

TERRI FELDMAN,

Appellant

v.

CARROLL COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-26

OPINION

INTRODUCTION

The Appellant, Terri Feldman, is a bus driver for Carroll County Public School System. She appeals the decision of Carroll County Board of Education (local board) suspending her for three days. The local board filed a Motion for Summary Affirmance. The Appellant filed an Opposition, and the local board filed a Reply.

FACTUAL BACKGROUND

On Friday, April 23, 2010, during her morning run driving bus #165, Ms. Feldman arrived at the Tahoma/Ryder bus stop a few minutes early. (T. 145). Several students got on the bus. (T. 145). Another student, Student B., approached the bus and told Ms. Feldman he was not going to ride the bus that day. (T. 21). He said to go on without him. (T. 21). Student B. walked back up the sidewalk away from the bus. (T. 22). At that same time, someone in the back of the bus told Ms. Feldman that Student T. had fallen on his way to the bus stop. (T. 147). Ms. Feldman saw Student T. laying on the sidewalk, 300 feet or so away. (T. 147; 160). Ms. Feldman pulled away, continuing on her route. (T. 148-149). She did not make a report to the school system at that time or at anytime thereafter.

Student T. had indeed fallen and broken his arm while he was running with Student B. to catch the bus. (T. 6-8). He also was cut and bleeding from brush burns. (T. 17). Student B. returned to help him after he told Ms. Feldman he would not ride the bus that day. (T. 21). By circumstance, Student T.'s mother was in her car behind the bus and she was able to get her son to the hospital. (T. 17-18). Student T.'s mother complained to the school system that the bus driver drove away "without due care and concern" leaving her son lying on the sidewalk. (Motion, Ex. 1).

After an investigation, Richard Stimmel, Area Supervisor for Transportation Services, concluded:

- Ms. Feldman was aware that the student had fallen within

- her sight and did not proceed to her bus.
- Ms. Feldman did not make any effort to determine if the student was injured or the extent of those injuries. Student had lacerations and broken arm. With a fall of this nature the student could have had other complications such as a concussion and been in need of immediate emergency response.
 - Ms. Feldman has been repeatedly trained not to leave a student at a stop and endanger them.
 - Ms. Feldman made no attempt at contacting Transportation Services or 911 to report this situation which is in violation of her training as a driver.
 - Ms. Feldman left the scene with the understanding that she was the only adult who was aware of the accident. From her observation of the scene she left two middle school students to fend for themselves while one student had fallen and was on the pavement.

(Motion, Ex. 2).

Mr. Stimmel concluded that Ms. Feldman's conduct on that day endangered student safety. He suspended Ms. Feldman for three days. (Motion, Ex. 3).

Ms. Feldman appealed the suspension to James Doolan, Director of Transportation who, after a hearing, upheld the suspension. (Motion, Ex. 5). Ms. Feldman appealed to the Superintendent. After an evidentiary hearing, the Superintendent's Designee upheld the suspension. (Motion, Ex. 7).

Ms. Feldman appealed to the local board. A majority of the board upheld the suspension finding that the Appellant "committed a serious lapse of judgment by not reporting the fallen child to anyone." (Motion, Ex. 8 at 4). The local board concluded that her omission "created an environment of endangerment for the two students left at the bus stop." (*Id.*) Two members dissented. 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. As such, the decision of the local board is to be considered *prima facie* correct. The State Board will not substitute its judgement for that of the local board in this case unless the decision was arbitrary, unreasonable or illegal. See *Popp v. Howard County Bd. of Educ.*, MSBE Op. No. 04-22 (2004).

LEGAL ANALYSIS

Ms. Feldman makes two arguments in support of her appeal. First, she asserts that she violated no written law or policy. Second, she argues that she was not provided due process of law.

Law or Policy

Ms. Feldman argues that no written law or policy existed governing what a bus driver should do when a student falls “hundreds of feet [away] from the assigned bus stop.” (Appeal at 3-5). We disagree. COMAR 13A.06.07.07D provides that “any act or omission that adversely affects . . . safety may be grounds for disqualification and termination.” In addition, Carroll County Public School System written guidelines for bus drivers set forth the offense of “endangerment students/allowing unsafe environment” which carries a penalty of suspension for a first offense. (Motion, Ex. 4).

