

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PALM BEACH COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 16-3913

BOBBIE ALEXANDER,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

On October 21, 2016, Administrative Law Judge Lisa Shearer Nelson of the Division of Administrative Hearings conducted a hearing in this proceeding by video teleconference with sites in Tallahassee and West Palm Beach, Florida.

APPEARANCES

For Petitioner: Helene K. Baxter, Esquire  
Palm Beach County School District  
Suite C-323  
3300 Forest Hill Boulevard  
West Palm Beach, Florida 33406

For Respondent: Bobbie Alexander, pro se  
1972 Marsh Harbor Drive  
Riviera Beach, Florida 33404

STATEMENT OF THE ISSUE

The issue to be determined is whether Petitioner, the Palm Beach County School Board (the School Board or Petitioner), had just cause to terminate Respondent's employment as a school bus attendant.

PRELIMINARY STATEMENT

On May 16, 2016, Dr. Robert M. Avossa, the superintendent of schools for the School Board, sent Respondent, Bobbie Alexander, a Notice of Recommendation for Termination of Employment (Notice). The Notice advised Respondent that Dr. Avossa would recommend her suspension without pay and termination from employment at the June 6, 2016, School Board meeting. The Notice further advised Ms. Alexander of her rights to challenge the proposed action.

On June 27, 2016, the School Board's legal office received some correspondence from Respondent that it interpreted as a request for hearing, and on July 28, 2016, the School Board referred the matter to the Division of Administrative Hearings for assignment of an administrative law judge. The District also filed a Petition alleging the factual and legal basis for seeking suspension without pay and termination from employment.

A Notice of Hearing was issued August 8, 2016, scheduling the hearing for September 23, 2016. At Petitioner's request, the case was rescheduled for October 21, 2016, and commenced as rescheduled. At hearing, Petitioner submitted the testimony of Bobbie Alexander, Vernessa Edwards, Pam Ambrose, Heidi Gonzalez Melendez, Dr. Christin Ferlita, Dr. Elvis Epps, and Sue Gorby. Petitioner's Exhibits numbered 3 through 11, 13 through 15, 17b, 20a, 20b, and 21 were admitted into evidence, and Petitioner's

Exhibits numbered 12 and 16-19 were officially recognized. Respondent testified on her own behalf, and Respondent's Exhibit 1 was admitted into evidence.

The one-volume Transcript of the proceedings was filed with the Division of Administrative Hearings on November 16, 2016. Both parties timely filed Proposed Recommended Orders that have been carefully considered in the preparation of this Recommended Order. All references to Florida Statutes are to the 2015 codification unless otherwise indicated.

#### FINDINGS OF FACT

1. Petitioner, Palm Beach County School Board, is the constitutional entity authorized to operate, control, and supervise the Palm Beach County Public School System. The authority to supervise the school system includes the hiring, discipline, and termination of employees within the school district.

2. Respondent has been a School Board employee since 2000. From 2000 to approximately 2007, she worked as a paraprofessional in the classroom, where her duties included assisting with exceptional education students. In 2007, she moved from the classroom to a position as a bus attendant, again working with exceptional education students as they were transported to and from school. Because of the population she served, her job

included making sure that students were secured in their seats, including those who are transported in wheelchairs.

3. As a bus attendant, Respondent was required to attend training each year at the beginning of the school year. The training included the transport of students with disabilities and the management of student conduct. Respondent was also subject to the guidelines contained in the School District of Palm Beach County Bus Drivers and Bus Attendant Handbook (Transportation Handbook), which reflects policies of the Transportation Department of the School Board and has not changed since 2011. She received a copy of the Transportation Handbook and was trained on the rules and procedures it contains.

4. In chapter 2, section 8 of the Transportation Handbook, it states, "[t]he Bus Driver or Bus Attendant do not have the authority to strike or hit a student or to retaliate if struck or hit, but does have the right to reasonably prevent harm to him/herself." Chapter 6, section 20 includes the following directions:

When you are interacting with special needs students it is important to find out if the student understands that her/his actions are inappropriate or unsafe. It may be that the behavior is related to the particular disability and is not willful or intended behavior. If the disability is at the root of the student's behavior, discipline may not be appropriate.

\* \* \*

The bus attendant, as well as the Bus Driver, should learn the names of all students on the bus. Greet them kindly each day. Inquire about how they are feeling, how that did in school that day, etc. Let them know you care about them as people. This helps to set a pleasant and positive tone for the bus trip.

