

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-3685

CLESHA STEVENSON,

Respondent.

_____ /

RECOMMENDED ORDER

On October 30, 2014, Thomas Porter Crapps, a duly-designated Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted a final hearing in Fort Myers, Florida.

APPEARANCES

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

For Respondent: Robert J. Coleman, Esquire
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STATEMENT OF THE ISSUE

Whether the Petitioner established just cause for the termination of Respondent's employment as a school bus driver.

PRELIMINARY STATEMENT

On July 16, 2014, the Superintendent for the Lee County School District (Superintendent) filed a Petition for Termination of Employment (Petition) before the Petitioner, Lee County School Board (School Board), seeking the dismissal of Respondent, Clesha Stevenson (Ms. Stevenson). The Petition charged Ms. Stevenson with misconduct in office under section 1012.33, Florida Statutes (2014)^{1/}, as defined by Florida Administrative Code Rule 6A-5.056(2), and violating School Board Policies 5.02, 4.09, 2.02, and provision 7.13 of the collective bargaining agreement between the School Board and the Support Personnel Association of Lee County. Ms. Stevenson timely requested an administrative hearing and the School Board transferred the Petition to DOAH on August 13, 2014.

At the final hearing, the School Board presented the testimony of Andrew Brown, the School District's director for professional standards and equity; Karen Lane, a school bus dispatcher; Luvenia Brown, a school bus dispatcher; Rita Thomas, a support specialist in transportation; Jennifer Rivero, a school bus attendant; Melissa Allen, a school bus driver; Niurka Diaz, a school bus driver; Tammy Black, a school bus driver; and Beatrice Aney, an assistant supervisor of transportation. The School Board offered into evidence Petitioner's Exhibits numbered 1 through 10 and 12 through 16. Ms. Stevenson presented the

testimony of herself, and Tomika Harris, another school bus driver. Ms. Stevenson offered into evidence Respondent's Exhibits numbered 1 through 9.

A two-volume Transcript was filed with DOAH on November 18, 2014. Respondent filed her Proposed Recommended Order on November 25, 2014, and Petitioner filed its Proposed Recommended Order on December 1, 2014.

FINDINGS OF FACT

1. The School Board is the state entity designated to operate, control, and maintain the public school system. The School Board's power includes the authority to enter into labor contracts and to terminate educational support personnel.

2. Ms. Stevenson began working for the School District in 2003 as a school bus assistant, and eventually became a school bus driver in August 2004.

3. A review of Ms. Stevenson's performance assessments show that she was a good employee for the time period leading up to the incidents that are the subject of this hearing. For example, Ms. Stevenson's Performance Assessment conducted for the July 1, 2012, through June 30, 2013, states that:

Ms. Stevenson shows great leadership and pays great attention to detail. She shows respect towards her students, her school and her fellow employees. Ms. Stevenson is always in uniform and shows great professionalism both on and off the clock. Ms. Stevenson is very passionate about her work and takes great

pride in doing a great job. It is a pleasure and honor working with Ms. Stevenson.

4. The incidents that are subject of this final hearing occurred during the following school year for 2013-2014.

5. On April 25, 2014, Ms. Stevenson was driving her school bus route, returning the students to their homes. Shortly after beginning the bus route, Ms. Stevenson began to feel sharp pains in her chest. Ms. Stevenson made her first bus stop, and then radioed the School District's bus dispatch for help. She had stopped the bus in a safe location and was told to wait for Emergency Management Services (EMS) paramedics.

6. Ms. Beatrice Aney, an assistant supervisor at the School District's Leonard Transportation Compound (bus depot), was notified about Ms. Stevenson's call. EMS was contacted, and the School District sent another bus to finish the route, and Ms. Aney to assist.

7. The paramedics arrived at the scene and began to evaluate Ms. Stevenson's condition. Near that same time, Ms. Aney arrived and boarded the school bus in order to watch the children, as the paramedics helped Ms. Stevenson.

