

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 10-2978
	)	
AVA WHITE-SMITH,	)	
	)	
Respondent.	)	
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RECOMMENDED ORDER

On July 28, 2010, a formal administrative hearing was conducted by video teleconference in Tallahassee and Sarasota, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Scott A. Martin, Esquire		
Manatee County School Board	Post Office Box	
9069	Bradenton, Florida 34206-9069	For
Respondent: Norman Adam Tebrugge, Esquire		
Tebrugge Legal	520 12th Street, West, Suite	
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STATEMENT OF THE ISSUE

The issue in this case is whether the Manatee County School Board (Petitioner) has just cause to terminate the employment of School Bus Operator Ava White-Smith (Respondent).

PRELIMINARY STATEMENT

By an Administrative Complaint dated May 29, 2010, the Petitioner alleged that, on February 19, 2010, students riding on the Respondent's bus consumed alcoholic beverages and that the Respondent failed to take action to prevent the alcohol consumption or to report the students to appropriate authorities for discipline. Additionally, the Administrative Complaint alleged that the Respondent's operation of the bus on February 23, 2010, created a dangerous traffic situation.

The Respondent denied the allegations and requested a formal administrative hearing. The Petitioner forwarded the dispute to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner presented the testimony of six witnesses and had Exhibits 1 through 18 admitted into evidence. The Respondent testified on her own behalf and presented the testimony of one witness.

No transcript of the hearing was filed. Both parties filed Proposed Recommended Orders that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this case, the Respondent was a school bus operator employed by the Petitioner.

2. School bus operators employed by the Petitioner are responsible for safely operating the vehicle and for maintaining order among the students being transported.

3. On buses that are equipped with seat belts, students are to use the seat belts. Whether or not seat belts are present, students are to remain properly seated, facing forward, while the bus is in motion.

4. The Petitioner prohibits consumption of all beverages on school buses. Part of the rationale for prohibiting beverage consumption by passengers on the bus is the inherent difficulty in identifying the type of beverage being consumed.

5. At all times material to this case, the Respondent operated school bus number 611. Her school bus was equipped with seat belts. A large rearward-facing mirror located above the driver's position allowed the driver to observe the passengers. The bus was also equipped with an audio/video system that recorded the passengers being transported.

6. On the morning of February 19, 2010, the Respondent transported students to the Manatee School for the Arts (MSA) and to the "Just for Girls" (JFG) School.

7. The audio/video system recorded the behavior of the passengers on the Respondent's bus on February 19, 2010. Copies of the video recordings were admitted as exhibits and were

played during the hearing and narrated by a witness for the Petitioner. The recordings were also reviewed subsequently by the Administrative Law Judge.

8. On February 19, 2010, the Respondent first drove the bus to the MSA, where she discharged the majority of students being transported that day, and then she drove the remaining students to the JFG School.

9. As demonstrated by the video recordings, many of the students on the Respondent's bus were not properly seated and were not wearing the seat belts. The Respondent made no attempt to require the passengers to sit in a forward-facing manner or to require that seat belts be used.

10. During the time that all the students were present on the bus, the JFG School students sat in the rear of the vehicle. Some of the JFG School students surreptitiously consumed an unknown beverage from a container that was passed around by the students involved in the incident.

11. As the bus trip continued and the beverage was consumed, the participating students became very loud and restless.

12. The Respondent was aware that some students were consuming a beverage on the bus, but she made no attempt to intervene in the activity. Given the prohibition on consumption of beverages, and the demeanor of the students involved, the

Respondent should have interceded in the situation.

13. When the Respondent arrived at the MSA, the students attending that facility exited the vehicle, and the JFG School students moved to the front of the bus. Before the JFG School students were seated, the Respondent started to drive the bus away from the MSA. None of the JFG School students appeared to use the seat belts after moving.

14. While being transported to the JFG School, some students sang or spoke loudly and inappropriately, one student stood and danced to a lewd song on her music player, two students were excessively affectionate, and a general "party" mood prevailed.

15. It is inconceivable that the Respondent was unaware of the JFG School students' behavior after the MSA students were discharged from the vehicle. The JFG School students were at the front of the bus, in the immediate proximity of the Respondent, who on occasion conversed with and about the students. The Respondent made no significant attempt to require the students to be seated properly or to correct their behavior.

16. Shortly after the bus arrived at the JFG school, school administrators discovered that some of the JFG School students who had been transported by the Respondent were intoxicated. One of the students had a half-emptied, half-gallon bottle of gin in her possession. The JFG School



officials took disciplinary action against the students involved in the incident.

