his conduct by indicating that he would have been injured or he could have injured one of the students if he attempted to break up the altercations. This testimony is not credible.

19. Respondent admitted that bus operators are prohibited from picking up students and that he should have used verbal prompts during the other incidents to urge the students to stop fighting. Respondent testified that prior to the events depicted on video, C.M. had responded to an earlier verbal prompt by the bus attendant to return to his seat. Respondent's testimony is inconsistent and not entirely credible in this regard.

20. In a further effort to mitigate Respondent's conduct, Respondent's counsel attempted to portray the students on the bus as completely uncontrollable and the District or school as unsupportive of the bus operators hired to transport these students. However, credible evidence showed that disruptive students were regularly suspended from the bus and from school.

21. C.M. had proven to be a discipline problem on the bus. C.M. historically was confrontational and argumentative with the other students. Notwithstanding C.M.'s prior history of misconduct and violence on the bus, the District suspended C.M. from the bus for one day. Whether Respondent failed to take adequate corrective measures to ensure that C.M. did not repeat such actions prior to allowing him to continue riding the bus is irrelevant to this proceeding.

22. However, Respondent was aware that at least one of the students on the bus had been previously disciplined for inappropriate conduct. Respondent had experience transporting Royal Palm students and had transported Royal Palm students previously during the 2007-2008 school year.

23. In addition, Respondent stated that he had attended all of the training the District provided regarding the discipline and handling of disruptive students on a school bus. It is clear from the record that Respondent had been trained to deal with such students.

24. Respondent mentioned the word "judgment" repeatedly throughout his testimony. Although judgment plays a role in the control of student behavior, the FDOE School Bus Driver's Manual spells out the protocol for dealing with disruptive students. The first three things a bus operator is to do is to tell students to stop fighting, pull off the road to a safe place and call dispatch and have them contact parents. Judgment is not a part of any of the above instructions, and Respondent failed to follow two out of three requirements. He neither told the students to stop fighting nor called dispatch to inform them of the fights.

25. The bus operator is then to go to the area of the fight, assess the situation, identify the students involved and attempt to gain control. If the operator cannot gain control the FDOE manual states that the operator should radio for help, remove other students from the area of the fight, intervene if the situation is life-threatening, or if not, to monitor and wait for assistance and use reasonable force to prevent injury to himself and the students.

26. Respondent never attempted to gain control of the situation and then, when it did get out of control, he never radioed for help, removed other students from the area of the fight or used reasonable force to prevent injury to the students.

27. Morgan testified that Respondent's alleged violation of the policy for safety belts was "not the issue," and the District was not seeking to discipline Respondent for anything related to the non-use of safety belts. Consequently, the District effectively withdrew this charge at hearing.

28. Also, the District did not introduce as evidence the School District of Lee County Transportation Services Operator's, Assistant's and Monitor's Handbook. The charge that Respondent did not follow the procedure as outlined in the Handbook therefore fails for lack of evidence.

29. Respondent failed to comply with the District's policy for preserving order on a special needs bus. He did not exercise his best judgment. His testimony as to why he did not physically intervene in the fights between C.M. and J.O. and J.S. for fear that he would injure himself or the students is not credible. Although he directed Ms. Wallace to write disciplinary referrals for the students that were fighting, this was inadequate. He did, however, obtain emergency medical care for C.M., and notified the dispatch center of the Transportation Department of the fight and the fact that he was required to divert his route of travel to the fire station for medical care. Immediately, upon his return to the bus compound, Respondent completed and filed with his supervisor an Incident Report detailing the events on the bus that afternoon.

30. Petitioner proved by a preponderance of evidence that Respondent violated the policies recited in the Petition as a., b., c., d., e., and f.

31. Since Respondent commenced working for the District, he received one probationary and seven annual performance assessments. With the exception of his 2007-2008 performance assessment, Respondent always scored at an "Effective level of performance observed," except one score of "Inconsistently practiced" in his 2003-2004 assessment for the area targeted of "Demonstrates an energetic and enthusiastic approach to work, avoids excessive or unnecessary use of sick/personal leave." Respondent's supervisor consistently recommended him for reemployment, including the 2008-2009 school year.

32. In his 2007-2008 annual performance assessment, Respondent received a score of "Effective level of performance observed" in 29 out of a total of 32 areas targeted for assessment. Respondent received two scores of "Inconsistently practiced" for the areas of "Reports to work as expected unless an absence has been authorized" and "Reports to work on time as determined by route schedules," and one score of "Unacceptable level of performance observed" for the area of "Demonstrates an energetic and enthusiastic approach to work, avoids excessive or unnecessary use of sick/personal leave." Although the District's performance assessment form provides that Criteria

marked "I" or "U" require additional documentation, there was no evidence of any such documentation.

33. During the 2007-2008 school year, Respondent was disciplined on two occasions. Respondent was involved in a physical altercation with another employee in February of 2008 and as a result he was suspended for three days without pay. In addition, Respondent was suspended for an additional three days without pay for causing a disruption on another bus operator's route.

34. Petitioner has proven by a preponderance of evidence that Petitioner has just cause to terminate Respondent.

#### CONCLUSIONS OF LAW

35. DOAH has jurisdiction over the parties and the subject matter of these proceedings, pursuant to Section 120.569 and Subsections 120.57(1), and 1012.33(6)(a), Florida Statutes (2008)<sup>1</sup>, and School Board Policy 1.16(6)(c).

36. As a bus operator, Respondent is an "educational support employee," as defined by Subsection 1012.40(1)(a), Florida Statutes.

37. The superintendent of the District has the authority to recommend to Petitioner that educational support employees be suspended and/or dismissed from employment. § 1012.27, Fla. Stat.

