

TROY BRITTINGHAM,

Appellants

v.

SOMERSET COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 25-20

OPINION

INTRODUCTION

Appellant, Troy Brittingham, Sr., owner-operator of Brittingham Transportation, LLC, appeals the decision of the Somerset County Board of Education (“local board”) to terminate his bus transportation services contract. The local board responded to the appeal maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

On May 30, 2024, Somerset County Public Schools (“SCPS”) entered into a written contract with Brittingham Transportation, LLC, a single member limited liability company with Appellant as its sole member/owner, for the provision of school bus transportation services.¹ (R. 1-6). The contract for services contains a termination provision in ¶9 that states as follows:

In the sole discretion of the Board, this Agreement may be terminated at any time for cause or budgetary constraints by giving (60) days notice to the Contractor. If such termination is for inadequate performance or breach of the Agreement, the Contractor may be held responsible by the Board for expenses incident to its replacement. If this Agreement is terminated for inadequate performance or breach of the Agreement, the Contractor shall be provided the reason or reasons for terminating this Agreement. In the event the Contractor has more than one contract with the [local board] for school vehicle/water vessel services, a breach by the Contractor of any one contract may be deemed a breach by all contracts. Contractor shall be given an opportunity to be heard by the Board on no less than ten (10) days notice in regard to such termination. Contractor shall be allowed to bring counsel and witnesses if so desired. Further, an appeal of the

¹ There is no evidence in the record to dispute that Appellant is the sole owner/member of the company.

Board's decision may be made to the State Superintendent of Schools within thirty (30) days from the date of said decision.

Id. at 5.

On November 15, 2024, an incident occurred involving a sixth-grade student while the Appellant was operating the school bus. According to Michael Bartemy, Director of Transportation, the Appellant stopped his bus approximately ¼ mile from his destination at Crisfield High School and the bus video footage showed the Appellant verbally and physically assaulting the student. (R. 7). Appellant maintains that the child was scraping a toy across the seat in front of him and Appellant was concerned that it would damage the seat. (Appeal).

Prior to the November 2024 incident, Appellant was the subject of two other incidents requiring corrective action resulting from Appellant's inability to control his anger. (R. 7-8). One of those incidents, on October 8, 2021, resulted in a one-week suspension from driving a school bus and required Appellant to attend classes on stress management and conflict de-escalation. *Id.* After the October 2021 incident, Appellant signed a *Constructive Advice Memorandum* dated October 11, 2021, acknowledging the sanctions imposed at that time and that Appellant "understood and agreed that any such action going forward would result in further action up to recommendation for revocation of [his] contract." *Id.*

On November 18, 2024, Mr. Bartemy placed Appellant on administrative leave from his bus duties due to the November 15 incident.²

On November 22, 2024, the States Attorney for Somerset County charged Appellant with second degree assault based on the November 15 event. (R. 9). That charge is currently pending with a jury trial set for June 11, 2025.³ On November 26, 2025, Appellant was disqualified as a bus driver based on the charges against him. (Appeal).

By letter dated June 17, 2025, Mr. Bartemy provided written notice to Appellant that his bus services were being terminated due to the November 15 incident based on the local board's vote on the matter at its December 17, 2024 meeting. (R.7-8). He explained that the bus video footage clearly showed the physical and verbal assault of the child and that this was the Appellant's third transportation-related incident. *Id.*

Mr. Bartemy further stated:

Policy #200-18 Section 4.G states: The contract between the contractor and the Board may be terminated at any time at the sole discretion of the Board with sixty days (60) notice and in accordance with the terms and conditions of the contract. The second paragraph of 9 of your contract states: "In the sole discretion of the Board, this Agreement may be terminated at any time for cause or budgetary

² Appellant was also employed by SCPS as a custodian and was subject to termination proceedings. That matter is not the subject of this appeal.

³ There was also a Child Protective Services investigation due to the incident which resulted in an unsubstantiated finding. (Appeal, attach.).

constraints by giving sixty days (60) notice to the contractor” ... It further states: “Contractor shall be given an opportunity to be heard by the Board on no less than ten (10) days notice in regard to such termination. Contractor shall be allowed to bring counsel and witnesses if so desired. Further, an appeal of the Board's decision may be made to the State Superintendent of Schools within thirty (30) days from the date of said decision.”

For the reasons discussed above, effective March 19th, 2025, your contract for Route 003 will no longer be valid. You have 30 days to file an appeal of the Board's decision with the State Superintendent of Schools....

Id.

On March 7, 2025, Appellant submitted an appeal to the State Superintendent of Schools. The matter was forwarded to the State Board to be handled as an appeal of the local board’s decision under Education Article §4-205, which is the proper process for appealing matters such as this.⁴

STANDARD OF REVIEW

In appeals arising under Md. Code Ann., Educ. §4-205, the local board’s decision 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. *See* COMAR 13A.01.05.06A; *see also Fields v. Baltimore Cnty. Bd. of Educ.*, MSBE Op. No. 16-05, at 4 (2016).

LEGAL ANALYSIS

Appellant argues that the local board failed to terminate the contract consistent with the contract provisions and denied his procedural right to be heard before the local board as set forth in ¶9 of the contract. As stated above, ¶9 provides:

If this Agreement is terminated for inadequate performance or breach of the Agreement, the Contractor shall be provided the reason or reasons for terminating this Agreement...[and] Contractor shall be given an opportunity to be heard by the Board on no less than ten (10) day’s notice in regard to such termination.

