

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 13-1249

BELINDA S. IVEY,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held on June 13, 2013, in Largo, Florida, before the Division of Administrative Hearings (DOAH) by its designated Administrative Law Judge Lynne A. Quimby-Pennock.

APPEARANCES

For Petitioner: Laurie A. Dart, Esquire
Pinellas County Schools
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Post Office Box 2942
Largo, Florida 33779-2942

For Respondent: Belinda Ivey, pro se
3612 Tifton Street North
St. Petersburg, Florida 33713

STATEMENT OF THE ISSUE

Whether just cause exists to terminate Ms. Ivey from her employment with the Pinellas County School Board.

PRELIMINARY STATEMENT

By correspondence dated March 19, 2013, Respondent, Belinda Ivey (a/k/a Belinda S. Watson), was informed by the superintendent, Michael A. Grego, Ed.D., that a recommendation seeking the termination of her employment would be submitted to Petitioner, Pinellas County School Board (Petitioner or School Board) for appropriate action. In response to the March 19 correspondence, Ms. Ivey timely filed a Request for Administrative Hearing. The matter was forwarded to DOAH for a disputed fact hearing on April 11. The final hearing in this matter was scheduled for and held on June 13, 2013.

Petitioner called Ms. Ivey, Courtney McClendon, Michael Walker, Mary Sue Cross, Christine Coston, T. Mark Hagewood, and Valencia Walker to testify. Ms. Ivey testified on her own behalf. Petitioner's Exhibits 3 through 16^{1/} were admitted into evidence.^{2/} Ms. Ivey's Exhibit 1 was admitted into evidence.

A one-volume Transcript of the proceeding was filed with DOAH on July 5, 2013. Petitioner requested to file its Proposed Recommended Order (PRO) 20 days following the filing of the transcript. Ms. Ivey did not object and the request was granted. Petitioner timely filed its PRO which has been considered in the preparation of this Recommended Order. To date, Ms. Ivey has not filed a PRO.

FINDINGS OF FACT

1. In 2005, Ms. Ivey was hired by the School Board to work as a school bus driver (bus driver). The position of school bus driver is covered by the 2012-2015 Collective Bargaining Agreement between the School Board of Pinellas County, Florida, and SEIU/Florida Public Services Union, CTW-CLC (Collective Bargaining Agreement).

2. One of the many requirements to operate a Pinellas County school bus is to undergo a medical/physical examination every year. Among the physical requirements, bus drivers are to maintain at least 20/40 vision in each eye (with or without corrective lenses).

3. On Wednesday, January 23, 2013, Ms. Ivey underwent her yearly physical examination (exam). As a result of this exam, Ms. Ivey's "Work Status" was "PE on hold," meaning Ms. Ivey was not able to work as a bus driver until some corrective measures involving her eyesight were obtained.

4. Ms. Ivey completed her morning bus routes prior to her exam on January 23. After her exam, Ms. Ivey called in sick and did not complete her afternoon school bus routes. On January 24, Ms. Ivey completed both her morning and afternoon bus routes without incident. However, she took sick leave for the remainder of January 2013 (five work days). Ms. Ivey's first day back from her sick leave was February 4, 2013.

5. Each school bus is equipped with a global positioning system (GPS) monitoring device. Once the school bus is turned on the GPS automatically records the school bus position every 30 seconds. The GPS also records other activities that the school bus performs, e.g., when the amber caution lights are turned on or off, when the red stop lights are turned on or off, when the entrance door opens or closes, etc. Because of the cost of fuel, the School Board's policy is that no school bus idles for more than five minutes. If a bus must idle for more than five minutes, the bus driver is required to turn off the bus until it needs to move.

6. Each school bus is required to stop at each assigned bus stop whether or not a student is present. This is to maintain the published schedule for subsequent school bus riders.

7. Each school bus is also equipped with a two-way radio for constant communication with Petitioner's transportation dispatchers. In the event of an incident (or accident), there is an additional emergency channel for use by the dispatcher and the affected school bus driver.

