

D ■■■ O ■■■■,

Appellant,

v.

CARROLL COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-39

OPINION

INTRODUCTION

D ■■■ O ■■■■ (“Appellant”), a school bus driver employed by F&S Transportation, Inc., challenges the decision of the Carroll County Board of Education (“local board”) affirming her disqualification from operating a school bus based on a positive result for marijuana during a random drug test. Appellant argues that her positive test result was anomalous rendering the local board’s decision arbitrary, unreasonable, or illegal and requests that the local board reinstate her. The local board asserts that State and federal law preclude it from exercising any discretion and mandate Appellant’s disqualification.

FACTUAL BACKGROUND

Appellant, an employee of F&S Transportation, Inc., a private company under contract to provide transportation to Carroll County Public Schools (“CCPS”), served as a school bus driver for approximately 17 years. (Local Bd. Response, Ex. 1). Pursuant to COMAR 13A.06.07.10(A) and 49 C.F.R. §382.305, the Carroll County School Bus Contractors’ Association established a contract with Carroll Occupational Health (“COH”) to provide a random drug testing program for all CCPS bus drivers. (*Id.* at Ex. 5). Appellant submitted to random urine drug testing on three occasions: October 14, December 1, and December 15, 2020. (Appellant’s Memorandum at 2). Appellant’s December 15, 2020 test yielded a positive test result for marijuana. (Local Bd. Response, Ex. 2). Her October 14 and December 1 test results had been negative. (Exhibits to Appellant’s Memorandum-COH Test Results). Separately from the COH program, she also submitted to private testing on December 22 and again on January 8, 2021, in an attempt to demonstrate that the positive test result was somehow an anomaly. (Exhibits to Appellant’s Memorandum-Private Test Results). The December 22 and January 8 test results were negative. *Id.*

On December 18, 2020, the CCPS Transportation Services Department received Appellant’s verified results from the COH program and disqualified her from driving a school vehicle pursuant to COMAR 13A.06.07.10(B)(2)(i). (Local Bd. Response, Ex. 2). Appellant invoked her right under 49 C.F.R. §40.171 to request a retest of her “split specimen.”¹ (*Id.* at Ex. 1). On

¹ A split specimen test is when the urine sample is split into two testable specimens in order to allow for a second test from the same collection in the event that there is a challenge or concern regarding the test results.

December 24, 2020 the split specimen retest reconfirmed the positive result for marijuana. (*Id.* at Ex. 3).

On January 7, 2021, Appellant's counsel informed Michael Hardesty, Director of CCPS's Transportation Services Department, that Appellant had retained him to appeal her disqualification. (*Id.* at Ex. 4). In response, Mr. Hardesty explained the appeal process and applicable regulations, and the lack of discretion under the regulations where a positive drug test occurs. (*Id.* at Ex. 5). On January 22, 2021, Appellant appealed the disqualification to the local board. She submitted an Appeal Information Form stating that she had been a school bus driver for 16 years and "had negative urine tests both before and after an anomalous and erroneous test result from December 15, 2020." (*Id.* at Ex. 8). Appellant requested to be retested and reinstated as a school bus driver. *Id.*

On January 27, 2021, Jonathan O'Neal, acting as the Superintendent's designee, responded to the appeal via letter setting forth the basis for upholding Appellant's disqualification. (*Id.* at Ex. 9). In the letter, Mr. O'Neal explained that testing positive for controlled substances meets the definition of prohibited conduct under COMAR 13A.06.07.10(B)(2)(i), and therefore required Appellant's permanent disqualification from driving school vehicles under COMAR 13A.06.07.10(B)(1). *Id.* Mr. O'Neal's letter also addressed Appellant's split sample retest, as well as her contention that her positive test result on December 15 was "anomalous and erroneous" due to negative test results both before and after the positive result. *Id.* Without questioning the veracity of those negative results, Mr. O'Neal noted that the split sample retest confirmed the positive result from December 15th and remained firm that COMAR therefore required Appellant's disqualification as a bus driver. *Id.* He elaborated that Ms. Osborne's situation differs from others where discretion may be allowed in the decision to disqualify a school vehicle driver under other regulatory provisions, for example "where a driver has been disqualified for other reasons such as a poor driving record or inappropriate interactions with students or parents." *Id.* Finally, Mr. O'Neal explained that COMAR 13A.06.07.10D prescribes a pathway for disqualified drivers to return to service. *Id.* Accordingly, Mr. O'Neal asked that the local board uphold Appellant's disqualification. *Id.*

