

SHANE WEEKS,

Appellant

v.

CARROLL COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-44

OPINION

INTRODUCTION

The Appellant, Shane Weeks, challenges the decision of the Carroll County Board of Education to decertify him as a school bus driver. The Carroll County Board of Education (“local board”) filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, illegal, or unreasonable. The Appellant has not responded to the local board’s motion.

FACTUAL BACKGROUND

Appellant worked as a substitute bus driver for Carroll County Public Schools. On May 22, 2012, a student at Francis Scott Key High School told his principal that the Appellant had been sending him inappropriate text messages.

The text messages were sexual in nature and included messages where the Appellant asked about the student’s sexuality and also asked to meet the student somewhere. In response to the allegations, the school system reported the text messages to the Department of Social Services (“Social Services”), Child Protective Services, and the Carroll County Sheriff’s Department for an investigation into child abuse charges.

Dana Falls, Director of Student Services, then called the Appellant and told him that he was suspended from driving a bus until further notice. The school system also prohibited Mr. Weeks from entering any school property. That same day, John O’Meally, Transportation Area Supervisor, pulled the AngelTrax camera from the bus. The footage from the camera revealed that:

1. On May 21, 2012, Appellant used his cell phone while driving the school bus for both talking and texting, including activity while students were on the bus;
2. On May 21, 2012, Appellant pulled over and exited the bus for approximately one minute during his route;
3. On May 22, 2012, Appellant left the bus unattended and running for five minutes while he entered a convenience store;

4. On May 22, 2012, Appellant used his cell phone and texted multiple times while driving the bus, sometimes for several consecutive minutes at a time, including times when students were on board the bus;
5. On May 23, 2012, Appellant used his cell phone and sent text messages thirteen times while driving, including times when he had students on board the bus;
6. On May 24, 2012, Appellant used his cell phone and sent text messages while driving, including times when he had students on board the bus;
7. On May 24, 2012, Appellant sent inappropriate text messages of a sexual nature to a student; and
8. On May 24, 2012, Appellant stopped the bus and directed a student to exit the bus to retrieve cleaning supplies from an external compartment on the bus. Upon the student's return, Appellant directed the student to clean the windows on the bus.

Social Services began its investigation and the school system halted its investigation until the Social Services investigation was complete. Social Services did not charge the Appellant with child abuse. The school system then resumed its own internal investigation.

On July 18, 2012, Mr. O'Meally met with the Appellant to discuss his conduct. The Appellant did not dispute any of the allegations. The Appellant maintained, however, that he had been unaware that he had been texting a student. Instead, he thought he had been texting one of his friends. He said that he stopped once he realized he had been speaking to a student. When Mr. O'Meally asked how he got the student's phone number, Appellant insisted that, not knowing he was a student, he had friended him on Facebook.¹

Appellant then asked Mr. O'Meally to allow him to return as a bus driver on probationary status, with the school bus' cameras monitoring his actions. Mr. O'Meally declined that request. By letter dated July 19, 2012, Mr. O'Meally informed the Appellant that he had been decertified as a bus driver for the school system.

Appellant appealed Mr. O'Meally's decision to Michael J. Hardesty, Director of Transportation. In response, Mr. Hardesty held a meeting with the Appellant on September 6, 2012. He sent the Appellant a letter the same day affirming Mr. O'Meally's decision.

On September 19, 2012, the Appellant filed an appeal with the Superintendent, and submitted a written addendum on October 2, 2012. The Superintendent's Designee affirmed Mr. Hardesty's decision and also prohibited the Appellant from serving, in the future, in any other capacity for the school system.

The Appellant appealed the Superintendent's decision to local board. On January 10, 2013, the local board affirmed the Superintendent's decision. This appeal ensued.

¹ The Superintendent reported to the local board that on Facebook the student identifies himself as a Carroll County high school student.

STANDARD OF REVIEW

The local board's decision is prima facie correct and the State Board may not substitute its judgment unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

ANALYSIS

The Appellant raises several issues in his appeal. He asserts that his decertification was discriminatory; his procedural due process rights were violated; and his punishment was too harsh.