8. The paramedics determined that Ms. Stevenson needed to be transported to the local hospital for further evaluation. Ms. Stevenson was reluctant to leave the bus in the ambulance, and expressed her concern about being able to retrieve her car

keys and pick her child up from daycare on time. Ms. Stevenson believed that the paramedics had spoken with Ms. Aney, and that Ms. Aney had promised that Ms. Stevenson would be picked up from the hospital. In the confusion of the bus, Ms. Aney did not hear or make any promise to Ms. Stevenson about transporting Ms. Stevenson from the hospital.

9. At approximately 3:45 p.m., Ms. Stevenson was admitted into the hospital. She was diagnosed as having a panic attack, and was administered Xanax for anxiety. According to the hospital record and Ms. Stevenson's testimony, she was released from the hospital at approximately 5:15 p.m.

10. After Ms. Stevenson was transported to the hospital, Ms. Aney returned to the bus depot. Another school bus had been dispatched and finished Ms. Stevenson's school bus route.

11. Following her discharge from the hospital, Ms. Stevenson called the bus depot seeking a ride from the hospital back to the depot. Ms. Luvenia Brown answered the phone.

12. The bus dispatch office was described as a busy place, and Ms. Aney was working with the many different driver requests. At the time Ms. Stevenson called, Ms. Aney was sitting across from Ms. Brown, who answered the phone. Ms. Brown, holding the phone receiver with Ms. Stevenson on the line, asked Ms. Aney about transporting Ms. Stevenson from the hospital. Ms. Aney

stated that she did not have anyone who could pick up Ms. Stevenson at that moment. Ms. Stevenson overhearing the conversation between Ms. Brown and Ms. Aney stated "f**k it, she would walk," and then hung up. Unfortunately, in Ms. Stevenson's anger, she did not speak with either Ms. Aney or Ms. Brown before hanging up the phone. Had Ms. Stevenson waited a moment, she would have learned that Ms. Aney was going to drive to the hospital to pick up Ms. Stevenson. Ms. Aney's statement that she did not have anyone who could transport Ms. Stevenson related to the fact that she did not have an available driver.

13. Ms. Stevenson left the hospital angry, and began walking what would have been approximately a six-mile trip from the hospital. As she was walking, Ms. Stevenson was seen by Ms. Niurka Diaz, a fellow school bus driver who recognized Ms. Stevenson. Ms. Diaz had heard about Ms. Stevenson's illness on the bus radio, and had already completed her school bus route. Ms. Diaz stopped her bus, and offered Ms. Stevenson a ride. At this point, Ms. Stevenson had walked approximately four-tenths of a mile from the hospital.

14. While Ms. Stevenson was enroute to the bus depot, Ms. Aney had left for the hospital in order to transport Ms. Stevenson.

15. Ms. Stevenson arrived at the school bus depot angry, and she walked into the dispatch office. Upon entering the

office, Ms. Stevenson began a prolonged, profane tirade stating, in essence, that her co-workers did not care what happened to her, and then threatening "where the f**k is Beatrice? I am going to beat her a**." During Ms. Stevenson's outburst, she grabbed at papers on the wall and crumpled them. Within a few minutes, Ms. Stevenson exited the dispatch office and then entered the bus driver lounge. She continued to yell profanities in the hallway and doorway of the bus driver lounge. One of the drivers, Ms. Tomeika Harris, Ms. Stevenson's friend, attempted to find out what was wrong. Ms. Harris reached for Ms. Stevenson's arm. The video and testimony show that Ms. Stevenson flailed her right arm upward in order to throw off Ms. Harris' hand. Consequently, when Ms. Harris' hand was thrown off Ms. Stevenson's arm, Ms. Harris' cell phone was damaged. At the time Ms. Stevenson reacted, she was so angry that she did not recognize that it was Ms. Harris, her friend, who had reached to touch her. Subsequently, Ms. Stevenson learned that she had damaged Ms. Harris' cell phone, and has since replaced it.