On March 10, 2021, the local board issued its decision affirming Appellant's disqualification as a school vehicle driver. (*Id.* at Ex. 1). The decision explained that both the State and federal regulations establish that "those entrusted with the transportation of students must meet higher safety and compliance 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." *Id.* Any driver who "tests positive for drugs must immediately be removed from service because of the great risk to students from an impaired bus driver." *Id.* The local board noted that neither State nor federal regulations provide any flexibility to reinstate Appellant without her completing the steps established at COMAR 13A.06.07.10D. *Id.*

Appellant filed her appeal of the local board's decision on March 12, 2021.

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. A local board's decision is "arbitrary or unreasonable" if it is "contrary to sound educational policy" or if a "reasoning mind could not have reasonably reached the [same] conclusion." COMAR 13A.01.05.06(B). A local board's decision is "illegal" if it: "(1) is 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." COMAR 13A.01.05.06(C). Appellant bears the burden of proof by a preponderance of the evidence. *See* COMAR 13A.01.05.06(D).

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

Appellant contends that the local board acted arbitrarily, unreasonably, or illegally when it upheld her disqualification from driving a school bus. Based on the record presented, we conclude that Appellant failed to prove that the local board did anything but follow the plain and ordinary meaning of COMAR 13A.06.10B and C when disqualifying Appellant as a school vehicle driver.

The local board has an obligation to adhere to State and federal regulations in the operation of its student transportation program. In *Reed v. Carroll County Bd. of Educ.*, MSDE Op. No. 00-4 at 3 (2000), we upheld the local board's decision to disqualify a school vehicle driver following a positive test result for marijuana under the mandatory drug testing program. *Id.* at 3. In *Reed*, the bus driver had unknowingly consumed marijuana-laced brownies prepared by her husband, who provided an affidavit explaining what happened. *Id.* We concluded that the applicable provisions of COMAR were mandatory, and therefore "did not require that [appellant] possess knowledge of her use of the controlled substance for purposes of disqualification." COMAR 13A.06.07.10B mandates disqualification for positive results regardless of the basis for the person ingesting the alcohol or controlled dangerous substance. *Id.*; *see also Matthews v. Prince George's County Bd. of Educ.*, MSBE Op. No. 11-02 (2011)(disqualification based on breathalyzer test for blood alcohol concentration claiming it was due to cough syrup consumption).

In the present case, Appellant tested positive for marijuana on a random drug test, which required her immediate disqualification from driving a school vehicle. COMAR 13A.06.07.10B(2)(i). The federal regulation, 49 C.F.R. § 40.23(a), requiring immediate removal from duty prior to testing the split specimen, is incorporated by reference at COMAR 13A.06.07.10A(2). Although Appellant contends that the December 15th positive test for marijuana was "anomalous and erroneous," she availed herself of testing of the split specimen

that yielded the same positive result. CCPS followed State and federal law and promptly disqualified Appellant from service. Appellant's negative drug test results from other days do not negate the December 15th positive test result.

CONCLUSION

Appellant has provided no basis to demonstrate that her December 15, 2020 positive test result was inaccurate based on the collected sample, and has failed to show that the local board violated COMAR 13A.06.07.10 by disqualifying Appellant from driving a school vehicle following a positive test result from random drug testing required by State and federal regulation. Accordingly, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

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

Abstain:
Susan J. Getty

Absent:
Shawn D. Bartley
Rachel McCusker
Joan Mele-McCarthy

June 22, 2021