

MICHELE BUCEY,

Appellants

v.

HARFORD COUNTY BOARD  
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-18

## OPINION

### INTRODUCTION

Michele Bucey, the Appellant, was a bus driver for Harford County Public Schools (HCPS). She appeals her termination from that position. The Harford County Board of Education (local board) filed a Motion to Dismiss or For Summary Affirmance. The Appellant filed a Response in Opposition. The local board filed a reply.

### FACTUAL BACKGROUND

HCPS employed the Appellant as a bus driver in August, 2002. (Tr. 215). During the 2009-2010 school year the Appellant drove Bus 398 transporting special education students from Harford County to Kennedy Krieger High School (KKHS) located on Greenspring Avenue in Baltimore County. (Joint Ex. 8; Tr. 70). Bus 398 was designed for special needs students with four rows of seating on one side and eight on the other side. (Tr. 70-72; Joint Ex. 12). On January 27, 2010, five special education students were being transported to KKHS on Bus 398. (Tr. 162-165; Ex. 18).

Appellant began Bus 398's run to KKHS at approximately 5:00 a.m. (Joint Exs. 8 and 18). The regular bus attendant, Ms. Sharon Pennington, accompanied Appellant on the run. (Joint Ex. 8; Tr. 69). At approximately 7:40 a.m., Bus 398 arrived at KKHS. (*Id.*; Joint Ex. 18). At approximately 7:45 a.m., four of the five students disembarked at KKHS. (*Id.*; Joint Ex. 18). At approximately 8:00 a.m., Bus 398 departed from KKHS, proceeded to Joppa Road, and entered the parking lot at the Bob Evans Restaurant on Joppa Road. (Tr. 173; 187; Joint Ex. 18). This location was approximately a half hour drive from KKHS. (*Id.*)

After the bus was parked at the Bob Evans lot, Ms. Pennington exited the bus and entered the Bob Evans Restaurant. (Tr. 60). Appellant, upon leaving the driver's seat, walked through the bus and observed a student's backpack in seat number one immediately behind her driver's seat. (Joint Ex. 18). After seeing the student's backpack, the Appellant discovered a student, identified as Jacob, curled up and sound asleep in his seat. (*Id.*; Tr. 73). The Appellant drove Bus 398 back to KKHS where Jacob disembarked at or about 9:00 a.m. (*Id.*)

At or about 2:45 p.m., the Appellant returned to Harford County on Bus 398 and requested to meet with Danielle Lister, an HCPS Supervisor of Transportation. (*Id.*) She advised Ms. Lister that she had discovered Jacob asleep in his seat in the bus at the Bob Evans Restaurant parking lot, approximately a half hour after the other students had disembarked from Bus 398 at KKHS. (*Id.*)

HCPS has a policy and procedure that requires bus drivers to conduct a post-trip inspection of the bus immediately or no later than five minutes after discharging the last child from the bus. (Tr. 36-37; 52-53; Joint Ex. 2, section entitled "School Bus Driver Attendant Handbook" at page 17; Joint Ex. 9; Joint Ex. 12). The Appellant had attended training sessions where she was instructed about the required procedures relating to HCPS bus drivers and, more specifically, the requirement to conduct an immediate post-trip inspection. (Tr. 37-50). A sign was posted in Bus 398, as well as all other buses, over the bus door which stated "IMPORTANT! You must Check Bus For Students After Every Run." (Tr. 52-53; Joint Ex. 9; Joint Ex. 12).

Later in the day, the Appellant met again with Ms. Lister and with Mr. Taibi, the Director of Transportation. (Tr. 97). Following that meeting, Mr. Taibi issued a letter dated January 27, 2010 to the Appellant advising her that she had been decertified as a bus driver for the HCPS because she had failed to perform a complete post-trip inspection within the mandated five minute timeframe, resulting in a student being left on her bus for a significant length of time. (Joint Ex. 7). She was subsequently terminated from her job.

