

B■■■■■ M■■■■■,

Appellant,

v.

BALTIMORE COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-38

OPINION

INTRODUCTION

B■■■■■ M■■■■■, (“Appellant”), appeals the decision of the Baltimore County Board of Education (“local board”) affirming the decision of the Superintendent’s Designee barring Appellant as a charter bus driver for the school system and disqualifying him as a bus driver in the State. The local board filed an answer and motion for summary affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellant filed a reply. The local board rested on the arguments raised in its prior filing.

FACTUAL BACKGROUND

This is an appeal of the local board’s decision barring the Appellant from driving buses for Baltimore County Public Schools (“BCPS”) and other school systems in Maryland based on his criminal record. The facts in this matter are not in dispute. (Motion, Ex. 1). The Appellant was employed by Woodlawn Motor Coach (“Woodlawn”) as a bus driver. *Id.* Woodlawn supplies drivers to BCPS for field trips. *Id.* The Appellant drove Woodlawn charter buses for BCPS for fifteen years. *Id.* The buses were marked as charter buses as required by the Md. Code Ann., Transportation Article (“TR”), §13-420(c). *Id.* The charter buses that the Appellant drove always had one or more chaperones on the bus. *Id.* The Appellant drove without incident and is described as a “diligent and dedicated bus driver,” who wants to work in that capacity again. (Motion, Ex. 6).

In 2019, Woodlawn and BCPS entered into a new contract for Woodlawn to provide drivers for field trips. (Motion, Ex. 1). A new provision in the contract requires any employee of Woodlawn to complete a criminal background check to drive for BCPS. Section 15.1 of the contract provides in part:

All vendor’s employees working on BCPS property are required to be fingerprinted by the Maryland Criminal Justice Information System, or by an authorized private provider acceptable to BCPS....BCPS reserves the right to reject the Vendor’s employees based on information received from said background investigations. In accordance with Md. Ed. Code Ann., §6-113(b), the contractor

shall not knowingly assign any employee to work on school premises if the employee has been convicted of a crime identified in Md. Ed. Code Ann. § 6-113(a).

Section 15.2 of the contract provides in part:

Vendor's employees who have unsupervised, uncontrolled or direct access to children or who are assigned duties in a school where unsupervised contact with children is likely are required to have a complete fingerprint-based background check at BCPS's direction, which could include fingerprinting conducted by its in-house fingerprint vendor or at a site chosen by BCPSBCPS reserves the right to reject the Vendor's employees based on information received from said background investigations. In accordance with Md. Ed. Code Ann., § 6-113(b), the contractor shall not knowingly assign any employee to work on school premises if the employee has been convicted of a crime identified in Md. Ed. Code Ann. § 6-113(a).

(Appeal, Ex. E, contract extract).

On June 25, 2019,¹ the Appellant completed a BCPS background check application for fingerprinting non-BCPS employees. (Motion, Ex. 1). The background application contains the following question:

Have you ever been convicted, or placed on probation before judgment (PBJ), found not criminally responsible, or have pending criminal charges against you without a final disposition for an offense other than a minor traffic violation?

Appellant checked the box "No". (Appeal, Ex. H). However, on the application he disclosed two convictions and wrote "CDS Possession" from March 1990 and "CDS Poss w/int Mane/Distr" (sic) from September 1990. *Id.* This question was prefaced with the following and was initialed by Appellant:

WARNING: Failure to report criminal convictions, Probation Before Judgment (PBJ) dispositions, or pending charges may result in termination of your employment with [BCPS]. Any individual who fails to disclose prior conviction(s) or the existence of pending charge(s) shall be guilty of perjury. This is a misdemeanor offense and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

¹ The record is unclear why the Appellant was not asked to complete a criminal background check prior to this date. However, the law is clear in Maryland that an alleged past failure of the State (or local school system) to enforce a prohibition does not bar the State (or local school system) from enforcing it. *See, Salisbury Beauty Schools v. State Bd. of Cosmetologists*, 268 Md. 32, 63 (1973).

Id.

On June 25, 2019, the Appellant also completed an authorization and release to obtain a consumer and/or investigative report. *Id.* This form states as follows:

If you are not sure about certain information that may be in your criminal history record, do not complete the Background Check Form today. You are advised to contact the court(s) and/or Department of Social Services (DSS) where your information may be kept, or seek advice from an attorney who handled your case before continuing the background process.