8. Prior to each school year, school bus drivers are provided training in how to handle an incident (or accident). When an incident occurs, the driver is to immediately contact the transportation dispatcher, remain at the scene of the incident, ensure the safety of the students, and cooperate fully with the

investigation. The bus driver is to complete an incident report and turn it in to the transportation division before the end of the incident day.

9. The school bus that Ms. Ivey drove on February 4, 2013, was equipped with the two-way radio and the GPS.

10. Ms. Ivey's published/authorized school bus route (for the middle school pick-up) started at 8:15 a.m. each morning when she was to pick up her riding assistant, Courtney McClendon,^{3/} at 102nd Avenue and Seminole Boulevard. This stop was in a large parking lot, close to a Little Caesar's restaurant (restaurant). The second bus stop, where the first student was to be picked up, was located at 97th Street North and Lake Seminole Drive East (corner location). Without the School Board's permission or authorization, Ms. Ivey unilaterally changed her school bus route to begin with the student pick-up at the corner location.

11. On February 4, Ms. Ivey began her middle school bus route at the corner location. According to the GPS, Ms. Ivey entered the corner location neighborhood at 8:32 a.m., and could not have been at the designated corner location bus stop at 8:18 a.m. The student rider was not at the corner location when the school bus arrived. There was no indication, via the GPS, that either the amber caution or red stop lights were activated for this stop, or that the entrance door opened or closed to allow a student to enter the bus.

12. Ms. Ivey turned the school bus onto 97th Street and stopped at the red light at 102nd Avenue (stop light corner). As Ms. Ivey was looking left (in order to turn right), she heard a knock on the school bus door, but did not see the student. Ms. Ivey completed the right-turn onto 102nd Avenue West and then, in her right rear-view mirror noticed a student falling down. Ms. Ivey did not immediately stop the school bus, but drove to the restaurant approximately two minutes away. There, Ms. Ivey turned on her amber lights and opened the door for Ms. McClendon to board the school bus.

13. While at the restaurant, Ms. Ivey radioed Petitioner's transportation dispatcher that she might have hit a student. Ms. Ivey left the restaurant and drove back to the corner location. Despite having a two-way radio on board the school bus and repeated attempts by the dispatcher to contact her, Ms. Ivey and the dispatcher failed to communicate again for over 45 minutes.

14. Upon notification of the incident, the transportation dispatcher switched to the emergency frequency; however, Ms. Ivey stayed on the regular two-way radio frequency.

15. Two transportation supervisors were immediately dispatched to investigate the incident at the restaurant, as this was the location where the incident was reported. Once they arrived, the supervisors were unable to locate the school bus,

Ms. Ivey, or Ms. McClendon (the trio) at or near the restaurant. In an effort to locate the trio, the supervisors traveled to several more school bus stops, but only found students waiting for the school bus.^{4/} After searching for over 45 minutes, the supervisors finally located the trio at the corner location. At that time the transportation supervisors determined that the stop light corner location was where the incident actually occurred.

16. One week after the incident, on February 11, Ms. Ivey completed and turned in the "DRIVER'S REPORT OF INCIDENT." Petitioner's field operations supervisor, Ms. Cross had to make repeated requests to Ms. Ivey to get her to turn in the report.

17. On three separate occasions, Ms. Ivey was noticed to appear at the Office of Professional Standards to answer questions regarding the January medical issue and the February 4th incident. At the meeting on February 20, 2013, Ms. Ivey refused to answer questions about either matter. During the second meeting on February 28, shortly after the meeting began, Ms. Ivey asked to use the restroom, left the room, and never returned to complete the meeting. Although she was noticed for the third meeting to begin at 7:30 a.m. on March 4, Ms. Ivey did not arrive for that meeting until after 3:00 p.m. During this third meeting, Ms. Ivey again refused to answer questions about either matter.