The local board noted that, even if there was not a specific law or rule governing the specific facts of this case, that did not require reversal of the suspension. The board stated:

The fact that there is not a precise written policy or procedure holds no merit. Not every infraction needs to be spelled out nor can it be. In the majority’s view, the absence of a specific transportation procedure does not excuse the bus driver from responsibility for student safety.

(Motion, Ex. 8 at 4).

In the context of this argument, the Appellant asserts that her responsibility for a student’s safety lies within “the immediate zone of the bus stop.” (Opposition at 15). She believes that, because Student T. fell about 300 feet from her bus, no responsibility arose. We decline to adopt the “immediate zone” argument or to define such a zone. In this case, Ms. Feldman knew that a student had fallen on his way to catch the bus. She saw him on the ground. In our view, that knowledge was sufficient to trigger the responsibility for student safety.

The local board viewed all the facts in the case and concluded that Ms. Feldman violated regulation and board policy. (Motion, Ex. 8 at 4). We find nothing arbitrary or unreasonable about that conclusion. Ms. Feldman left two eleven year old boys to fend for themselves, knowing that one had fallen. She didn’t even pick up her phone to report the incident. We concur with the local board that she endangered the safety of those two students. Luckily, Student T.’s mother was close by and able to tend to her son.

Due Process

Ms. Feldman asserts that she was denied due process because she was called to a meeting

on April 29, 2010 concerning the incident that occurred on April 23, 2010. She says she had "no notice" of the subject of the meeting. (Opposition at 14). At the meeting, Mr. Stimmel explained the facts he had gathered and Ms. Feldman was given an opportunity to address them. On May 3, 2010, she received the letter suspending her for three days. She believes that prior to her suspension, she was entitled to more due process.

Under *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), the due process requirement prior to suspension is an informal pre-suspension meeting at which a person is informed of the information the school had gathered and given an opportunity to respond. We believe Ms. Feldman was provided such a meeting on April 29, 2010.

As the local board points out, however, even if it were assumed that Ms. Feldman was denied due process at the pre-suspension stage, any such lapse was subsequently cured by the hearing before Mr. Doolan followed by the evidentiary hearing before Mr. Simmons. See *Venter v. Howard County Bd. of Educ.*, MSBE Op. No. 05-22, at n. 12 (2005); *Harrison v. Somerset County Bd. of Educ.*, 7 Op. MSBE 391 (1996), (reasoning that alleged due process violations at earlier stages are cured by subsequent evidentiary hearing). In short, it is our view that the local school system provided Ms. Feldman with all of the process that she was due under the *Loudermill* standard and under the Due Process Clause of the United States Constitution.

The Penalty


While we will affirm the decision of the local board, we take note that the penalty imposed in this case seems quite lenient, particularly when compared with a recent case in which a bus driver was terminated for an offense on par with this one. See *Bucey v. Harford County Bd. of Educ.*, MSBE Op. No. 11-18 (April 26, 2011).

CONCLUSION

For all these reasons, we affirm the decision of the local board because it is neither arbitrary, unreasonable nor illegal.



James H. DeGraffenreidt, Jr.
President



Charlene M. Dukes
Vice President

Mary Kay Finan
Mary Kay Finan

*S. James Gates, Jr.*¹⁰⁵
S. James Gates, Jr.

Luisa Montero-Diaz
Luisa Montero-Diaz

*Sayed M. Naved*¹⁰⁵
Sayed M. Naved

*Madhu Sidhu*¹⁰⁵
Madhu Sidhu

*Guffie M. Smith*¹⁰⁵
Guffie M. Smith, Jr.

Donna Hill Staton
Donna Hill Staton

Ivan C.A. Walks
Ivan C.A. Walks

*Kate Walsh*¹⁰⁵
Kate Walsh

May 24, 2011