Id. This form also asked if applicants had disclosed all previous criminal convictions for which they had not received confirmation of expungement. *Id.* The Appellant circled “Yes” in answer to this question. *Id.*

On June 27, 2019, the Office of Investigations and Records Management (“ORIM”) received the criminal background report for Appellant. (Motion, Ex. 1). The local school system noted the report contained the following relevant items:

- October of 1974, arrested and charged with homicide and murder: conviction of murder and sentenced to 10 years and paroled in 1976;
- March of 1990, arrested and charged with CDS Possession: found guilty and sentenced to six-months.
- July of 1990, arrested and charged with CDS possession with intent to manufacture and distribute: found guilty and sentenced to 15 years.
- July of 1991, arrested and charged with possession with intent to distribute cocaine: sentenced to 15 years.

Id.

The Appellant does not dispute that he has a criminal record that includes convictions. *Id.* He does dispute the accuracy of the report obtained by OIRM. *Id.* During the appeal process the local school system was aware that the Appellant was working to have his record corrected. *Id.* At some point subsequent to the Appellant’s disqualification but prior to the decision of the Hearing Examiner, the Appellant provided an updated copy of his record. (Appeal, Ex. F). The updated criminal background report provided by the Appellant confirms that the murder conviction was not correct. *Id.* The Appellant was convicted of manslaughter (not murder) and sentenced to 10 years. *Id.* The corrected record provided by the Appellant does not specify if the manslaughter conviction was voluntary or involuntary manslaughter and the Appellant is uncertain as to the specific type of manslaughter, he was convicted of in 1975. (Appeal at p. 9). The corrected record also clarifies that the Appellant was convicted on two controlled dangerous substance charges and not three as the July 1991 conviction is not listed in the corrected record. *Id.* The corrected record also contains a conviction for a handgun violation in August of 1980. *Id.*

The Appellant did not disclose the manslaughter conviction and the handgun violation conviction on the background check application as required. (Appeal, Ex. H). Upon review of the Appellant's initial criminal background investigation report, on June 28, 2019, Melinda Basler, investigations and records representative, advised Woodlawn that the Appellant was not allowed to drive buses for BCPS because of his convictions. (Motion, Ex. 1). On June 28, 2019, BCPS also filed a disqualification form with the Maryland State Department of Education ("MSDE"). *Id.* The disqualification form prevents the Appellant from driving a school vehicle in Maryland. On or about July 2, 2019, Woodlawn advised the Appellant of these actions. *Id.*

On July 26, 2019, the Appellant filed an appeal to the Superintendent, who appointed as his Designee Allyson Huey, manager of employee and student appeals, to make a decision on his behalf. On September 5, 2019, through counsel, the Appellant informed Ms. Huey that the criminal background report received by BCPS contained errors and that a revised report would be forthcoming removing any convictions for the crimes relied upon by BCPS to ban the Appellant as a driver. (Motion, Ex. 3). The Appellant also argued that the regulations were not applicable to him because he was not a "school vehicle driver" as defined in the regulations given that the Appellant only drove school charter buses with chaperones. *Id.*

In a decision issued January 17, 2020, Ms. Huey concluded that it was not arbitrary, unreasonable or illegal for BCPS to bar the Appellant from driving a bus. (Motion, Ex. 1). She found that the Appellant failed to fully disclose his criminal background, as required, and that this failure alone provided a basis for BCPS to ban the Appellant from driving buses for BCPS. *Id.* Ms. Huey also found that Md. Code Ann., Education Article ("ED"), §6-113(a) & (b) bar BCPS from retaining the Appellant as a charter bus driver due to his conviction of a crime of violence as defined by Md. Code Ann., Criminal Law Article ("CR") §14-101. *Id.* She also concluded that under COMAR 13A.06.07.07(C), BCPS was mandated to submit the Appellant for disqualification from driving any school buses in Maryland. *Id.* She recognized that the Appellant argued that as a charter bus driver he was never alone with children without a chaperone, however, she concluded "it is reasonable to find that [Appellant] could be alone with students with direct, unsupervised, and uncontrolled access to students." *Id.*