5. Respondent also received training on the School Board's Code of Ethics Policy, as well as receiving a copy of the policy itself. On April 27, 2010, Respondent electronically signed the Code of Ethics Acknowledgement Receipt indicating that she had received the training and read, understood, and agreed to comply with School Board Policy 3.02, the Code of Ethics.

6. Policy 3.02 specifically defines unethical conduct as including committing any act of child abuse, including physical or verbal abuse; committing any act of cruelty to children or any act of child endangerment; and engaging in misconduct that affects the health, safety, and welfare of a student.

7. Respondent worked on the Royal Palm School route. Royal Palm School is a school that is restricted to special needs students with significant cognitive and physical impairments. All bus routes for Royal Palm School require the use of bus attendants to assist with the students. Respondent chose the Royal Palm School bus route in order to work with Vernessa Edwards, a bus driver with whom Respondent worked for over two and a half years. She was working with Ms. Edwards the day of the incident giving rise to these proceedings.

8. M.S.H. is a special needs student on the Royal Palm School bus route. M.S.H. is approximately 18 years old and suffers from an autism spectrum disorder. He is a large, muscular young man and is non-verbal. At the time of the incident giving rise to this case, M.S.H. was a fairly new student on Respondent's bus. However, in the short time that he had ridden the bus, he had exhibited some disruptive behavior and both Respondent and Ms. Edwards were somewhat afraid of him.

9. His prior behavior had led Ms. Edwards and Ms. Alexander to request that he ride the bus with a harness in order to restrict his movement. Their request had been added to his IEP (Individual Education Plan), but the harness provided was too small for M.S.H. As a result, while his movement was restricted, it was not as restricted as it would have been if the harness had fit him properly. M.S.H.'s shoes also were removed while he was on the bus in order to prevent him from throwing them to get attention.

10. On October 29, 2015, M.S.H. was a student on the Royal Palm School route in the afternoon. Ms. Edwards had instructed Respondent not to seat any student in front of M.S.H. because of his aggressive behavior. Despite this instruction, Respondent placed a younger female student on the bench directly in front of M.S.H.

11. Bus attendants are instructed to sit at the back of the bus, so that the adults on the bus are in different locations. This policy is implemented so that, in the event that there is an accident, at least one adult would be likely to be available to assist the students. Respondent did not follow this policy, but instead sat near the front of the bus, next to the younger student on the bench in front of M.S.H.

12. At the beginning of the bus route, M.S.H. was fairly quiet. He was carrying a baggie filled with cereal, and seemed content. However, several minutes into the bus route, M.S.H. started rocking back and forth in his seat, and then began banging on the bus window.

13. M.S.H. started flailing his arms around, and tried to reach toward Respondent to hit her with his baggie of cereal. Ms. Edwards called the dispatch officer to report the behavior. At first Respondent ignored him, and stood up to let other students off the bus. When she sat down, she continued to ignore him until he hit her with the cereal baggie. Respondent then snatched the baggie out of his hand, looked at him and after a moment returned the baggie to him. M.S.H. then sat in his seat, relatively quiet, for the next two minutes: however, while Respondent and Ms. Edwards assisted a wheelchair-bound student to exit the bus, M.S.H. resumed hitting the window.

14. Soon after the bus resumed forward motion, M.S.H. once again hit the window, and then started reaching for Respondent with both hands. Respondent made no attempt to soothe him. Instead, she stood up and said to him, in an angry voice, "keep your hands to yourself!" M.S.H. responded by hitting her with the baggie of cereal and by reaching forward over the back of Respondent's seat toward the young girl sitting next to Respondent.

15. Once again, there was no attempt by Respondent to calm M.S.H. To the contrary, Respondent responded by punching M.S.H., three to four times and yelling at him.

16. While Respondent does not dispute hitting M.S.H., she does not take responsibility for her actions and does her best to minimize them. She claims that hitting the student was not intentional and that it was "just a tap." The undersigned has viewed the videos of the bus trip several times. It was no tap, and the action taken was definitely deliberate. Respondent hit M.S.H. so forcefully that the sound of the impact could be heard clearly on the bus surveillance tapes, as taken from the front, back, and middle of the bus.

17. Respondent claimed that she was defending the little girl sitting in front of M.S.H. because he had hit her, and the child had cried out. While M.S.H. did reach over the seat toward



the younger student, he did not make contact with her because of his harness, and she did not cry out.

18. Respondent also stated that she had never before hit a child on the bus. Respondent has a short memory. The District also presented the bus video from October 21, 2015, slightly more than a week earlier. On that day, Respondent was strapping the wheelchair of another disabled student into place. While she was securing the wheelchair, she was standing to the side of the child's wheelchair, leaning over him with her arms on either side of him. In short, while perhaps necessary, Respondent was definitely invading the child's personal space. The child pushed against Respondent's hand, and Respondent slapped him, telling him not to touch her. There was nothing soothing in the way she reacted to this child, just as there was nothing soothing in the way she reacted to M.S.H.

