

IN THE MATTER OF

* BEFORE THE
*
* BOARD OF EDUCATION OF
*
* CARROLL COUNTY
*

* * * * *

DECISION OF THE BOARD OF EDUCATION OF CARROLL COUNTY

This matter is 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 pursuant to an appeal filed by _____ contesting the decision of Jonathan O'Neal, Assistant Superintendent of Administration, acting as the Superintendent's designee, to uphold the decision of Michael Hardesty, Director of the Transportation Services Department ("TSD"), to decertify _____ as a bus driver.

The Board has reviewed all of the written material submitted by _____ as well as the documentation submitted on behalf of the Superintendent in response to appeal. The Board has determined that this appeal may be decided under its rules of procedure without an evidentiary hearing or oral argument. For the reasons set forth below, the Board has determined that the Superintendent's decision should be affirmed.

FINDINGS OF FACT

The facts in this case are essentially undisputed. _____ served as a school bus driver during the 2017-2018 school year. Prior to the start of that school year, _____ received in-service training. During that training, _____ signed a document entitled "2017-2018 Driver/Assistant In-Service" confirming his attendance at that training. That form listed the areas of instruction provided, and it also listed approximately twenty driver expectations and instructed drivers to initial next to each expectation to confirm that the driver had read each expectation. One of those expectations was, "Daily pre-trip/post-trip as required

by COMAR 13A.06.07.12C&D,” and another was, “Perform a Walk Through inspection to check for children, personal belongings and vandalism after each run. Leaving students on the bus could result in a minimum of a suspension but may result in decertification.” (Emphasis in original.) [redacted] initialed next to each driver expectation, including the two quoted above.

On December 18, 2017, a four-year-old pre-kindergarten student riding the bus driven by [redacted] was not let off at school and was left unattended on the bus for a period of time greater than two hours after the bus was parked in the bus lot. The student was found by the bus contractor who employed [redacted] after the student’s school had notified the TSD that the student was absent from school yet the student’s parent was adamant that the student had boarded the bus that morning. A review of the video camera footage aboard the bus at issue revealed that the student was sitting on the second seat from the front of the bus, and that [redacted] had failed to perform the required walk-through that day. The video also revealed that [redacted] had failed to perform the required walk-through on four of the other five days available on film.

On December 20, 2017, Scott Parsons, Area Supervisor in Transportation Services, and Keith Shorter, TSD Supervisor, met with [redacted] to discuss the matter. In a letter from Mr. Parsons to [redacted] dated that same day, Mr. Parsons emphasized that CCPS Transportation Policy requires every driver to complete a walk-through of the bus after each run, and that [redacted] was being decertified as a bus driver for the CCPS “[a]s a result of the [December 18th] incident and [redacted] consistent failure to complete this critical step.” Mr. Parsons’ letter also informed [redacted] that he could appeal the decision to Michael Hardesty, Director of TSD.

timely appealed Mr. Parsons' decision to Mr. Hardesty, and Mr. Hardesty affirmed. In affirming, Mr. Hardesty stated:

As you recognized, leaving a four year old child on the school bus unattended for over two hours could have led to serious harm to the child and consequences for your contractor-employer, the school system, and yourself. This incident was caused entirely by your negligence in failing to follow the training and retraining provided each year by the TSD that requires a child check following each bus run. While I can empathize with your remorse and appreciate your commitment that you would never forget to perform a child check in the future if you were permitted to drive again, I must take into consideration the potential consequences to our school system of this one negligent act. We were extremely fortunate that outside temperatures were mild on the day of the incident and that the student was found unharmed. Unfortunately, as is the case throughout life, it only takes one act of negligence to sometimes cause a lifetime of harm. Had your failure to do a walkthrough/child check only occurred on this one day (December 18, 2017) perhaps I could be more sympathetic to your appeal for recertification. In that you had repeatedly failed to do the required child check despite being reminded each year of the importance of this required driver action, I must take this repetitious failure to follow proper protocol into account. For these reasons, I am upholding Mr. Parsons' decertification decision.

timely appealed Mr. Hardesty's decision to the Superintendent, who referred the matter to his designee, Assistant Superintendent O'Neal. Mr. O'Neal affirmed Mr. Hardesty's decision, largely adopting Mr. Hardesty's reasoning. thereafter filed a timely appeal to the Board.

In his appeal to the Board, made a number of arguments which we summarize as follows:

- argues that the December 18th incident was his "first incident driver incident," and that, pursuant to Page 70 of the 2017-2018 Contractor & Bus Driver Transportation Handbook, "[t]he consequence of a first offense carries a spirit and intention to elicit positive corrective action not an excessive punitive judgment."
- argues that the 2017-2018 bus driver training, discussed above, "did not include or address the 'child check' issue" but instead "was dedicated to CPR, First Aid videos (both laudable) and a panel discussion that covered school administrative operations and a fundraising effort," and thus "the 2017 retraining session as support evidence for a 'child check' is false and should be held invalid and unenforceable."

- _____ argues that the Superintendent's decision relied upon harm that "could have" occurred but did not actually occur, and thus "this hypothetical is arbitrary by its nature."
- _____ argues that the consideration of the age of the student in question "was capricious by nature and served only to fuel emotional furor and therefore jade and bias the decision."
- _____ argues that the conclusion that his remorse is insufficient to ensure future student safety "illustrates the inconsistency and the arbitrary nature of the designee's decision-making."

