

DIANA BELL,

Appellant

v.

CALVERT COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-33

OPINION

INTRODUCTION

The Appellant appeals the decision of the Calvert County Board of Education (local board) disqualifying her from driving a bus in any local school system in Maryland for five years. The local board filed a Motion for Summary Affirmance. The Appellant has not responded.

FACTUAL BACKGROUND

The Appellant began driving a school bus for Calvert County schools as a new bus driver at the beginning of the 2011-2012 school year. Shortly thereafter, on September 26, 2011, Appellant was returning 12 elementary students to their homes at the end of the day. As she was traveling down Ross Road, she missed a regular bus stop. Appellant did not contact the transportation department for assistance on where an appropriate and safe change in her bus route could be made in order to drop of the students whose stop she had missed.

The Appellant began looking for places along the road in which she believed she could turn her bus around. She decided to turn around in a dirt driveway, backing up her bus across Ross Road between two curves in the road. Appellant used her mirrors and asked one of the elementary school students to assist in the backing maneuver. She did not check her clearances before backing up. As Appellant was backing up, she backed into a tree. Damage to the bus for this accident was \$12,339.87.

After backing into the tree, Appellant again failed to communicate with the transportation department to ascertain where and how she should attempt to return to her bus route. She decided to drive down the private driveway and attempt to turn around at the end of the driveway. On the way down the driveway, trees slammed against the bus, scraping and damaging the sides of the bus. At a clearing along the driveway Appellant attempted to turn the bus around. The bus got stuck. It was necessary for the owner of the property to get his tractor and pull the bus out of the mud. On the way back down the private driveway to Ross Road, trees slammed against the side of the bus, again scraping and damaging the bus. Damage for this second incident was \$6,480.11.

Approximately 15 minutes from the time Appellant left her assigned bus route, Appellant notified her bus contractor and the transportation department that she was "running late" for her stops, and "got stuck" turning around, but she did not report her departure from her assigned route or her two accidents.

The Appellant returned to work on September 27 and completed incident report forms. Thereafter, she was suspended until a further investigation was completed and a final decision reached.

The Accident Review Committee met on October 3, 2011. In accordance with the Maryland State Department of Education Guidelines for Determining Preventability of School Bus Accidents, the Committee determined that Ms. Bell had been involved in two separate accidents and that each accident was preventable. On November 14, 2011, Mr. Edward Cassidy, Director of Transportation, determined that because Ms. Bell had been involved in two separate, preventable accidents, each resulting in "appreciable damage" to the bus, and because she did not report the accidents to the Transportation Department, in accordance with Maryland law and regulations Ms. Bell would be disqualified as a school bus driver in any school system in Maryland.

On November 21, 2011, Ms. Bell appealed Mr. Cassidy's decision to Mr. Deborah Pulley, the Superintendent's designee and Executive Director of School Operations. On November 29, 2011, Ms. Pulley and Ms. Kimberly Roof, Executive Director of Administration, met with Ms. Bell to give her an opportunity to explain the incident. Upon completion of an investigation and review of records, Ms. Pulley informed Ms. Bell on December 15, 2011, that she was upholding Mr. Cassidy's findings and decision.

From that decision of the Superintendent's designee, Appellant filed an appeal with the local board. After reviewing the filings of all parties, on May 21, 2012, the local board remanded the matter to a hearing examiner who conducted a full evidentiary hearing in which all parties were represented by legal counsel. On September 27, 2012, the hearing examiner filed his recommendation with the local board to affirm the decision of the Superintendent's designee for the reasons set forth in his findings of fact and conclusions of law. Neither party to the proceeding filed exceptions to the hearing examiner's recommendation to the local board. The local board accepted the hearing examiner's recommendation. This appeal ensued.

STANDARD OF REVIEW

Because this appeal involves a decision of a local board concerning a local policy, the local board's decision is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

The Appellant contends that she had one preventable accident, as a result of a single incident, not two separate accidents. If that were the case, she argues, she would not be subject to suspension under applicable school bus regulations. In the alternative, she argues that even if there were two separate, preventable accidents, her supervisor should have exercised his discretion under the school bus regulations to punish her less harshly. Finally, the Appellant challenges the authority of the local board to suspend her from driving a school bus in any and all local school systems.

We address each argument.

One Accident or Two?