Ms. Bucey appealed the decertification/employment termination to the Harford County Board of Education. The local board referred the appeal to a Hearing Officer. After hearing testimony in this matter, the Hearing Officer issued his findings of fact, conclusions of law and a recommendation that the local board affirm the Superintendent's decision. The local board issued a decision on or about July 14, 2010 upholding the decision of the Superintendent terminating the employment of the Appellant as a result of her decertification. This appeal ensued.

#### STANDARD OF REVIEW

This case involves a local policy or dispute regarding the rules and regulations of the local board and, more specifically, rules and regulations relating to bus transportation, *i.e.* HCPS' requirements that bus drivers perform a post-trip inspection. As such, the decision of the local board is to be considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board in this case unless the decision was arbitrary, unreasonable or illegal. *See Popp v. Howard County Board of Education*, MSBE Op. No. 04-22 (2004).

#### LEGAL ANALYSIS

The local board, as a policy, strictly enforces its rule that a bus driver conduct a post-trip inspection of the bus immediately or no later than five minutes after discharging the last child from the bus. The rule itself states "Failure to perform a post-trip inspection [within the 5 minute limit] which results in a child being left unattended will be viewed as a serious breach of duty.

This breach of duty will result in the disqualification/termination of the responsible person.” (Joint Ex. 2).

In 1999, then Superintendent Haas issued a statement about the school system’s interpretation of the rule. She said, “I will not discriminate whether you get off the bus and leave the child alone on the bus or whether you did not discover a student because you have not implemented your pre-and-post-trip checklist. In my view, both of those violations are negligent and place a student in potential risk.” (Joint Ex. 13). That policy was reiterated to bus drivers throughout years. (Hearing Officer Decision at 9).

On January 27, 2010, Ms. Bucey and the attendant failed to perform the inspection within the five minute time limit. For thirty minutes, until the stop at Bob Evans, neither Ms. Bucey nor the attendant were aware that a child remained on the bus.

Ms. Bucey argues that she did not violate the rule because the child was not left “unattended.” We do not agree. In our view, an attended child is one whose presence is known to the bus driver and who is being cared for. An unattended child is one whose presence is unknown and who is not being watched over. We agree with the local board and with the Hearing Officer who ruled:

[T]he evidence supports the inference that neither the driver nor the attendant was aware of the child and that he was, therefore, “unattended.” The common meanings of unattended include “without attention,” “not cared for or ministered to,” “not watched over,” “unheeded,” and “disregarded.” The Random House Dictionary of the English Language, 2Ed., Random House, New York. (1987).

Hearing Officer’s Decision at 23.

The Appellant argues, however, that because of the chaotic traffic circumstances at KKHS, it was impossible to do the post-trip inspection within the five minute time period. A colleague bus driver, Ms. Smithson, testified about the chaotic nature of the KKHS bus loop. Other bus drivers would pass a bus when it was unloading, squeezing by it, cabs would pull up on the grass to unload. It was difficult to find a place to park to do the post-trip inspection. She testified that this was a typical day on the KKHS bus loop. *See* Hearing Officer Decision at 12-13. She also testified that if she couldn’t stop to do the inspection “she would push her attendant to make sure she did the post-trip inspection.” *Id.* at 13.

Ms. Bucey testified about the circumstances on January 27, 2010.

That day all of the buses were running late. There’s 53 buses at that school. There’s six in the loop. There’s three on the hill . . . . Everyone else is down at the bottom of the hill in the lower parking lot. We couldn’t even get to the lower parking lot because the buses

were parked there, some waiting to unload. Some had already unloaded from the LEAP building and were parked there.

. . . . I don't know exactly [how many buses were parked in that lower lot] because buses were still coming in. Traffic was late that day . . . There were buses parked in the lot.

I left the school. I was holding up traffic . . . . Where I was I was actually holding up traffic waiting for other . . . buses to come in, other buses to leave. There's no way I could stay there at the school. So once I got out onto Greenspring, two buses were parked out on Greenspring already, so . . . there was no opportunity to stop on Greenspring. Those two side streets that Ms. Lister is talking about are small that cars are parked on the side and it's only large enough for one vehicle to come down, one car.

