

IN RE:

Appellant

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BEFORE THE  
BOARD OF EDUCATION  
OF CARROLL COUNTY

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**DECISION OF THE BOARD OF EDUCATION OF CARROLL COUNTY**

This is an appeal before the Board of Education of Carroll County (the "Board") pursuant to Section 4-205(c) of the Education Article of the Annotated Code of Maryland regarding [redacted] disqualification to drive a school bus after [redacted] failed a random controlled substance test. [redacted], through counsel, has appealed the January 11, 2021 decision of Director of Transportation Michael Hardesty to disqualify

The Board has reviewed all of the written material submitted by [redacted] and [redacted] counsel as well as those materials submitted by the Superintendent's Designee, Jonathan D. O'Neal, Chief Operating Officer. Pursuant to its review, the Board has determined that this appeal may be decided under its Rules of Procedure without an evidentiary hearing or oral argument.<sup>1</sup> For the reasons set forth below, the Board has determined that the decision to disqualify [redacted] from driving a school bus based on [redacted] failing a random controlled substance test was not arbitrary, unreasonable or

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<sup>1</sup>An appeal on the record can be decided without oral argument if it does not involve a dispute of material fact. COMAR 13A.01.01.06; *Johnson v. Howard County Bd. of Educ.*, MSBE Op. No. 09-28 at 9. Thus, after both sides have provided all material paperwork, the board can decide on the record. To show that an issue of material fact exists, an opposing party must demonstrate there is a factual dispute by producing factually credible and accurate assertions. *Id.* at 7.

illegal.<sup>2</sup> Accordingly, the Board shall affirm the decision upholding the denial disqualifying \_\_\_\_\_ from driving a school bus based on \_\_\_\_\_ failing a random controlled substance test.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

\_\_\_\_\_ is a bus driver for \_\_\_\_\_ which provides school bus transportation services for Carroll County Public Schools (CCPS). For seventeen years prior to this incident, \_\_\_\_\_ drove a bus that served CCPS.

The U.S. Department of Transportation requires random testing for controlled substances for bus drivers. 49 CFR 382.305. The U.S. Dept. of Transportation require that a bus driver who tests positive for certain controlled substances be removed from his or her bus duties. 49 CFR 40.23. Similarly, the State of Maryland disqualifies such a driver from operating a school bus. COMAR 13A.06.07.10B(2)(i).

\_\_\_\_\_ was selected for random drug testing in December 2020. \_\_\_\_\_ test results for marijuana, a controlled substance, came back positive on December 15, 2020. The Transportation Services Department of CCPS was notified of this test result on December 18, 2020, and immediately disqualified \_\_\_\_\_ as a school bus driver pursuant to COMAR 13A.06.07.10.

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<sup>2</sup>A decision may be arbitrary or unreasonable if: a) it is contrary to sound educational policy; or b) a reasoning mind could not have reasonably reached the conclusion the Superintendent or his Designee reached. A decision may be illegal if it is one or more of the following: a) unconstitutional; b) exceeds the statutory authority or jurisdiction of the Superintendent; c) misconstrues the law; d) results from an unlawful procedure; e) is an abuse of discretionary powers; or f) is affected by any other error of law. See COMAR 13A.01.05.05.

After the positive marijuana result, [REDACTED] asked for testing of [REDACTED] "split specimen." As part of the random testing process, a urine sample is taken and separated into a "primary specimen" and a "split specimen." See 49 CFR 40.3. The split specimen tested positive for marijuana as well.

On January 7, 2021, [REDACTED] through counsel asked for clarification on [REDACTED] appeal rights. Mr. Hardesty responded on January 8, 2021 and explained his decision, the appeal process, and the state and federal requirements for bus drivers who test positive for controlled substances. [REDACTED] appealed Mr. Hardesty's decision to this Board, seeking a "re-test and reinstatement."