STANDARD OF REVIEW

Under Section 4-205(c)(2) of Education Article, the Superintendent is charged with "decid[ing] all controversies and disputes that involve: (i) The rules and regulations of the county board; and (ii) The proper administration of the county public school system." Where, as here, an appellant challenges a Superintendent's decision, the appellant bears the burden of demonstrating that the Superintendent's decision was arbitrary, unreasonable, or illegal. *See* COMAR 13A.01.05.05.¹

¹ Although COMAR 13A.01.05.05 sets forth the Maryland State Board of Education's standard of review with regard to the State Board's review of decisions of local boards, this standard is widely used by local boards to review the decisions of local superintendents. COMAR 13A.01.05.05 reads, in relevant part:

- A. General. Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be 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.
- B. A decision may be arbitrary or unreasonable if it is one or more of the following:
 - (1) It is contrary to sound educational policy; or
 - (2) A reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.
- C. A decision may be illegal if it is one or more of the following:
 - (1) Unconstitutional;
 - (2) Exceeds the statutory authority or jurisdiction of the local board;
 - (3) Misconstrues the law;
 - (4) Results from an unlawful procedure;
 - (5) Is an abuse of discretionary powers; or
 - (6) Is affected by any other error of law.

CONCLUSIONS OF LAW

We conclude that the Superintendent's decision was not arbitrary, unreasonable or illegal as those terms are defined.

The Driver Discipline Guidelines contained in the 2017-2018 Contractor & Bus Driver Transportation Handbook (the "Guidelines"), referenced above, provide the following consequences for "Not conducting walkthrough after each run": First offense – written reprimand; Second offense – suspension; Third offense – decertification. Those guidelines provide the following consequences for "Leaving students on board": First offense – minimum 5 day suspension; Second offense – decertification. _____ argues that decertification was inappropriate and unduly harsh because the December 18th incident was his first offense. We disagree. The undisputed video evidence showed that _____ had failed to check the bus for students numerous times over the few days of video that were available. As such, the December 18th incident was at least his third offense of failing to conduct a walkthrough after each run, thus warranting his decertification pursuant to the Guidelines. Although _____ argues that he did not receive training on the "child check issue" prior to the 2017-2018 school year, it is undisputed that, by way of the initialed form discussed above, he was placed on notice that he was required to perform a walkthrough to inspect for children after each run. *See Lowe v. Wicomico County Bd. of Educ.*, MSBE Op. No. 10-38 (2010) (affirming the decertification of a bus driver on the reasoning that the bus driver had attended in-service training at which procedures and expectations were reviewed, and thus, "[a]s an experienced bus driver, [the appellant] knew or should have known that his actions . . . were contrary to the clear guidelines for bus drivers").

D. The appellant shall have the burden of proof by a preponderance of the evidence.

Nor do we find persuasive argument that the Superintendent's decision was arbitrary because it relied on upon harm that "could have" occurred as opposed to that which actually did occur. As initial matter, we believe that harm did in fact occur to the four-year-old student and the student's family when the student was left unattended for more than two hours on a parked bus in the wintertime. But more to the point, the State Board has concluded that the mere risk of harm to a student left unattended in contravention of policy and training constitutes sufficient grounds to decertify a bus driver. *See Bucey v. Harford County Bd. of Educ.*, MSBE Op. 11-18 (2011) (affirming the decertification of a bus driver who left a student unattended for thirty minutes in contravention of the school system's policy and training regarding required walkthroughs, and reasoning: "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 also find unpersuasive argument that the Superintendent's consideration of the age of the student in question "was capricious by nature and served only to fuel emotional furor and therefore jade and bias the decision." To the contrary, we find the tender age of the student in question highly relevant. Four-year-olds are among the most vulnerable – if not *the* most vulnerable – students that attend the schools operated by the Board, and thus we find it entirely reasonable that the Superintendent took the student's age into consideration.

We also find unpersuasive argument that the Superintendent's decision that his remorse is insufficient to ensure future student safety "illustrates the inconsistency and the arbitrary nature of the designee's decision-making." As with the Superintendent, we have no

reason to doubt the sincerity of safety.


remorse, but we must err on the side of student

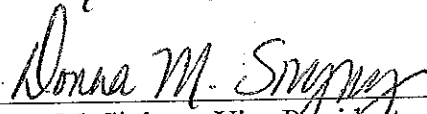
Lastly, _____ has not demonstrated that the Superintendent's decision was illegal. COMAR 13A.06.07.07D, entitled "Disqualification for Unsafe Actions," provides that "[m]isfeasance, incompetence, insubordination, or any act of omission that adversely affects transportation or safety may be grounds for disqualification and termination by the supervisor of transportation." We conclude that _____ repeated failure to check for students after each bus run constitutes an "act of omission that adversely affects transportation or safety," and consequently, it properly constitutes "grounds for disqualification . . . by the supervisor of transportation."

DECISION

We conclude that the Superintendent's decision to affirm _____ decertification as a bus driver was not arbitrary, unreasonable, or illegal. We therefore affirm the Superintendent's decision.

May 9, 2018
Date


Bob E. Lord, President


Donna M. Sivigny, Vice President


Virginia B. Harrison


Marsha B. Herbert

(Absent)

Devon M. Rothschild