

RITA BAILEY,  
Appellant

v.

SOMERSET COUNTY  
BOARD OF EDUCATION,  
Appellee.

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION  
Opinion No. 18-19

## OPINION

### INTRODUCTION

Rita Bailey (Appellant) appeals the decision of the Somerset County Board of Education not to renew her contract as a bus driver, not to approve her purchase of a new school bus, and to disqualify her as a bus driver. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

### FACTUAL BACKGROUND<sup>1</sup>

On September 15, 2017, Appellant entered into a contract with the local board in which she agreed to provide transportation as a school bus driver. The local board provides transportation for its students by using approximately 28 bus contractors, such as Appellant. Bus contractors must provide their own buses, subject to approval by the local board, and contractors are responsible for maintenance and upkeep of their vehicles. Bus contracts run for one year, but renew automatically unless the contractor or local board provide notice of non-renewal at least 30 days before the expiration date of the contract, which occurs on June 30. (Motion, Ex. 1).

In late January, Appellant began using a spare bus after her regular bus experienced engine problems. According to Appellant, the first mechanic she consulted told her the engine would likely need to be rebuilt or replaced, but that he could not perform the work. She consulted a second mechanic and learned it would likely be weeks before the mechanic could diagnose the problem. (Motion Response).

The local board provides a certain number of “spare” buses that its drivers can use in case the driver’s bus is temporarily inoperable. Local board policy requires that drivers inform Michael Bartemy, the Supervisor of Transportation, in writing of a timeline for repairs if the driver plans to use a spare bus for more than two weeks. *See* Somerset County Board of Education Policy #200-18, Sec. 7D. The policy provides that a spare bus may not be used for more than 30 days unless approved by the Supervisor of Transportation. *Id.* (Motion).

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<sup>1</sup> Neither side has submitted affidavits to support the factual assertions made in this case. Because the record is otherwise sparse, we shall rely on the unsupported statements from the parties in their filings for the factual background.

According to Appellant, she left a message on Mr. Bartemy's cell phone telling him that her bus broke down and that she had found a spare bus to use. Appellant left another message for Mr. Bartemy on February 15, 2018, but did not hear back from him. (Motion Response).

Around March 1, 2018, Mr. Bartemy contacted Appellant and asked her about her continued use of a spare bus. He reportedly reminded her that she should have informed him in writing that her bus would be out of service for more than two weeks and provided a timeline for when the bus would be back in service. According to Mr. Bartemy, Appellant told him that she had moved her bus to a repair shop in Hyattsville and planned to have the engine repaired or replaced there. Mr. Bartemy sent a letter to Appellant that same day, requesting that she provide a written timeline for repairing her bus and an estimate of when the bus would be back in service. (Appeal; Motion Response, Ex. 5).

On March 5, 2018, Appellant emailed Mr. Bartemy and requested permission to purchase a new 2019 Bluebird school bus to replace her bus. She explained that it would be more economical to purchase a new bus rather than to replace the engine on her bus because her bus was expected to last only a few more years. Prior to approving the purchase of a new bus, the local board typically considers whether it anticipates using the same bus contractor for the 15-year life cycle of the new bus.<sup>2</sup> Appellant's request went to the local board for review. (Motion; Appeal; Motion Response, Ex. 4).

Meanwhile, on March 14, 2018, Appellant discussed with Mr. Bartemy the process for selling her current bus because of its engine failure. The next day, Mr. Bartemy sent Appellant a letter explaining the school system's procedures for "decommissioning" a school bus. The nine-step process included painting over the school bus number and the name of the school system; returning equipment belonging to the school system; and removing any paperwork from the bus that contained student information. According to Appellant, she made clear to Mr. Bartemy that she only planned to sell her bus if she were given permission to purchase a new bus. (Motion, Ex. 2; Appeal).

On March 19, 2018, Appellant spoke with Mr. Bartemy by phone to discuss the decommissioning process. According to Mr. Bartemy, Appellant told him during the conversation that she had sold her bus. Appellant denies having ever sold her bus, but acknowledges that she wanted to decommission the bus because she worried that the local board's equipment could be stolen while the bus was out for repairs. (Motion; Motion Response).

On March 20, 2018, the local board met to consider Appellant's request to purchase a new bus. During the same meeting, the board also considered during closed session whether to renew Appellant's contract beyond the 2017-18 school year. The board voted to deny Appellant's request to purchase a new bus and decided not to renew her contract beyond the current school year. (Motion).