Under federal and state law, those entrusted with the transportation of students must meet higher safety and compliance transportation standards than the general community as part of a multi-pronged effort to keep students safe, in no small part because of the students' limited ability to protect themselves. Accordingly the United States and Maryland have put protective measures in place to reduce the risk to students in the area of transportation.

As part of the federal effort to safeguard students, the U.S. Dept. of Transportation (DOT) requires random drug testing of school bus drivers. A driver who submits to such testing and tests positive for drugs must immediately be removed from service because of the great risk to students from an impaired bus driver. For that same reason, in Maryland, a bus driver who tests positive for drugs is immediately disqualified from driving a school bus anywhere in Maryland.

In this case, [redacted] was randomly selected for a drug test as part of DOT safety requirements. [redacted] sample was taken and split into both a primary and split specimen. [redacted] primary specimen tested positive for marijuana. Per DOT safety requirements, that positive test result meant CCPS was required to remove [redacted] from duty. Under Maryland safety requirements, the positive test result immediately disqualified [redacted] as a school bus driver, COMAR 13A.06.07.10B, and CCPS was required to notify the Maryland State Department of Education's (MSDE) Office of Pupil Transportation that [redacted] was disqualified from driving a school bus. COMAR 13A.06.07.10C.

In [redacted] appeal, [redacted] requests a re-test and "reinstatement," arguing that [redacted] positive test results for marijuana are "anomalous and erroneous" because [redacted] tested negative for drugs before and after [redacted] positive test results for marijuana. Essentially, [redacted] argues that [redacted] positive test results were in error and should be disregarded, and therefore she must be allowed to drive a school bus.

[redacted] argument fails because MSDE requires that a driver who takes a federally required test and tests positive for marijuana be permanently disqualified from driving a school bus unless the driver completes the "Return to Service of Disqualified Drivers" to requalify for to bus duty, which [redacted] has not. [redacted] identifies no authority for the Board to waive or otherwise ignore this requirement, undoubtedly because there is none. There is no flexibility under the State COMAR or the Federal Department of Transportation regulations to give [redacted] another chance and reinstate

The State Board has made clear that a positive test result for controlled substances, not the driver's intent to use controlled substances, is all that is required to disqualify a driver. See *Reed v. Carroll County Board of Education*, MSBE Op. No. 00-4; *Brown v. Queen Anne's County Board of Education*, MSBE Op. No. 13-37. Because of [redacted]'s positive test results for marijuana, Mr. Hardesty properly disqualified [redacted] as a driver for school bus service.

As to [redacted]'s request for reinstatement, [redacted] was not a CCPS employee, but an employee of [redacted]. CCPS has not terminated [redacted] from employment, and so has no ability to "reinstate"

**DECISION**

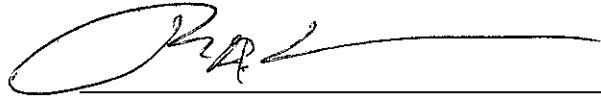
For the reasons discussed above, this Board affirms the decision to disqualify [redacted] from driving a school bus. Should [redacted] choose to do so, [redacted] may appeal this decision to the Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing, within thirty (30) days of the date of this decision.

**BOARD MEMBERS**

March 10, 2021  
Date

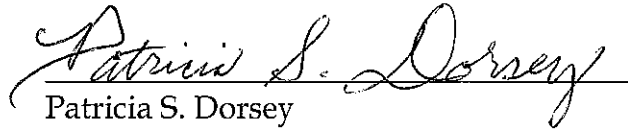
Marsha B. Herbert  
Marsha B. Herbert, President

Kenneth A. Kiler  
Kenneth A. Kiler, Vice President



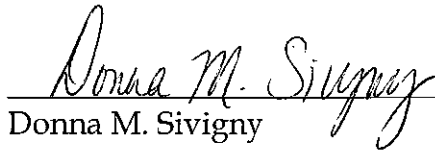
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Tara A. Battaglia



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Patricia S. Dorsey



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Donna M. Sivigny