19. When Respondent denied at hearing that she had ever slapped a child before hitting M.S.H., she was asked about the encounter with the wheelchair-bound child from the week before. The following exchange took place:

Q. So, Ms. Alexander, you admit that you hit student M.S.H.?

A. Yes.

Q. And you hit him more than once?

A. Yes.

Q. And although you claim it's not intentional; that it was a reflex, you actually hit him four times?

A. I didn't know how many time I hit him. Like his, to myself I counted four time. I don't know how many time I did it. It was a quick reaction. I don't know how many time I did. But I do admit it, that I hit him.

Q. But you saw the video?

A. I saw it. I was shocked.

Q. And you had the opportunity to view the entire video?

A. With you, yes.

Q. And based on what you saw, it wasn't a reflex, was it?

A. Yes. Lord as my witness, yes.

Q. So your reflex was to hit him. But you saw the video. It was more - it was more -

A. I know it. When it happened I didn't know until I saw the video because I did it so fast.

Q. You just testified that you were shocked?

A. I was shocked. Lord as my witness, I was shocked.

Q. You were shocked by your own behavior?

A. My own behavior, yes.

Q. You testified earlier that you've never slapped a student before?

A. Never slapped a student before, yes.

Q. But in my office you also saw the video that's been introduced into evidence as Exhibit 20-B where you said the other student in the wheelchair, M, and the video shows you slap his hand and you said don't touch me?

A. I didn't hear that, but if you said it, it happen.

Q. But you saw the video, and you slapped his hand?

A. I'm always hitting him like that. I'm with him like that, and he like to kick his feet like that.

Q. So it's your normal course to slap the students like that?

A. No, no. I play with him, tease with him. I don't know--it just a way I interact with him.

20. There was nothing playful about the way Respondent slapped this child's hand.

21. Moreover, Ms. Edwards' reaction when Respondent hit M.S.H. does not reflect the surprise or shock that one would expect if Respondent had in fact never previously slapped a child. Instead, Ms. Edwards' expression could be described as resigned dismay, more indicative of someone who had, sadly, seen this behavior before, and was hoping not to see it again.

22. Ms. Edwards reported the incident with M.S.H. to her superiors. As a result, Respondent was reassigned from her position as a bus attendant and had no further contact with students.

23. It does not matter whether Respondent's behavior toward M.S.H. was the first time or the fortieth time she had acted this way. A single case of slapping a child in the manner that Respondent slapped M.S.H. is just cause for termination.

24. While the School Board's collective bargaining agreement provides for progressive discipline, there is authority for termination where the conduct for which discipline is sought is sufficiently egregious. Respondent had no prior formal discipline, although she had on two occasions received formal counseling and directives regarding aggressive behavior toward co-workers that would violate the School Board's Code of Ethics Policy.

25. Dr. Elvis Epps, the School Board's human resources manager, testified that based on the investigation into

Respondent's behavior toward M.S.H., the superintendent recommended that she be terminated because her actions represented a real and immediate danger to the students in the school district and a flagrant and purposeful violation of the reasonable rules of the School Board.

26. Dr. Robert Avossa was hired as superintendent of schools for the school district in June 2015. Since his employment as superintendent, the School Board has consistently terminated employees who have hit a student. It is common knowledge for employees of the School Board that hitting a student is grounds for termination.

#### CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this proceeding pursuant to Article 17 of the Collective Bargaining Agreement between the School District of Palm Beach County, Florida, and the Service Employees International Union/Florida Public Services Union (CBA), as well as sections 120.57(1), 120.65(9), 1012.33(1)(a), and 1012.40, Florida Statutes (2016).

28. The School Board is seeking to terminate Respondent from employment. Normally, the burden of proof in an employment case such as this one would be a preponderance of the evidence standard. Allen v. Sch. Bd. of Dade Cnty., 571 So. 2d 568, 569 (Fla. 3d DCA 1990); § 120.57(1)(j), Fla. Stat. However,

Article 17(1) of the CBA requires Petitioner to prove its case by clear and convincing evidence.

29. As stated by the Supreme Court of Florida:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts at issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). This burden of proof may be met where the evidence is in conflict, but it "seems to preclude evidence that is ambiguous." Westinghouse Elec. Corp. v. Shuler Bros., 590 So. 2d 986, 988 (Fla. 1st DCA 1991).