On February 14, 2020, the Appellant appealed Ms. Huey's decision to the local board. The local board appointed Hearing Examiner, Roger Thomas, to review the appeal. On October 14, 2020, Hearing Examiner Thomas issued a decision recommending that the local board uphold Ms. Huey's determination finding the Appellant ineligible to serve as a contractual bus driver for BCPS and that he met the criteria for disqualification. (Motion, Ex. 6). The local board held oral arguments on the recommendation on January 26, 2021. (Motion, Ex. 9). On February 9, 2021, the local board issued its opinion and order unanimously accepting Hearing Examiner Thomas' recommendation and upholding the decision of the Superintendent's Designee. (Motion, Ex. 10).

On March 11, 2021, the Appellant through his counsel filed an appeal with the State Board. (Motion, Ex. 11).

STANDARD OF REVIEW

In cases involving a local board's policy, or a controversy or dispute regarding the local board's rules and regulations, the local board's decision is considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision was arbitrary, unreasonable or illegal. COMAR 13A.01.05.06A.

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.06E.

LEGAL ANALYSIS

Statutory Provisions

The Appellant argues that the local board erred in barring him from operating as a bus driver for BCPS because he was not convicted of a crime of violence. Maryland law prohibits local school systems from hiring or retaining individuals who have been convicted of certain crimes. Specifically, ED §6-113(b) provides that the local school system may not knowingly assign a contractual employee to work on school premises with direct, unsupervised, and uncontrolled access to children if convicted of any crime listed in ED §6-113(a). The crimes listed in ED §6-113(a) are crimes of violence as set forth in CR §14-101. CR §14-101(a)(4) lists manslaughter, except for involuntary manslaughter, as a crime of violence.

Appellant's corrected criminal background report states that he was convicted of manslaughter. It does not identify the crime as voluntary or involuntary. The Appellant cannot recall if he was convicted of voluntary or involuntary manslaughter. It is Appellant's burden, however, to make his case in the appeal and demonstrate that no reasoning mind could have reached the same conclusion as the local board. *Bailey v. Somerset County Pub. Schs.*, MSBE Opinion 18-19 (2018). The Appellant has not provided any evidence to prove that the conviction was for involuntary manslaughter. We conclude, therefore, that it was reasonable for the local board to rely upon the criminal record stating that the Appellant was convicted of manslaughter to bar him from hire or retention with BCPS under ED §6-113(a)(3) and §6-113(b).

Alternatively, the Appellant maintains that the requirements of ED §6-113(b) are not applicable here because he was never alone with the students and did not have direct, unsupervised, and uncontrolled access to the children. The record does not support Appellant's argument. It is undisputed that as a bus driver, the Appellant had direct access to children. Although the Appellant argues that as a charter bus driver he never had unsupervised and uncontrolled access to students as they were always chaperoned by another adult, Hearing Examiner Thomas and Ms. Huey both concluded that "there could be situations where it is reasonable to find that [Appellant] could be alone with students with direct, unsupervised, and uncontrolled access to students." (Motion, Ex. 1). The Hearing Examiner Thomas further explained that a charter bus driver could have direct, unsupervised, and uncontrolled access to students when students exit or enter a bus and no other adult person is present, or if a bus driver interacts with students, outside the bus, and no other adult is in the vicinity. (Motion, Ex. 6 at p. 6). We find that the local board reasonably concluded that ED §6-113(b) prohibits Appellant from driving buses for BCPS because the Appellant, as a charter bus driver, could have direct, unsupervised, and uncontrolled access to students under numerous scenarios.

Regulatory Provisions

In addition to the statutory ban that applies to all school employees and contractors with certain criminal backgrounds, there are additional regulations that apply to bus drivers. The MSDE and the Motor Vehicle Administration are authorized to establish standards for the safe operation of school buses. *See* ED §2-205 and §8-410 & TR §25-110. COMAR 13A.06.07.07 sets forth standards for disqualification of school vehicle drivers in several areas such as driving record, criminal conduct, unsafe actions and accidents. In pertinent part, COMAR 13A.06.07.07 provides the following:

C. Disqualification for Criminal Conduct.

(1) A local school system shall disqualify an individual school vehicle driver or trainee from operating a school vehicle if the individual:

(a) Has been convicted of a crime or if criminal charges are pending against the individual for a crime involving:...