38. The School Board has the authority to terminate and/or suspend without pay, educational support employees.

§§ 1012.22(1)(f) and 1012.40(2)(c), Fla. Stat.

39. An educational support employee can only be terminated for the reasons set forth in the collective bargaining agreement (SPALC agreement), which governs these employees. The SPALC agreement provides that support employees can only be terminated for "just cause." § 1012.40(2)(b), Fla. Stat.; SPALC agreement 7.10. Provision 7.10 of the SPALC Agreement provides that "any discipline during the contract year, that constitutes a reprimand, suspension, demotion, or termination shall be for just cause."

40. Just cause for discipline is a reason which is rationally and logically related to an employee's conduct in the performance of the employee's job duties and which is concerned with inefficiency, delinquency, poor leadership, lack of role modeling or misconduct. State ex rel Hathaway v. Smith, 35 So. 2d 650 (Fla. 1948).

41. Petitioner has the burden of establishing just cause by a preponderance of the evidence. McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996).

42. The Petition sets forth the specific facts upon which Respondent's proposed discipline is based. Respondent cannot be disciplined for conduct that is not set out in the Petition.

Respondent is entitled to fair notice and an opportunity to be heard on each of the charges against him. Pilla v. School Board of Dade County, Florida, 655 So. 2d 1312 (Fla. 3d DCA 1995); Florida State University v. Tucker, 440 So. 2d 37 (Fla. 1st DCA 1983).

43. Under Florida law, a school board's decision to terminate an employee is one affecting the employee's substantial interest; therefore the employee is entitled to a formal hearing under Subsection 120.57(1), Florida Statutes, if material issues of fact are in dispute. Sublett v. District School Board of Sumpter County, 617 So. 2d 374, 377 (Fla. 5th DCA 1993).

44. Subsection 1012.45(2), Florida Statutes, invests each school bus driver with the authority and responsibility to control students during the time students are on the school bus pursuant to Section 1006.10, Florida Statutes. Section 1006.10, Florida Statutes, requires Respondent to control students during the time students are on the school bus.

45. Subsection 1006.09(1)(a), Florida Statutes, requires each school principal to "fully support the authority of his or her teachers and school bus drivers to remove disobedient, disrespectful, violent, abusive, uncontrollable, or disruptive students from the classroom and the school bus . . . and give full consideration to the recommendation for discipline made



by . . . a bus driver when making a decision regarding student referral for discipline.”

46. The District’s Code of Student Conduct expressly provides that with regard to bus transportation, fighting will not be permitted and suspension of bus-riding privileges may result when a student violates the code of conduct. (emphasis theirs).

47. The School Board has construed just cause for purposes of discipline pursuant to the SPALC Agreement in the same manner as that phrase is used in Section 1012.33, Florida Statutes, relating to instructional staff. See Lee County School Board v. Simmons, Case No. 03-1498 (DOAH July 15, 2003)(adopted in toto by Final Order dated August 12, 2003). See also Lee County School Board v. Kehn, Case No. 04-1912 (DOAH February 21, 2005) (adopted in toto by Final Order dated March 10, 2005).

48. The School Board has established by a preponderance of evidence that Respondent, on May 21, 2008, failed to control students on the school bus and did not take the steps necessary to protect students from injury.

49. Respondent’s failure to respond appropriately to multiple student fights and his failure to follow the procedure outlined in the FDOE School Bus Driver’s Manual regarding disruptive behavior are in violation of Subsection 1006.10(4), Florida Statutes, which requires a bus operator to take the

steps necessary to protect students. His actions are in violation of Florida Administrative Code Rule 6A-3.017, which requires a bus driver to maintain order and discipline to ensure that each passenger remains seated, to keep each aisle clear and to report immediately to the proper authority any misconduct on the part of any student while on the bus.

50. Respondent's actions are also in violation of School Board Policy 5.26, which prohibits pushing or grabbing a student unless the student's health or safety is directly threatened and the employee is acting in defense of a student.

51. Respondent is in violation of School Board policy 5.02, which requires Respondent to be in compliance with state laws and adhere to the highest ethical standards. Finally, Respondent is in violation of School Board Policy 5.29, which requires Respondent to exemplify conduct that is lawful and professional.

52. The School Board has established by a preponderance of evidence that Respondent's conduct on May 21, 2008, while serving as the bus operator for Bus 999, constituted just cause for his dismissal from employment from the School Board.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board enter a Final Order finding that just cause exists for termination of the employment

of Respondent and dismissing Respondent from his position as a bus operator with the School District of Lee County.

DONE AND ENTERED this 29th day of June, 2009, in Tallahassee, Leon County, Florida.



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DANIEL M. KILBRIDE  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 29th day of June, 2009.

ENDNOTE

<sup>1/</sup> All references to Florida Statutes are to Florida Statutes (2008), unless otherwise indicated.

COPIES FURNISHED:

Deborah K. Kearney, General Counsel  
Department of Education  
Turlington Building, Suite 1244  
325 West Gaines Street  
Tallahassee, Florida 32399-0400

Dr. Eric J. Smith, Commissioner of Education  
Department of Education  
Turlington Building, Suite 1514  
325 West Gaines Street  
Tallahassee, Florida 32399-0400

James W. Browder, Ed.D., Superintendent  
School District of Lee County  
2855 Colonial Boulevard  
Fort Myers, Florida 33966-1012

Robert J. Coleman, Esquire  
Coleman & Coleman  
Post Office Box 2089  
Fort Myers, Florida 33902-2089

Robert Dodig, Jr., Esquire  
School District of Lee County  
2855 Colonial Boulevard  
Fort Myers, Florida 33966-1012

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.