

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SEMINOLE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 12-3865TTS
)
HOWARD D. MOORE, SR.,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held on January 22, 2013, in Sanford, Florida, before Thomas P. Crapps, a designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Serita D. Beamon, Esquire
Seminole County School Board
400 East Lake Mary Boulevard
Sanford, Florida 32773-7127

For Respondent: Howard D. Moore, Sr., pro se
1100 West 25th Street
Sanford, Florida 32771-4240

STATEMENT OF THE ISSUE

Whether Petitioner established "just cause" to terminate Respondent's employment as a school bus driver.

PRELIMINARY STATEMENT

On November 2, 2012, Respondent, Howard D. Moore, Sr. (Mr. Moore), received formal notice from the Superintendent of Seminole County Public Schools that he would recommend Mr. Moore be terminated from his employment as a school bus driver "based upon evidence that you jeopardized the health, safety, and welfare of students when you left students on a bus that was still running to go into a place of business." On November 13, 2012, Mr. Moore timely requested a hearing concerning the allegations. On November 28, 2012, the Superintendent filed a petition with the Seminole County School Board (School Board) to terminate Mr. Moore's employment based on the allegation that Mr. Moore, during his morning school bus route, had "exited the school bus while leaving the school bus running and students aboard the school bus."

Mr. Moore's request for a hearing and the Petition for Termination were transmitted to DOAH. Based on responses filed by the parties, a hearing was scheduled for January 23, 2013, in Sanford, Florida. At the January 23, 2013, hearing, the School Board presented the testimony of Julie Murphy (Ms. Murphy), Deborah Moon (Ms. Moon), and Mr. Moore. The School Board introduced into evidence Exhibits numbered 1, 5 through 10, 12, and 14 through 18. Mr. Moore testified on his own behalf, and did not offer any exhibits into evidence.

A one-volume Transcript was filed in this case on January 31, 2013. On February 11, 2013, the School Board filed its Proposed Recommended Order. Mr. Moore did not file a Proposed Recommended Order.

FINDINGS OF FACT

1. Mr. Moore has been a school bus driver in Seminole County since 2009.

2. The operative facts are not in dispute. On October 24, 2012, Mr. Moore was beginning his morning school bus route. After picking up two students, Mr. Moore, at approximately 6:45 a.m., pulled into a parking lot of a local doughnut shop and parked the bus. Mr. Moore exited the bus, left the school bus door open with the motor idling. Mr. Moore returned within three minutes with a bagel and a soft-drink. All of these events were captured on video, and Mr. Moore does not dispute that this early morning breakfast stop occurred. Mr. Moore's only explanation is that he was not thinking, and had been under a lot of personal stress at the time.

3. The School Board has a specific policy that requires a school bus driver to operate the bus with "maximum regard for the safety of students and due consideration for the protection of health of all students" School Board Policy 8.31. Moreover, a bus driver is prohibited from using the bus for personal business, and prohibited from leaving the bus' motor

unnecessarily idling while in the vicinity of students. School Board Policies 8.48, and 6.22(J).

4. In addition to the School Board Policies, the School Board bus drivers are required to follow the procedures set out in the School Bus Operations Handbook (Handbook). Seminole County Public Schools, Transportation Services, School Bus Operations Handbook, (amended July 2012). Importantly, for this case, the Handbook expressly provides that a driver shall never leave students unattended on the school bus. School Bus Operations Handbook at 247. Further, the Handbook provides that in the event a driver must leave the bus, the driver must set the parking brake and remove the bus keys from the ignition. Id. A school bus driver is then directed to keep the keys in his or her possession. Id. Finally, the Handbook clearly states that the school bus driver is not to leave the approved bus route without permission. Id.

5. Mr. Moore received extensive training in the School Board's policies concerning the safe operation of the school bus and the School Board's expectations for its school bus drivers found in the Handbook.

6. Mr. Moore is sincere in his testimony that he loves his job, and forthright in his admission that he made a mistake in stopping for his morning breakfast while on his bus route.

CONCLUSIONS OF LAW

7. DOAH has jurisdiction over the parties and subject matter of this proceeding. § 120.57(1), Fla. Stat.

8. The School Board has the authority to operate, control, and supervise the public schools in its district. See Art. IX, § 4(b), Fla. Const. This authority includes the termination or suspension of educational support personnel. § 1012.27, Fla. Stat. (2012). State law permits school districts to adopt rules governing personnel matters. § 1012.23(1), Fla. Stat. The law provides that a school district may terminate a person's employment "for reasons stated in the collective bargaining agreement, or in district school board rule in cases where a collective bargaining agreement does not exist[.]" § 1012.40(2)(b), Fla. Stat.

9. The School Board here entered into a Collective Bargaining Agreement, titled Agreement with the Seminole County School Bus Drivers' Association, Inc., and the School Board of Seminole County (Collective Bargaining Agreement). The Collective Bargaining Agreement provides that school bus drivers, who have been hired for a minimum of three continuous years, shall not be disciplined, suspended, or terminated except for "just cause." Collective Bargaining Agreement, Art. IX, § 4(a). Further, the Collective Bargaining Agreement provides the following:

C. An employee may be suspended without pay or discharged for reasons including, but not limited to, the following provided just cause is present.

1. Violation of School Board Policy.
2. Violation of work rules.

* * *

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

The term "just cause" is not defined in the Collective Bargaining Agreement or in the School Board policies. However, the Collective Bargaining Agreement's statement listing reasons for discharging an employee is instructive for determining what facts constitute "just cause."

10. The School Board has the burden of proving that "just cause" exists by the preponderance of the evidence. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996).

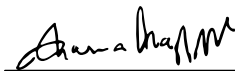
11. Applying the rules of law to the facts here, the School Board met its burden of showing "just cause" to terminate Mr. Moore's employment. It is undisputed that Mr. Moore violated the work rules set out in the Handbook and School Board policies by leaving the students unsupervised on a school bus with the engine running and the door open. Further, the record clearly showed that Mr. Moore used the school bus for his own personal business on an unauthorized stop. These facts show that Mr.

Moore's action violated the School Board Policy directing that a driver take maximum regard for the students' safety. Thankfully, the facts here showed that no harm occurred. However, it does not take a lot of imagination to see how Mr. Moore's actions could have resulted in a danger to the students left on the bus. Therefore, the undersigned finds that the School Board proved by the preponderance of the evidence that "just cause" exists to terminate Mr. Moore's employment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Seminole County School Board terminate Mr. Moore's employment.

DONE AND ENTERED this 14th day of February, 2013, in Tallahassee, Leon County, Florida.



THOMAS P. CRAPPS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of February, 2013.

ENDNOTE

^{1/} References to Florida Statutes shall be the 2012 version unless otherwise indicated.

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.