18. Ms. Ivey's employment disciplinary history with the School Board is as follows:

02/08/10 Ms. Ivey received a "Conference Summary" for failing to correct performance deficiencies;

02/18/10 Ms. Ivey received a Conference Summary" for failing to comply with board policy, state law, or appropriate contractual agreement;

10/20/11 Ms. Ivey received a "Caution" for failing to comply with board policy, state law, or the appropriate contractual agreement and misconduct;

05/23/12 Ms. Ivey received a "Reprimand" for failing to perform the duties of the position and failing to correct performance deficiencies;

12/15/12 Ms. Ivey received a "Reprimand" for failing to perform the duties of the position and failing to correct performance deficiencies; and

02/20/13 Ms. Ivey received a "Conference Summary" for failing to perform the duties of the position and failing to correct performance deficiencies.

19. Despite repeated opportunities to provide her version of the events, Ms. Ivey declined to present her case in a manner that would warrant serious consideration.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2012).^{5/}

21. Petitioner seeks to terminate Ms. Ivey's employment. Petitioner bears the burden of proving by a preponderance of the evidence that just cause exists for Ms. Ivey's termination. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

22. As a member of the transportation department of the School Board, Ms. Ivey is considered an educational support employee. §§ 1012.01(6) and 1012.40(1)(a).

23. Section 1012.40(2)(b) provides in part that "[u]pon successful completion of the probationary period by the [educational support] employee, the employee's status shall continue from year to year unless the district school superintendent terminates the employee for reasons stated in the collective bargaining agreement, . . ." At the time of the incidents that provide the basis for the instant action, Ms. Ivey had successfully completed her term of probationary employment.

24. Article 23, (Discipline) of the Collective Bargaining Agreement provides, in part,

A. The parties are committed to progressive discipline. Progressive discipline is a process for dealing with job-related behavior that does not meet expected and communicated performance standards. The primary purpose for progressive discipline is to assist the employee to understand that a performance problem presents an opportunity for improvement. . . . The goal of progressive discipline is to improve employee

performance. . . . Failing that, progressive discipline enables the board to fairly, and with due process, terminate the employment of employees who are ineffective and unwilling or unable to improve.

* * *

C. The board shall generally follow a system of progressive discipline that may include, but not be limited to, the use of:

- (1) Conference Summary: This is a written memorandum or letter memorializing an area of concern involving the performance or conduct of the employee. It is the first step in progressive discipline and is intended to counsel and advise the employee of best practices.
- (2) Letter of Concern
- (3) Written reprimand
- (4) Suspension without pay
- (5) Dismissal

The severity of the problem or employee behavior will determine whether all steps will be followed in successive order or a recommendation will be made for . . . dismissal. . . .

D. When a recommendation is made for imposition of . . . dismissal, employees shall be entitled to an administrative hearing before an impartial administrative law judge as provided under the Administrative Procedure Act (F.S. Chapter 120) and shall be entitled to all the rights provided under that Act including the right to be represented by counsel or qualified representative. The provisions of Board Policy 4140 will define just cause for . . . dismissal.

25. School Board of Pinellas County Policy (Policy) 4140 provides in part, as follows:

Support staff may be dismissed for cause.

* * *

All Board employees shall cooperate fully with appropriate authorities who are conducting investigations into employee conduct.

The Superintendent retains the right and the responsibility to manage the work force. The School District generally follows a system of progressive discipline in dealing with deficiencies in employee work performance or conduct. Progressive discipline may include, but is not limited to, written counseling/conference summary, caution, reprimand, suspension without pay, and dismissal defined as follows:

A. Written Counseling/Conference Summary--

This is a written memorandum or letter memorializing an area of concern involving the performance or conduct of the employee. It is the first step in progressive discipline and is intended to counsel and advise the employee of best practices.

B. Letter of Caution--A letter of caution is given to an employee who has demonstrated problematic behavior or performance. It is the second step in progressive discipline and is intended to alert the employee that a problem has been identified and needs to be corrected.

C. Reprimand--A written reprimand is more serious than a caution. It is a formal censure or admonition given to an employee who has engaged in unacceptable behavior or demonstrated unacceptable performance.