17. None of the students being transported by the Respondent to the JFG School had ever been the subject of a disciplinary report filed by the Respondent.

18. At the hearing, the Respondent testified that she paid little attention to the behavior of the students on her bus, because, in her experience, their behavior was not unusual. However, rather than excuse the Respondent's failure to properly supervise her bus passengers on February 19, 2010, the testimony suggests that the Respondent failed on a repeated basis to enforce rules clearly related to passenger safety.

19. On February 23, 2010, the Respondent was driving the bus westbound on 30th Avenue in Manatee County, Florida, and arrived at an intersection with U.S. Highway 301, a well-traveled four-lane highway. There were no students on the bus.

20. Presumably because the Respondent initially intended to make a left turn at the signaled intersection, she was in a left turn lane.

21. The Respondent realized that the traffic signals at the intersection were not functioning. As required, she contacted the Petitioner's transportation dispatcher to advise authorities of the situation and to request permission to make a

right turn; however, she failed to inform the dispatcher that she was located in the left turn lane or that a right turn would require her to take the bus across other traffic lanes.

22. The dispatcher approved the Respondent's request, and she made the turn without incident.

23. The Petitioner subsequently received a complaint from a "concerned citizen" about the Respondent's turn across the traffic lanes.

24. There was no evidence presented at the hearing that there was injury or damage to any person or property by the turn. There was no credible evidence that the traffic present at the intersection at the time the Respondent completed the turn precluded the Respondent from making the right turn in a safe manner.

#### CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2010).

26. The Petitioner has the burden of proving by a preponderance of the evidence the allegations set forth in the Administrative Complaint underlying the proposed termination of the Respondent's employment. McNeill 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).





27. At all times material to this case, the Respondent was employed by the Petitioner as a school bus operator. Manatee County School Board Policy 6.11(12)(c) states as follows:

Any employee of the School Board may be terminated from employment for just cause, including, but not limited to, immorality, misconduct in office, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude, violation of the Policies and Procedures Manual of the School District of Manatee County, violation of any applicable Florida Statute, violation of the Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida. (Emphasis supplied.)

28. Florida Administrative Code Rule 6B-4.009 provides the following relevant definition:

(3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system. (Emphasis supplied)

29. The Principles of Professional Conduct for the Education Profession in Florida are set forth at Florida Administrative Code Rule 6B-1.006 and provide, in relevant part, as follows:

6B-1.006 Principles of Professional Conduct for the Education Profession in Florida.

\* \* \*

(3) Obligation to the student requires that the individual:

(a) Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

30. The evidence established that the Respondent failed to monitor the activities of students for whom she was responsible while they rode her bus on February 19, 2010. Several students riding the Respondent's bus consumed alcohol to the point of intoxication. Many students were not properly seated and were not using the available seat belts.

31. The Respondent was aware that students were surreptitiously consuming some type of beverage while riding her bus. She made no effort to intervene or to identify the type of beverage being consumed.

32. Additionally, the Respondent failed to make any attempt to enforce rules related to proper seating or use of seat belts.

33. The Respondent failed to make a reasonable effort to protect the students from conditions harmful to learning and to the students' health. The failure was of such significance and seriousness as to impair her effectiveness as an employee of the school system and to warrant termination from employment.

34. At the hearing, the Respondent denied being aware that

the students were consuming a beverage, but the denial lacked credibility, particularly since the recordings clearly captured her discussion with the JFG School students about their consumption of the unknown beverage.

35. The Respondent also testified that she lacked any personal background which would have indicated, at least to a casual observer, that the students were becoming intoxicated. There was no credible evidence presented to the contrary. However, the video recordings reveal a group of students clearly being transported in an unsafe manner and obviously behaving inappropriately. The Respondent made no effort to enforce bus rules, to correct the student's behavior, or to determine what was being consumed.

36. The evidence also established that on February 23, 2010, the Respondent, while driving her assigned bus, made a right turn from the far left lane at a multilane intersection and, in doing so, turned across several traffic lanes. The turn was approved by a dispatcher who was unaware of the Respondent's location. There were no students present on the bus at the time of the turn. The evidence fails to establish that traffic conditions at the time of the incident posed a threat to the safety of any person or property. The incident was not of such significance as to warrant discipline against the Respondent.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Manatee County School Board enter a final order, terminating the employment of Ava White-Smith.

DONE AND ENTERED this 26th day of August, 2010, in Tallahassee, Leon County, Florida.

*William F. Quattlebaum*

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 26th day of August, 2010.

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.