(iv) An alcohol or controlled substances offense defined in federal or State law, unless the supervisor of transportation determines and reports the determination in writing, to the Department's Office of Student Transportation, that the permanent disqualification should not apply because mitigating circumstances exist;

(v) A crime of violence as set forth in Criminal Law Article, §14-101, Annotated Code of Maryland;...

As discussed *supra*, the Appellant has convictions for manslaughter, a crime of violence, and two convictions for controlled dangerous substance offenses. The conviction of a crime of violence bars him from driving buses under the regulations. The two convictions for controlled substances offenses also bar him from driving buses as there is no determination by the department of student transportation that the permanent disqualification should not apply to the Appellant.

The Appellant argues that this regulation is not applicable to him because he is a charter bus driver and not a school vehicle driver. COMAR 13A.06.07.01(26) provides:

"School vehicle driver" means an individual who:

(a) Has applied for employment with a local school system or an entity contracting with a school system as a school vehicle driver;

(b) Is employed by a school system or an entity contracting with a school system as a school vehicle driver; or

(c) Is an owner-operator of a school vehicle; and

(d) Is certified and verified by the local school system as having met all local, state, and federal requirements to be a school vehicle driver.

COMAR 13A.06.07.01(24) states “school vehicle” has the meaning stated in TR §11-154 and COMAR 13A.06.07.01(23) states “school charter vehicle” has the meaning in TR §13-420(c). The Appellant argues the fact that these two terms have separate definitions coupled with the fact that the term “school vehicle driver” does not include any reference to a driver of a “school charter vehicle” means that the Appellant as a charter bus driver should not be held to the same standards as a school vehicle driver. The Appellant also argues the fact that these terms are used separately in several places throughout the regulations offers additional support of his arguments. These arguments fail for several reasons.

First, the definition of “school charter vehicle” includes the term “school vehicle” as TR §13-420 is entitled “Registration of school vehicles.” Second, the Hearing Examiner concluded that “the school charter vehicle designation under [TR §13-420] relates to the registration of types of school vehicles but does not impact or change the underlying requirements for a driver to be qualified to transport students....” (Motion, Ex. 6 at p. 5). The fact that the regulations hold the driver of a “school vehicle” and a “school charter vehicle” to the same safety standards and requirements (other than registration) supports the hearing examiner’s conclusion.² Clearly, the intent of the regulations is to hold drivers of all school vehicles transporting students to the same safety standards. We find no merit in the Appellant’s arguments that the regulations use of the two terms somehow creates separate safety standards.

Contract Provisions

In addition, BCPS has the right to bar the Appellant from driving charter buses under the terms of the contract. Section 15 of the Contract between BCPS and Woodlawn provides that employees who have unsupervised, uncontrolled, or direct access to children, or who are assigned duties in a school where unsupervised contact is likely are required to have a complete background check. Section 15 further provides that BCPS reserves the right to reject vendor’s employees based on information received from the background investigations. Accordingly, BCPS is entitled under the terms of the contract to ban the Appellant from driving charter buses for BCPS. Finally, BCPS was entitled to ban the Appellant from driving students for BCPS due to his failure to disclose all of his convictions.

CONCLUSION

Based upon our review of the record, we believe that the local board acted consistent with the law in this matter. Under the controlling statutes and regulations and the provisions of the governing contract between BCPS and Woodlawn, BCPS was required to disqualify the Appellant from driving charter school buses. We find, therefore, that the local board’s decision is not arbitrary, unreasonable or illegal. Accordingly, we affirm the local board’s decision

² See COMAR 13A.06.07.07C(1)(vii) and (viii) “Driving a school vehicle or a school charter vehicle while under the influence...” and COMAR 13A.06.07.11A “A school vehicle or school charter vehicle may not be used to transport students unless a vehicle acceptance sheet...”

barring the Appellant from driving school vehicles for BCPS and disqualifying the Appellant from driving school vehicles in Maryland.

Signatures on File:

Clarence C. Crawford
President

Jean C. Halle
Vice-President

Gail H. Bates

Charles R. Dashiell, Jr.

Susan J. Getty

Vermelle Greene

Rose Maria Li

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Absent:

Shawn D. Bartley
Rachel McCusker
Joan Mele-McCarthy

June 22, 2021