D. Suspension Without Pay--A suspension without pay is the temporary release from duty of an employee for a stated number of calendar days without pay and applies when a violation or repetition of violations of policies, contractual provisions, laws, or District expectations are serious enough to warrant suspension.

E. Dismissal--This is the final step in progressive discipline and applies in cases where the employee misconduct is severe or in cases where the misconduct or unacceptable behavior or performance is repetitive and the progressive discipline procedures have not corrected the problems.

The severity of the problem or employee conduct will determine whether all steps will be followed or a recommendation will be made for suspension without pay or dismissal. When there is a range of penalties, aggravating or mitigating circumstances will be considered. The following offenses are subject to the penalties described below:

VIOLATIONS	OFFENSE	PENALTY RANGE
A.9	Incompetence as evidence by inability or lack of fitness to discharge the required duty	Reprimand-- Dismissal
A.9a.	Failure to perform the duties of the position	Caution-- Dismissal
A.19.	Failure to correct performance deficiencies	Conference Summary- Dismissal
A.20.	Insubordination, which is defined as a continuing or intentional failure to obey a direct order reasonable in nature, and given by and with proper authority	Caution -- Dismissal
A.22.	Misconduct or Misconduct in Office	Caution -- Dismissal
A.24.	Failure to comply with Board policy, State law, or appropriate contractual agreement	Caution-- Dismissal

* * *

C. The following aggravating and mitigating factors or circumstances will be considered when determining the appropriate penalty within a penalty range:

1. The threat posed to the health, safety or welfare of students, co-workers, or members of the public;
2. The severity of the offense;
3. Degree of student involvement;
4. The disciplinary history of the employee, including the number of offenses, the length of time between offenses as well as the similarity of offenses;
5. The actual damage, physical or otherwise, caused by the misconduct;
6. Any effort of rehabilitation by the employee;
7. Attempts by the employee to correct or stop the misconduct;
8. Pecuniary benefit or self-gain to the employee realized by the misconduct;
9. Impact of offense on students, co-workers, or members of the public;
10. Length of employment;
11. Whether the misconduct was motivated by unlawful discrimination;
12. Employee's evaluations; [and]
13. Any other relevant mitigating or aggravating factors[.]

26. Ms. Ivey was charged with violating Policy 4140. She did not cooperate with the investigation regarding her medical

clearance or the February 4th incident. Ms. Ivey did not timely complete the "DRIVER'S REPORT OF INCIDENT" and she refused to answer questions regarding the incident. Petitioner satisfied its burden and proved by a preponderance of the evidence that Ms. Ivey's conduct violated Policy 4140.

27. Ms. Ivey was charged with violating Policies 4140 A.9 and 4140 A9a. The School Bus Driver Handbook (Handbook) enumerates, among other things, the duties of a school bus driver.

28. Section 2.02 (Duties of the Driver) of the Handbook provides, in part, as follows:

* * *

H. Drivers will immediately report any hazards on the bus route or at bus stops which might offer an actual or potential threat to the safety of transported students to the Dispatch Office for their assigned compound and to their assigned Field Operations Supervisor.

* * *

K. Loading and unloading of students from the school bus is an especially critical period of time for safety awareness.

1. Drivers will always follow established procedures for loading and unloading of student passengers as set forth in the Department of Education's Basic Driver Training Curriculum.

2. Drivers will always directly supervise the loading and unloading of all student passengers. Drivers will be on their buses at all times while students are loading or unloading at schools. Drivers will supervise

the activities of students leaving the bus until they have crossed the road safely, and will permit students to leave the bus only at their assigned stop.

* * *

Y. Drivers will complete, accurately and to the best of their knowledge and ability, all required reports. Drivers will comply with established deadlines for completing and submitting required reports.^[6/]

Z. Drivers will report all accidents/crashes and incidents at the time of occurrence while they are driving a school bus to the Dispatch office no matter how minor and regardless of damage. An incident/crash is defined as any time a school bus comes in contact with another vehicle or object, regardless of damage. If the incident/crash occurs after normal working hours or at any other time when the Dispatch Office is closed, the driver will immediately notify Pinellas County Schools Police.