In opposition, the local board argues that the contractual requirement for a hearing before the local board does not apply in this instance because the hearing provision applies only to terminations for “inadequate performance” or “breach of the contract” and not to other “for cause” bases. The local board claims that it terminated the contract based on the following school bus driver disqualification regulations:

⁴ We suggest SCPS make note of this when drafting contracts in the future.

- COMAR 13A.06.07.07D – Disqualification for Unsafe Actions: Any unsafe action may lead to disqualification and termination of a school vehicle driver or trainee by the supervisor of transportation.
- COMAR 13A.06.07.07C(1)(a)(vi) – Disqualification for Criminal Conduct (convicted or charges pending): A local school system shall disqualify an individual school vehicle driver or trainee from operating a school vehicle if the individual has been convicted of a crime or if criminal charges are pending against the individual for a crime involving any action that may endanger the safety of students being transported.
- COMAR 13A.06.07.07C(1)(b) – Disqualification for Criminal Conduct (criminal history): A local school system shall disqualify an individual school vehicle driver or trainee from operating a school vehicle if the individual has a criminal history, including second degree assault, which in the opinion of the supervisor of transportation, makes the individual unfit for employment. Evidence of second-degree assault is not deemed to be an automatic reason for disqualification.

The local board maintains that termination of the contract for violation of these COMAR provisions is a general “for cause” basis to terminate and does not amount to the more specific for cause bases of “inadequate performance” or “breach of contract” which would trigger the hearing procedure before the local board.

While the behavior of the Appellant on November 15, 2024 may have served as the basis for disqualification to drive a school bus under COMAR, the termination letter does not state that the contract was being terminated because Appellant was disqualified as a school bus driver under COMAR 13A.01.06.07.07. In fact, the letter contains no reference to the COMAR disqualification provisions whatsoever and makes no mention of disqualification.

The termination letter states that the contract termination was “based on the events that occurred on the afternoon of November 15th” and that the bus video shows that Appellant verbally and physically assaulted a 6th grade student. (R. 7). As stated in the local board’s response, the school system lost confidence in Appellant and his company regarding the safety of children on a bus under their authority by placing the possibility of seat damage above the physical well-being of a child under the company’s charge. This is objectively viewed as termination for “inadequate performance” of the contract for bus transportation services within the plain meaning of the term and consistent with its usual definition, *i.e.* “not enough or good enough”, as proposed by the local board in its final reply. *See also* Inadequate, Merriam-Webster’s Online Dictionary (accessed May13, 2025).⁵ Appellant performed the bus transportation services in an unsafe manner that endangered the health and safety of a student and the bus transportation services were, therefore, not good enough. This inadequate performance is what triggered the termination of the contract.⁶

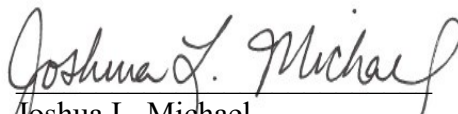
⁵ <https://www.merriam-webster.com/dictionary/inadequate>.

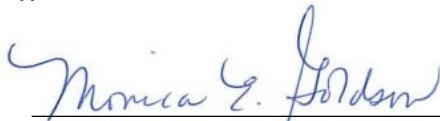
⁶ We acknowledge that ¶9 of the contract does not preclude the possibility of “for cause” reasons to terminate that do not amount to a breach of contract or inadequate performance and thus do not trigger the opportunity for hearing before the local board, however, that is not what occurred here.

The local board also maintains that even if the hearing provision applies in this case, the Appellant failed to request a hearing before the local board and instead filed an appeal directly to the State Superintendent. The contract provision does not require the Appellant to initiate the hearing, rather it places an affirmative duty on the local board to provide the opportunity to be heard. Although Mr. Bartemy's termination letter repeated the hearing provision of ¶9 of the contract, the letter provides no offer of an opportunity to be heard by the local board on the matter. Instead, the letter advises the Appellant that his next level of review is an appeal to the State Superintendent. The fact that Appellant followed the directions provided in the letter and submitted an appeal to the State Superintendent and did not request a hearing before the local board cannot now be reasonably used as an argument to preclude such a hearing. Nor is the local board's argument that a *de novo* remand to the local board would unlikely change the result persuasive. Whether or not Appellant is likely to prevail, he is still contractually entitled to the opportunity to be heard before the local board in accordance with the contract requirements.

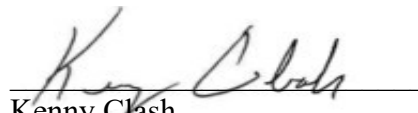
CONCLUSION

For the reasons stated above, we find that the local board's termination of the contract failed to comply with the Appellant's right to an opportunity for a hearing before the local board and was, therefore, illegal. We remand this matter to the local board so that it can offer the Appellant the opportunity to be heard before the local board in accordance with the contract.



Joshua L. Michael
President


Monica Goldson
Vice-President



Chuen-Chin Bianca Chang

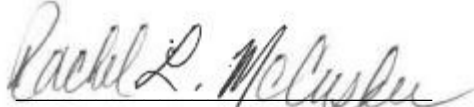

Kenny Clash

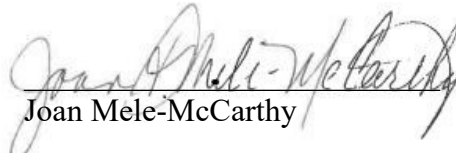

Clarence Crawford

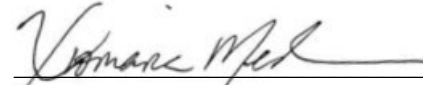

Nick Greer


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Samir Paul

Abstained:
Chet Chesterfield

May 29, 2025