On March 23, 2018, the local superintendent wrote to Appellant explaining the local board's decision not to renew Appellant's contract. He stated that Appellant:

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<sup>2</sup> Although COMAR 13A.06.07.20 requires that school buses not be used for more than 12 years, statute permits Somerset County buses to be used for up to 15 years. See Md. Code, Educ. § 7-804(b).

- Failed to provide a written timeline for repairing her bus.
- Failed to inform the Supervisor of Transportation that she was using a spare bus starting January 31, 2018 and that it would be for an extended period.
- Failed to timely notify the local board that she intended to sell her bus.
- Was required to complete a driver improvement course in January 2014 because of major safety violations.
- Was cited in March 2015 for oversleeping and being late on her route.
- Was cited twice in December 2015 for excessive speed.
- Was cited in January 2016 for excessive speeding and other citations leading to another driver improvement course.

The local board agreed to allow Appellant to use a spare bus for the remainder of the school year so that she could complete her contract to provide transportation for students. The superintendent's letter informed Appellant that if "at any time you are unable to meet the obligations, under the contract, all payments will stop immediately." (Motion, Ex. 3).

On March 29, 2018, the owner of the spare bus driven by Appellant told Mr. Bartemy that he had received complaints that Appellant had been speeding and driving unsafely in his bus. Every school bus in Somerset County has a GPS system installed. Mr. Bartemy pulled records for the spare bus driven by Appellant and concluded Appellant had regularly driven the bus at speeds above 60 miles per hour. School system policy requires that bus drivers not drive more than 55 miles per hour at any time. Three of the occasions occurred while students were on board (February 21, 2018: 66 miles per hour; March 9, 2018: 64.5 miles per hour; March 12, 2018: 63.7 miles per hour). On March 20, 2018, GPS recorded Appellant traveling at 68 miles per hour in the bus. In light of Appellant's previous history, Mr. Bartemy concluded that Appellant had a history of ignoring school system policy on speeding. (Motion.)

On March 30, 2018, Mr. Bartemy sent Appellant a letter disqualifying her immediately as a bus driver. Mr. Bartemy explained that the GPS had tracked Appellant speeding on numerous occasions and that Appellant "demonstrated a casual disregard and lack of concern where it comes to controlling your speed while operating a school bus." Mr. Bartemy pointed out that Appellant previously had been suspended from driving a school bus and required to attend driver improvement training. He reminded Appellant that she remained contractually obligated to provide transportation for the school system. If she did not find someone who could cover her route, the school system would hire someone, at her expense. (Motion, Ex. 4).

Appellant initially informed the board that she would be able to continue providing transportation for students under her contract by using a substitute bus and driver. On April 9, 2018, however, Appellant told Mr. Bartemy that she would no longer have access to the bus and could not therefore provide transportation to students. The local board decided it would take over her route. (Motion; Motion Response).

This timely appeal followed.

### STANDARD OF REVIEW

A school vehicle driver who has exhausted the local school system appeal process may appeal decisions to the State Board. COMAR 13A.06.07.21. 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. COMAR 13A.01.05.05A.

## LEGAL ANALYSIS

Appellant challenges three decisions made by the local board: (1) the non-renewal of her contract; (2) the denial of her request to purchase a new school bus; and (3) her disqualification as a bus driver. We shall address each of these issues in turn.

### *Non-renewal of the bus driver contract*

Appellant argues that the decision not to renew her contract was arbitrary and unreasonable. She maintains that she kept the local school system apprised of the status of her bus and that the local board improperly used her prior driving history as a reason not to renew her contract.

The local board argues that it could decline to renew Appellant's contract for any reason, so long as the reason was not illegal. The local board had two primary reasons for declining to renew Appellant's contract: (1) failing to timely provide notice of a timeline for repairing her bus, her use of a spare bus, and her plans to sell her bus; and (2) her past history of being late, speeding, and other safety violations.

According to Appellant, her primary means of notifying the school system was by leaving voicemails for Mr. Bartemy, the Supervisor of Transportation. This is contrary to the local board's policy, which requires a written timeline for repairs that last more than two weeks. Local board policy also required Appellant to gain Mr. Bartemy's approval if she had to use a spare bus for more than 30 days. Appellant did not, however, speak with Mr. Bartemy about the situation until after 30 days had passed. In our view, it was not unreasonable for the local board to rely on Appellant's failure to follow local board policy as a rationale for not renewing her contract.