16. Ms. Stevenson exited the bus driver lounge into the parking lot. Ms. Black, another school bus driver and friend of Ms. Stevenson, saw her in the parking lot. Ms. Stevenson continued a profane tirade that no one cared about her, and how she had been left at the hospital. Ms. Black attempted to calm

her friend down, and Ms. Stevenson subsequently left the bus depot in order to pick up her daughter from daycare.

17. During Ms. Stevenson's outburst, Ms. Aney was at the hospital looking for Ms. Stevenson. When she could not find Ms. Stevenson, Ms. Aney called the dispatch office and spoke with Ms. Karen Lane. Ms. Lane told Ms. Aney that Ms. Stevenson was at the bus depot and that Ms. Aney needed to return immediately. By the time that Ms. Aney returned, approximately 15 to 20 minutes later, Ms. Stevenson had already left the premises.

18. The School District did not contact any law enforcement agency concerning Ms. Stevenson's outburst and threats made against Ms. Aney on April 25, 2014.

19. The School District began an investigation into Ms. Stevenson's conduct at the school bus depot. The investigator, Mr. Andrew Brown, learned from one of Ms. Stevenson's supervisors that Ms. Stevenson had been involved in a prior incident on January 30, 2014.

20. Mr. Brown was provided a video taken on the bus driven by Ms. Stevenson on January 30, 2014. This January 30, 2014, video, with its audio, shows Ms. Stevenson losing her temper and verbally berating a third-grader because Ms. Stevenson perceived that the third-grader had been disrespectful to her. Further, the video shows Ms. Stevenson yelling at all of the students and warning them about being disrespectful to her.

21. Following her verbal tirade, Ms. Stevenson turned down the bus radio and called the school bus dispatch on her cell phone while driving the bus. Ms. Stevenson falsely reported that she had tried to call the dispatch on her bus radio, and that she wanted dispatch to inform the school that the identified student had been disrespectful to her and that she would be speaking to the student's mother.

22. Finally, the video shows that at the student's stop, Ms. Stevenson informed the student's mother that the child had been disrespectful, rolling her eyes and had "jumped at her." The video did not support Ms. Stevenson's characterization of the third-grader's actions as "jump[ing] at her."

23. After a parent complaint, the School District reviewed the video and suspended Ms. Stevenson as a school bus driver for three days. Ms. Stevenson's evaluation indicated that Ms. Stevenson was suspended for using the cell phone while driving. Ms. Stevenson testified that her suspension also was the result of her behavior on the bus in addition to the cell phone use. Certainly, the School District in suspending Ms. Stevenson took into account her inexcusable verbal berating of a third grader on the bus when it suspended her. The fact that Ms. Stevenson used a cell phone while driving the school bus could only have been learned by watching the video. As stated earlier, the video shows Ms. Stevenson's inappropriate behavior

directed to the student, and her inappropriate driving while talking on the cell phone. Consequently, the undersigned finds that the School District was aware of Ms. Stevenson's outburst on the school bus on January 30, 2014, when it suspended her for three days. Finally, it is agreed by the parties that Ms. Stevenson was directed by her supervisor, after the January 30, 2014, incident, to act courteously and cooperatively in the future.

24. Ms. Stevenson's un rebutted testimony shows that in 2013 and 2014 she was a victim of domestic violence, and had in place a domestic violence injunction against her husband. Ms. Stevenson explained that her difficult situation spilled over into her work life causing her anger and anxiety. Prior to her suspension, Ms. Stevenson sought help with Employee Assistance Program counseling concerning her anxiety. However, she has not been able to consistently continue with the counseling based on financial difficulties.

25. During this past school year, Ms. Stevenson has driven a bus for a private transportation company that provides bus services for charter schools without any further incident. She has expressed remorse for her actions, and stated a desire to return as a Lee County School District school bus driver.

CONCLUSIONS OF LAW

26. DOAH has subject matter jurisdiction over the parties and dispute in the instant case. §§ 120.569, 120.57(1), and 1012.40(2)(c), Florida Statutes.