Under the school bus regulations “A driver who has two preventable accidents involving personal or appreciable damage in a 24 month period may not operate a school vehicle in any local school system for a period of 5 years from the date of the last accident, unless the supervisor of transportation places a letter in a driver’s personnel file documenting sufficient reasons to retain the individual as a qualified school vehicle driver.” COMAR 13A.06.07.07E (5).

Appreciable damage means property damage in excess of \$1500. COMAR 13A.06.07.01B (2). The local board determined that there were two separate, preventable accidents with appreciable damage. One occurred when the Appellant backed into a tree, \$12,339.87. The second happened when she entered and exited the private driveway scraping trees along the way, \$6,480.11.

Under our standard of review we do not second guess the local board’s decision unless it is arbitrary or unreasonable. It is the Appellant’s burden to show that the local board’s decision has no reasonable basis in fact. The Appellant has offered no argument to support her contention that the local board’s decision is arbitrary or unreasonable. In our view, the local board’s decision on this issue is based on the facts and is a reasonable one.

Harsh Penalty

The regulation governing this type of case allows the supervisor to document sufficient reason to retain the individual despite the two preventable accidents rule. COMAR 13A06.07.07E(5). The supervisor did not do so in this case, in part because the Appellant placed students at risk. (Hearing Examiner’s Decision at 23). Specifically, the Appellant backed her bus into a main road. Because she was unable to see clearly each way, she asked one of her students to check if the road was clear. Although there were 12 students on the bus, she proceeded not knowing if it was safe to back up. In doing so, she placed students at risk. In addition, she backed the bus into a tree, again placing students at risk of injury.

In addition, the Appellant failed to report the accidents “as soon as practicable.” (Hearing Examiner’s Decision at 25-26). COMAR 13A.06.07.07E (1 & 2) states:

- (1) The school vehicle driver shall report to the supervisor of transportation a school vehicle accident involving personal injury or property damage as soon as practicable after the accident.
- (2) A school vehicle driver or trainee who fails to report an accident as soon as practicable following the accident is disqualified from operating a school vehicle. The duration of the disqualification is at the discretion of the supervisor of transportation.

The Appellant essentially waited until the next morning to report the accident.

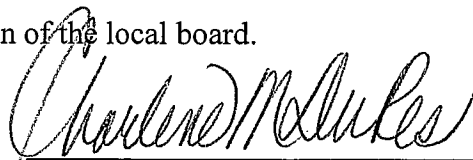
For the local board, the combination of failures and occurrences supported the supervisor's decision to suspend the Appellant without exercising his discretion to impose a lesser penalty. The Appellant has not shown us that such a decision is unreasonable. We conclude that the decision was reasonable in light of the facts and law.

Authority to Suspend in All School Systems

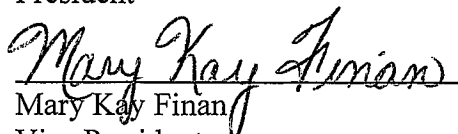
The Appellant contrasts two school bus regulations arguing that those regulations read together prevent the local board from suspending her from driving for other school systems. She first cites COMAR 13A.06.07.07E(6) which calls for a driver who has more than two preventable accidents in a 24 month period to be "disqualified from operating a school vehicle in Maryland." She contrasts that regulation with COMAR 13A.06.07.07(E)(5) which states that the driver with two preventable accidents in 24 months "may not operate a school vehicle **in any local school system** for a period of 5 years from the date of the last accident." [emphasis added]. She argues that the regulation would allow the local board to prohibit her from driving in Calvert County but not restrict her ability to drive in other counties. We do not agree. That regulation clearly allows for disqualification to operate in any of the 24 local public school systems. The other regulation applies when there are more than 2 preventable accidents and would preclude driving a school bus for any entity - - private school, non-public school, or public school in Maryland. One regulation does not impinge on the other.

CONCLUSION

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



Charlene M. Dukes
President



Mary Kay Finan
Vice President

Absent

James H. DeGraffenreidt, Jr.

Linda Eberhart
Linda Eberhart

S. James Gates, Jr.

S. James Gates, Jr.

Luisa Montero-Diaz
Luisa Montero-Diaz

Sayed M. Naved

Sayed M. Naved

Madhu Sidhu - MUP

Madhu Sidhu

Donna Hill Staton
Donna Hill Staton

Guffie M. Smith, Jr.
Guffie M. Smith, Jr.

June 25, 2013