Appellant did not produce concrete evidence to prove discrimination

The Appellant contends that he has been discriminated against based on his gender and his involvement in a prior civil case. Allegations of discrimination must be supported by evidence. Allegations alone are insufficient to support a claim of discrimination. *Keene v. Washington County Bd. of Educ.*, Op. No. 04-02 (2004) (see *Ewing v. Cecil County Bd. of Educ.*, 6 Op. MSBE 818 (1995)). The Appellant has failed to provide any evidence to corroborate his claims. Although he claims that he reported, on four occasions, female bus drivers for texting while driving and they have not been punished, he has not presented any evidence to substantiate this statement. Furthermore, the Appellant has not provided any specificity regarding the civil case or how it relates to his discrimination charge.

The local board provided the Appellant with due process

Appellant contends that his due process rights were violated because he was not provided with an evidentiary hearing on the termination. Due process does not require an evidentiary hearing on issues that do not include a dispute of material fact. *Johnson v. Howard County Bd. of Educ.*, MSBE Op. No. 09-28 at 9 (2009). The Appellant must show that there is a material factual dispute by producing "factually accurate and credible" assertions. *Id.* at 7 (citing *Ewing v. Cecil County Bd. of Educ.*, 6 Ops. MSBE 818 (1995)). However, the Appellant admitted to all of the school system's accusations when he met with Mr. O'Meally. He has only maintained that he did not know that he had been texting a student. That is the only "fact" in dispute but it does not rise to the level of materiality given the litany of other facts to which the Appellant admitted.

The Appellant also claims that the local board's decision should be reversed because he did not receive a copy of the local board's decision. While a local board's failure to provide an appellant with its decision may possibly violate due process in certain factual scenarios, such was not the case here. The record includes a copy of the local board's decision and a cover letter, with a notation that the letter was mailed on February 14, 2013. Furthermore, the Appellant's documentation includes the same decision and cover letter.

The local board adhered to the Transportation Service's Unacceptable Behavior Chart


The Appellant asserts that termination was too harsh a penalty and that suspension with a monitored probation period after returning to work was the proper punishment. The

Transportation Service's Unacceptable Behavior Chart outlines various offenses and the penalty. Under the policy, reckless driving, endangerment of students, and using a cell phone while driving hold a penalty of suspension for the first offense. The second offense warrants decertification. However, texting while driving warrants decertification on the first offense. Moreover, the policy states that a "combination of/or cumulative offenses could result in more serious consequences" and that "a more serious consequence on a first offense could occur." Thus, the final penalty may differ from those listed in the chart. The Superintendent has the final say over a non-certified employee's punishment.

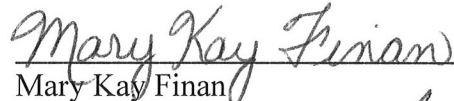
Appellant argues that because most of his infractions call for a punishment of suspension for the first offense, he should only be suspended. The facts show, however, that the Appellant used his cell phone, texted while driving, endangered students, and drove recklessly, all within a period of days. The policy states that employees could receive harsher punishment for a combination of offenses. The only punishment harsher than suspension is decertification. Moreover, the Appellant texted while driving on multiple occasions, which is punishable by decertification on the first offense.

CONCLUSION

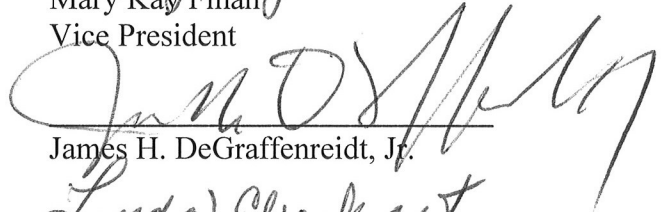
For the foregoing reasons, we do not find the local board's decision to be arbitrary, unreasonable, or illegal. Accordingly, we affirm the local board's decision to decertify the Appellant as a bus driver.



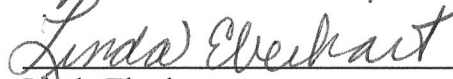
Charlene M. Dukes
President



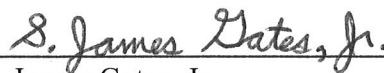
Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.



Linda Eberhart



S. James Gates, Jr.

Absent

Luisa Montero-Diaz

Absent

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Guffie M. Smith, Jr.

Guffie M. Smith, Jr.

August 27, 2013