27. The School Board is responsible for the operation, control and supervision of the free public schools in Lee County, Florida. Art. IX, § 4(b), Fla. Const.; and § 1001.32, Fla. Stat. The School Board's authority extends to personnel matters including the power to suspend or dismiss an employee. §§ 1001.42(5)(a) and 1012.27, Fla. Stat.

28. The School Board has the burden of proving by a preponderance of the evidence the allegations underlying the proposed disciplinary action. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996).

29. As a school bus driver, Ms. Stevenson is an "educational support employee," as defined by section 1012.40(1)(a). Consequently, Ms. Stevenson's employment is governed by the Collective Bargaining Agreement (SPLAC Contract) between the School Board and the Support Personnel Association of Lee County.

30. The SPLAC Contract recognizes that "dismissal is the extreme disciplinary penalty, since the employee's job seniority, other contractual benefits, and reputation are at stake." Art. 7.10, SPLAC Contract 2013-2014. Further, the SPLAC contract

requires "that in all instances the degree of discipline shall be reasonably related to the seriousness of the offence and the employee's record." Id. The standard set out in the SPLAC Contract for disciplining an educational support personnel is "just cause." Id.; See also § 1012.40(2)(b), Fla. Stat.

31. The term "just cause" is not defined in the SPLAC Contract. However, in the past, the School Board has used the statutory definition of "just cause" found in section 1012.33, Florida Statutes. See Lee Cnty. Sch. Bd. v. Lomonte, Case No. 11-0001 (DOAH Feb. 10, 2011; Lee Cnty. Sch. Bd. March 8, 2011); Lee Cnty. Sch. Bd. v. Simmons, Case No. 03-1498 (DOAH July 15, 2003; Lee Cnty. Sch. Bd. August 12, 2003); Lee Cnty. Sch. Bd. v. Kehn, Case No. 04-1912 (DOAH Feb. 12, 2005; Lee Cnty. Sch. Bd. March 10, 2005).

32. The statutory definition states, in pertinent part, that, "[j]ust cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: . . . misconduct in office[.]" In turn, the State Board of Education has defined "[m]isconduct in office," in part, as a "violation of the adopted school board rules." Fla. Admin. Code R. 6A-5.056(2)(c).

33. Turning to the instant case, the School Board charged Ms. Stevenson with "misconduct in office" for violating article 7.13 of the SPLAC, which concerns "Work Place Civility," as well

as violating School Board Policies concerning civility, threats of violence, and professional standards.

34. "Work Place Civility," set out in article 7.13, states, in part, that employees "shall not engage in speech, conduct, behavior (verbal or non-verbal), or commit any act of any type which is reasonably interpreted as abusive, profane, intolerant, menacing, intimidating, threatening, or harassing against any person in the workplace."

35. Similar to article 7.13 of SPLAC, School Board Policy 2.02, concerns civility and requires that school staff on all District facilities shall treat "other school staff, and District employees with courtesy and respect." Policy 2.02(1)(b), Lee Cnty. Sch. Bd. Further, Policy 2.02 expressly identifies "offensive language, swearing, cursing, using profane language, or display of temper[,]" as an unacceptable behavior. Policy 2.02(1)(b), Lee Cnty. Sch. Bd.

36. Next, School Board Policy 4.09, which addresses "Threats of Violence" sets out the School District's "'zero' tolerance policy for threats of violence." Further, the policy states that "[a]ny serious threat of violence shall result in immediate disciplinary action and referral to the appropriate law enforcement agency." Finally, School Board Policy 5.02 requires employees to meet the high ethical standards, and comply with policies concerning employment.