30. In the Petition filed in this proceeding, the School Board charges that Respondent violated a variety of School Board policies, as well as policies contained within the Transportation Handbook and Article 17 of the CBA. It alleges generally that Respondent's behavior provides "just cause" for her termination.

31. Respondent is an educational support employee as defined in section 1012.40(1)(a). Section 1012.40(2)(c) provides:

(c) In the event a district school superintendent seeks termination of an

employee, the district school board may suspend the employee with or without pay. The employee shall receive written notice and shall have the opportunity to appeal the termination. The appeals process shall be determined by the appropriate collective bargaining process or by district school board rule in the event there is no collective bargaining agreement.

32. The CBA provides that "without the consent of the employee and Union, disciplinary action may not be taken against an employee except for just cause and this must be substantiated by clear and convincing evidence which supports the recommended disciplinary action." The CBA does not define "just cause."

33. The parties in this proceeding did not address what constitutes "just cause" for discipline. However, a reasonable interpretation of the term would be the definition provided for instructional personnel in section 1012.33(1)(a), which provides:

Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: Immorality, misconduct in office, incompetency, . . . gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

34. Florida Administrative Code Rule 6A-5.056 further defines the terms used in section 1012.33(1)(a), with respect to "just cause." The term "misconduct" includes a violation of the adopted school board rules, as well as behavior that disrupts the student's learning environment. "Gross insubordination" means

"the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure in the performance of the required duties." "Willful neglect of duty" means "intentional or reckless failure to carry out required duties." Fla. Admin. Code R. 6A-5.056(2)(c) and (d); (4), and (5). The authority cited in the School Board's Petition is viewed through this lens with respect to the definition of "just cause."

35. The Petition asserts that Respondent violated Policy 1.013(1), Responsibilities of the School District Personnel and Staff, which provides:

It shall be the responsibility of the personnel employed by the district school board to carry out their assigned duties in accordance with federal laws, state statutes, state board of education rules, school board policy, superintendent's administrative directives and local school and area rules.

36. Violation of Policy 1.013(1) is dependent on the School Board establishing a violation of federal or state law or rule, another school board policy or rule, or superintendent's administrative directive. As found below, the School Board has proven such a violation.

37. The Petition alleges that Respondent violated several provisions within the School Board's Code of Ethics Policy. The relevant portions of the Policy 3.02, Code of Ethics, are as follows:

### 3. Making Ethical Decisions

While this Code of Ethics provides general guidance, it does not provide a complete listing or a definitive answer to every possible ethical situation. It is the intention of the Board in enacting this policy that the use of good judgment, based on high ethical principles and following such precedent as may be established by the Florida Commission on Ethics and Florida Education Practices Commission, will serve as a guide in determining appropriate conduct in any circumstance. When making decisions, the Superintendent and District employees should use good judgment to fulfill the spirit as well as the letter of this Code of Ethics and should:

- a. Evaluate the situation and identify ethical issues.

\* \* \*

### 4. Accountability and Compliance

Each employee agrees and pledges:

- a. To provide the best example possible: striving to demonstrate excellence, integrity and responsibility in the workplace.
- b. To obey local, state and national laws, codes and regulations.

\* \* \*

- d. To treat all students and individuals with respect and to strive to be fair in all matters.

\* \* \*

- f. To take responsibility and be accountable for his or her acts or omissions.

\* \* \*

- j. To be efficient and effective in the delivery of all job duties.



5. Ethical Standards

a. Abuse of Students - We are committed to ensuring that employee-student relationships are positive, professional and non-exploitive. We will not tolerate improper employee-student relationships. Each employee should always maintain a professional relationship with students, both in and outside of the classroom. Unethical conduct includes but is not limited to:

- (i) Committing any act of child abuse, including physical and verbal abuse.
- (ii) Committing any act of cruelty to children or any act of child endangerment.

\* \* \*

(vii) Engaging in misconduct which affects the health, safety and welfare of a student(s).

38. By striking M.S.H. as evidenced in the bus surveillance video, Respondent violated the Ethics Code as alleged in the Petition. By doing so, Respondent also violated Policy 1.013(1), and committed misconduct as contemplated by section 1012.33(1) (a).

39. The Petition also charged Respondent with violating Policy 3.10(6), Conditions of Employment with the District, which provides:

6. The District requires its employees to carry out their responsibilities in accordance to School Board Policy 1.013 (as may be amended), their job descriptions and reasonable directives from their supervisors that do not pose an immediate serious hazard to health and safety or clearly violate established law or policy.

40. This policy does not provide a separate, independent means for imposing discipline. It, however, supports the imposition of discipline where violations of the Transportation Handbook or other reasonable directives are proven.