29. On February 4, Ms. Ivey failed to activate her amber or red lights when stopping the school bus at the corner location, she failed to stop at the corner location school bus stop, and she failed to report the incident "at the time of occurrence" electing to drive to the restaurant and then radio the possibility of an incident. Petitioner satisfied its burden and proved by a preponderance of the evidence that Ms. Ivey's conduct violated Policies 4140 A.9 and 4140 A9a.

30. Ms. Ivey was charged with violating Policy 4140 A.19. On six occasions prior to these two incidents, Ms. Ivey was disciplined for violating Policy 4140. Petitioner satisfied its

burden and proved by a preponderance of the evidence that Ms. Ivey's conduct violated Policy 4140 A.19.

31. Ms. Ivey was charged with violating Policy 4140 A.20. Ms. Ivey was repeatedly directed to submit her report of the February 4th incident. The handbook requires the report to be completed and turned in by the end of the day of the incident, yet Ms. Ivey failed to turn in the report for one week. Further, Ms. Ivey was directed to attend meetings to discuss the two incidents. Although she arrived at each meeting, she failed to participate in any meaningful manner in any of them. Petitioner satisfied its burden and proved by a preponderance of the evidence that Ms. Ivey's conduct violated Policy 4140 A.20.

32. Ms. Ivey was charged with violating Policy 4140 A.22. Ms. Ivey unilaterally and without authority changed the scheduled bus stop route, she failed to actually stop at a bus stop (despite the fact she was late in arriving at its location), she failed to stop the bus when she saw a student falling down, she failed to immediately contact the transportation dispatcher at the location where the student fell down, she failed to establish and maintain radio contact with the transportation dispatcher following the incident, she failed to immediately complete the incident report, and she failed to cooperate in the investigation. Petitioner satisfied its burden and proved by a

preponderance of the evidence that Ms. Ivey's conduct violated Policy 4140 A.22.

33. Ms. Ivey was charged with violating Policy 4140 A.24. Petitioner proved by a preponderance of the evidence that Ms. Ivey's conduct violated various sections of Policy 4140. In accordance with Article 23 of the Collective Bargaining Agreement, Ms. Ivey was afforded the opportunity to be heard.

34. When determining the appropriate disciplinary sanction to impose against a staff member, Board Policy 4140 C. directs consideration of certain aggravating and mitigating factors.

35. As a result of Ms. Ivey's conduct, there was a substantial threat posed to the health, safety, and welfare of not only the student who fell down, but also of all the students who rode the school bus that Ms. Ivey drove on January 24, 2013, when she was under a medical restriction.

36. Having considered all of the factors set forth in Policy 4140, the undersigned concludes that there are no mitigating factors that weigh in favor of action other than termination of employment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that:

Petitioner terminate Ms. Ivey's employment as a school bus driver as a consequence of her repeated violations of School

Board Policies 4140 A.9, A.9a., A.19., A.20., A.22., and A.24.

The violation of any one of these subsections, standing alone, is sufficiently severe so as to warrant Ms. Ivey's termination from employment as a school bus driver.

DONE AND ENTERED this 20th day of August, 2013, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of August, 2013.

ENDNOTES

^{1/} Petitioner's Exhibit 11 contained private medical information and was admitted under seal to maintain patient confidentiality.

^{2/} Respondent objected to Petitioner's Exhibits 3 through 8 and 10 through 13.

^{3/} Ms. McClendon is an ESE associate who rides the school bus with a student who needs special assistance. The bus route is designed so that Ms. McClendon is on the school bus before that student is picked up.

^{4/} The supervisors requested a "chase" school bus be utilized to pick up the students and transport them to the middle school.

^{5/} Unless otherwise noted, all references to the Florida Statutes are to the 2012.

^{6/} Readers are to "Refer to Section 12, page 41 for a listing of forms." Therein, the Driver's Report of Incident is listed for use to "report situations affecting the safety of the bus or the safety and well-being of the driver, student passengers, or other persons on board the bus."

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.