37. The School Board clearly established "just cause" to discipline Ms. Stevenson because the facts clearly show that Ms. Stevenson violated article 7.13, and School Board Policies 2.02, 4.09, and 5.02. It is not disputed that Ms. Stevenson's profane, angry outburst was offensive and demonstrated a lack of civility. Furthermore, the undersigned finds that Ms. Stevenson violated the School Board's zero tolerance policy by threatening to harm Ms. Aney. While not diminishing the seriousness of Ms. Stevenson's threats against Ms. Aney, the undersigned notes that the School District did not contact law enforcement, as required by its Policy for "serious threats." Finally, as for the allegation that Ms. Stevenson knocked a cell phone from a fellow employee's hand, the facts showed that Ms. Stevenson's action was an unintended consequence of her throwing her arm in an upward motion. It is noteworthy that Ms. Stevenson made restitution to Ms. Harris for the damaged cell phone.

38. The Superintendent alleges the facts from the January 30, 2014, incident involving the student on the bus, but does not reference the incident as basis for termination in the charges. Rather, the undersigned's reading of the Petition shows that the undisputed January 30, 2014, incident is offered as part of Ms. Stevenson's prior disciplinary history in deciding whether

or not to recommend terminating her employment, not as additional charges supporting a "misconduct in office" charge.

39. As shown earlier, article 7.10 of SPLAC provides, in part, that "[a]ny discipline applied by the site based administrator pursuant to this provision shall be, when appropriate, progressive in nature." The School Board Policy 5.26 sets out managerial discipline guideline for transportation employees. Specifically, Policy 5.26 indicates that for the behavior of "verbal abuse," such as profanity or vulgar language, that the following recommended penalties: first offense, written reprimand; second offense, three-day suspension without pay; and, third offense, termination. School Board Policy 5.26 recognizes that the "[s]everity of the offense may result in moving to a higher level of discipline."

40. Turning now to the recommended penalty, the undersigned finds that it is not appropriate to terminate Ms. Stevenson's employment. At the onset, the undersigned recognizes the seriousness of Ms. Stevenson's conduct on January 30 and April 25, 2014, and especially the threats against Ms. Aney as supporting a decision to terminate the employment. However, the unique facts here support a lengthy suspension and counseling, not termination. Article 7.10 expressly directs that any discipline consider the employee's record. Here, it is undisputed that in the ten years before 2014, Ms. Stevenson was a

good employee. Her evaluation from the year before shows that Ms. Stevenson was praised for her professionalism. The unrebutted evidence from Ms. Stevenson showed that in 2013 and 2014 she was the victim of domestic violence. This violence had resulted in an injunction against her husband. As Ms. Stevenson compellingly testified, her personal life spilled over into her work. These facts put into perspective the stress, anxiety and pressure that Ms. Stevenson was under when she uncharacteristically acted on both January 30 and April 25, 2014. To Ms. Stevenson's credit, she began seeking counseling through the School District's Employee Assistance program to help her manage the anger and stress. Unfortunately, with her suspension, Ms. Stevenson has been unable to afford the continued counseling services.

41. Because Ms. Stevenson's past employment evaluations show that she was a good employee for over 10 years and the terrible toll that domestic violence can have on a victim, the undersigned finds that the two incidents in 2014 are an aberration of her character. Consequently, the undersigned does not recommend termination, but a lesser discipline.

RECOMMENDATION

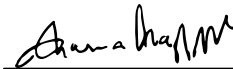
Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that:

1. The School Board established "just cause" for disciplining Ms. Stevenson's employment based on the finding that she is guilty of "misconduct in office," for violating article 7.13, and School Board Policies 2.02, 4.09, and 5.02;

2. Ms. Stevenson be suspended without pay from July 1, 2014 until the beginning of the January 2015 term; and

3. As a condition of continued employment, Ms. Stevenson successfully complete an Employee Assistance Program concerning anger and stress management, and successfully complete training concerning effective communication.

DONE AND ENTERED this 29th day of December, 2014, in Tallahassee, Leon County, Florida.



THOMAS P. CRAPPS
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of December, 2014.

ENDNOTE

^{1/} All references to Florida Statutes shall be the 2014 version.

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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.