"I didn't know the names [Keyworth Avenue and Shirley Avenue] but they're there. The side streets are there, but they are narrow. [There] are cars parked on the side of them and it's only one car width.

I didn't have access to the area where I would normally have gone to make the post-trip."

Ms. Bucey explained why she had not used the Northern District Police Station on Coldspring Lane: "Well, first of all, we have a rule "if you don't know, don't go." That area, I'm not sure of it, to begin with. Secondly, what I am sure of is that it had major construction from the . . . Loyola University field . . . they were erecting a stadium . . . . Trucks, big construction vehicles."

*Id.* at 16.

It is apparent from the testimony that the KKHS bus loop is usually a chaotic place and it is difficult to find a place to pull over. It was even more so on January 27, 2010. (*Id.* at 21). Yet, in our view, that is not a valid defense in this case. First of all, we point out that these were two adults and only five students on that bus. They were all special needs children. The post-trip inspection is a serious matter of child safety, especially for those children. Ms. Bucey did not "push" her attendant to do the post-trip inspection, certainly a viable option given the chaotic circumstances at KKHS that day.


We cannot conclude that the post-trip inspection was impossible to perform within the five minute rule. Indeed, Ms. Bucey could have held up bus traffic for a few minutes to do so. Or she could have asserted herself with the attendant to do so. She did neither. Luckily, the child in question was merely sleeping. He could instead have been ill or in life-threatening distress. Thirty minutes is too long a time for a child to be unattended. Although the penalty for

failure to do a timely post-inspection is severe, it is our view that it was neither arbitrary, unreasonable, or illegal to apply it in this case.

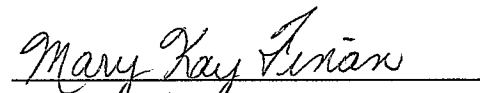
We point out, however, given the fact that KKHS bus loop is known to be chaotic and maybe dangerous, it may be appropriate for the school system and KKHS administration to meet to discuss how best to deal with the congestion problems. Ms. Bucey testified that in her runs to KKHS over two years, "probably about 70 to 80 percent [are chaotic] . . . ." *Id.* at 21. She also testified that there may have been one or two other days that she did not complete a timely post-trip inspection. *Id.* It seems that some attention to the problem would be prudent.

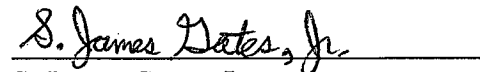
CONCLUSION

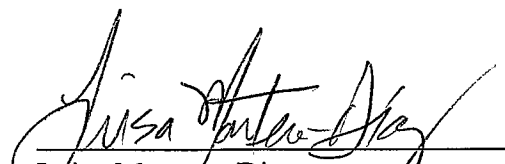
For all these reasons, we affirm the decision of the local board.

  
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James H. DeGraffenreidt, Jr.  
President

ABSENT  
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Charlene M. Dukes  
Vice President

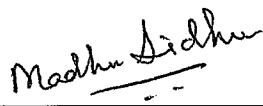
  
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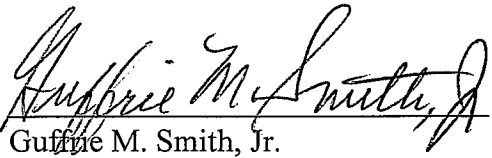
  
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Luisa Montero-Diaz



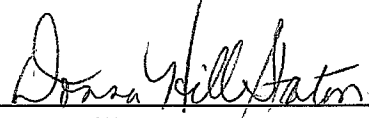
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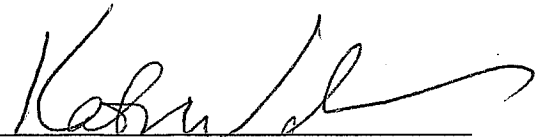
Guffie M. Smith, Jr.



Donna Hill Staton



Ivan C.A. Walks



Kate Walsh

April 26, 2011