41. Also cited as a basis for discipline and termination is School Board Policy 3.27, entitled "Suspension and Dismissal of Employees." This policy does not provide substantive violations, but describes the procedure by which disciplinary matters are handled. This case has been handled in accordance with Policy 3.27.

42. The most direct basis for disciplining Respondent that is alleged in the Petition, other than the Code of Ethics Policy at section 5, is the violation of the provisions within the Transportation Handbook. The Transportation Handbook contains the policies and procedures of the Transportation Department and, by extension, are policies of the School Board. The Petition alleges that Respondent violated the directives contained in chapter 2, section 8(A); chapter 3, section 2<sup>1/</sup>; and chapter 6, section 20 of the Transportation Handbook. The relevant provisions within these sections state, as follows:

Chapter 1, Section 2: Duties and Responsibilities of Bus Drivers and Bus Attendants:

There are many very important duties and responsibilities that you have as a bus driver and bus attendant. Students and their parents/guardians, as well as school

personnel count on you to be polite, courteous, and on time. They expect that you will get the students to and from school safely and supervise them well.

You are also expected to follow the established rules, guidelines, policies, procedures, and practices of the School District of Palm Beach County, Florida, and of our Transportation Department. Needless to say it is expected that you will be courteous and respectful to your supervisors, facility employees, and your coworkers. Getting along with others is a very important part of the job. Respect earns respect!

\* \* \*

Chapter 2, Section 8: Approved Procedures for Student Management

A. Bus Driver and Bus Attendant

Responsibilities: Rules, Regulations, and Student Conduct

\* \* \*

Hitting or Striking Students: The Bus Driver or Bus Attendant do not have the authority to strike or hit a student or to retaliate if struck or hit, but does have the right to reasonably prevent harm to him/herself.

\* \* \*

Chapter 6, "Special Needs" Students  
Section 20. Behavior Management (If Needed)

It is important for all passengers on the school bus to follow rules established by the school district. Behavior that puts the safety, health and welfare of other students, the bus driver, bus attendant, or the community at risk should not be permitted or tolerated. . . .

Interacting with Special Needs Students

When you are interacting with special needs students it is important to find out if the

student understands that her/his actions are inappropriate or unsafe. It may be that the behavior is related to the particular disability and is not willful or intended behavior. If the disability is at the root of the student's behavior, discipline may not be appropriate. **Behavior problems are usually a form of communication.** It is important to understand why students are acting out. Corrective steps can then be taken to correct the student's particular situation.

\* \* \*

Facilitating Student Management on the Bus

The Bus Attendant, as well as the Bus Driver, should learn the names of all students on the bus. Greet them kindly each day. Inquire about how they are feeling, how they did in school that day, etc. Let them know that you care about them as people. This helps to set a pleasant and positive tone for the bus trip.

43. Respondent clearly violated these requirements by yelling at and striking student M.S.H. Petitioner has proven that Respondent did so by clear and convincing evidence.

44. Finally, the Petition cites to the CBA, Article 17, related to Progressive Discipline. Article 17, paragraph seven provides that there shall be progressive discipline, "[e]xcept in cases which clearly constitute a real and immediate danger to the District or the actions/inactions of the employee constitute such clearly flagrant and purposeful violations of reasonable School Board rules and regulations."

45. It is noted that many of the provisions cited are somewhat duplicative: they reiterate that violation of reasonable directives, School Board policies, and Florida and federal law are bases to establish just cause for discipline. While some of the provisions cited appear to be aspirational in nature, there is no question that hitting a child is absolutely prohibited. Striking a child in anger is an action that is "clearly flagrant and purposeful."

46. While Respondent admitted striking M.S.H., she claimed it was just a reflex, caused perhaps by her fear of his size and ability to cause harm. However, Respondent is the adult in this situation, charged with caring for a student with special needs. A bus attendant is placed on the bus with special needs students to insure that these students come to no harm. Under no circumstances can the School Board allow a bus attendant who strikes out at a student, whether as a reflex or not, to remain employed in a setting where constant interaction with students is required.

47. Petitioner has proven the allegations in the Petition by clear and convincing evidence.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board of Palm Beach County

enter a final order determining that just cause exists for a 15-day suspension without pay and termination of employment.

DONE AND ENTERED this 16th day of December, 2016, in Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of December, 2016.

ENDNOTE

<sup>1/</sup> While Petitioner cites to chapter 3, section 2, "Duties and Responsibilities of School Bus Drivers and School Bus Attendants" is actually found in chapter 1 at section 2.

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.