Appellant also argues that her past history should not be used against her because it did not prevent her from having her contract renewed in past years. This overlooks, however, the fact that the board's decision was not based solely on these past incidents. Rather, the board considered these past incidents in light of Appellant's current failure to follow board policy in deciding whether to continue her contract. Appellant appears to argue that past incidents should never be taken into consideration beyond the year in which they happen. It is not unreasonable, though, for a local board to want to know a driver's past history in deciding on future contract renewals.

We note that as part of her appeal, Appellant included three school bus driver evaluations. One from June 2015 found her to be excellent in all categories; another from February 2016 rated her as satisfactory; and a final one from January 2018 found her to be excellent in all categories and described her as doing a "great job." These good evaluations were issued in the face of occurrences that we believe should have led to increased scrutiny of Appellant's driving history and an assessment of whether it was safe for children to be riding on

her bus. In 2013-2014, she needed driver improvement training because of major safety violations. In 2015 and 2016 she received several citations for speeding. In January 2018, she got an “excellent” rating but apparently no one checked the GPS system to determine whether Appellant’s penchant for speeding had abated. Based on the GPS check on March 29, 2018, it had not.

Bus driver safety and driving records should be a part of every school bus driver evaluation. It seems almost too obvious to point out that school bus drivers hold in their buses the hopes and dreams and lives of the children they transport every day. School systems must reflect that responsibility in a serious and thorough yearly evaluation of each school bus driver. Somerset County Public Schools did not appear to do so here.

#### *Denial of request to purchase a new school bus*

Appellant argues that another bus driver received approval to purchase a new bus, but she did not. She does not, however, provide any details about the other driver. Without any further information, there is nothing to suggest that it was arbitrary, unreasonable, or illegal for the local board to approve the purchase of a new school bus from another driver while denying Appellant’s request.

In light of the local board’s decision not to renew Appellant’s contract, it is not surprising that it declined to approve her request to purchase a new bus. Indeed, it would have been surprising for the board to approve her request given its decision about the non-renewal.

#### *Disqualification as a bus driver*

COMAR 13A.06.07.07 permits a school system to disqualify a bus driver from driving a school vehicle based on the individual’s driving record, criminal conduct, unsafe actions, or involvement in vehicle accidents. The local board upheld her disqualification as a bus driver due to her lack of concern for safety as evidenced by her speeding. The Appellant failed to drive in a safe manner despite her prior suspension and required attendance at driver improvement training. (Motion, Ex. 4).

Appellant argues, however, that the local board should not have disqualified her as a bus driver because the school system relied on faulty evidence. Specifically, Appellant claims that she could not have been speeding with students on board the bus on the three dates cited by the local board because she was unloading the students from the bus at those times. She also argues that another occasion when she reportedly had been speeding occurred when she would not have been driving the bus. Appellant implies that the owner of the spare bus falsely reported her speeding because he wanted to drive her route and he was upset with her for withdrawing her nomination as secretary of the local bus driver contractors association. (Motion Response).

Appellant ultimately bears the burden of proof on appeal to demonstrate that the local board’s decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A. This requires more than mere blanket statements that the local board relied on faulty evidence. *See Paula R. v. Charles County Bd. of Educ.*, MSBE Op. No. 15-15 (2015) (observing that an Appellant “failed to meet her burden by presenting evidence that would support her claim”). Appellant offers the names of people who she believes might be able to back up her account of events and requests

that the State Board investigate the facts. The State Board, through its appeals process, is not an investigative body and it is up to appellants to marshal the facts they believe support their cases. Simply arguing that the local board relied on faulty data does not suffice. By failing to support her claims with evidence, Appellant has failed to meet her burden.

CONCLUSION

We affirm the decision of the local board because it was not arbitrary, unreasonable, or illegal.

Signatures on File:

\_\_\_\_\_  
Andrew R. Smarick  
President

\_\_\_\_\_  
Chester E. Finn, Jr.  
Vice-President

\_\_\_\_\_  
Michele Jenkins Guyton

\_\_\_\_\_  
Jean C. Halle

\_\_\_\_\_  
Justin M. Hartings

\_\_\_\_\_  
Stephanie R. Iszard

\_\_\_\_\_  
Rose Maria Li

\_\_\_\_\_  
Joan Mele-McCarthy

\_\_\_\_\_  
Michael Phillips

\_\_\_\_\_  
David Steiner

Recused:  
Warner I. Sumpter

June 22, 2018