

DENESA CHURCHEY,

Appellant

v.

WASHINGTON COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-03

OPINION

INTRODUCTION

Appellant, Denesa Churchey, challenges the decision of the Washington County Board of Education (local board) to not renew her contract to operate two school bus routes. The local board filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant filed a Response in Opposition to the Motion for Summary Affirmance and the local board replied.

FACTUAL BACKGROUND

Appellant has worked as a bus driver for the Washington County school system for 27 years and as a bus contractor for 17 years. (Motion, Ex. 5). As a contractor, Appellant agreed to provide transportation to students on three bus routes. Her contract was first executed in 1995 for one year and was renewed on an annual basis thereafter. The contract contains a provision stating that the school district may terminate Appellant's contract for "inadequate performance" with thirty days' notice. (Motion, Ex. 5, tab 21).

Washington County Public Schools notified Appellant on April 23, 2012, that her contract would not be renewed for bus routes 35C and 95C. (Motion, Ex.1). In support of the decision, Barbara J. Scotto, Supervisor of Transportation, stated that Appellant had "demonstrated a pattern of behavior" that violated her school bus contract, school policies, and state law and regulations. Scotto stated that Appellant had been warned and counseled many times in the past, had previously been decertified as a driver for a period of time, and had money deducted from her paycheck because she had overstated her time and mileage. Scotto recommended that Appellant be allowed to keep one of her bus routes, 3C, as a means to show that she could comply with school regulations and the terms of her contract. (Motion, Ex. 5).

The letter included an attachment with a "summary of concerns" from the transportation department. The relevant incidents¹ included in the record, organized by the dates in which they were documented by the school district, were as follows:

¹ The letter includes a dozen alleged school policy or contract violations (not listed here) that occurred between 2004 and 2009. During the hearing before the local board, school officials stated they were only focusing on incidents that occurred during the most recent year of the contract, from 2011 to 2012. The local board, in rendering its decision, stated that it based its decision solely on incidents during that year. (Motion, Ex. 25).

- July 21, 2011
 - o Appellant failed to have a cell phone assigned to each bus and to disclose that a substitute driver was driving. Appellant stated cell phones were placed in the glove box of each bus. (Local Board Hearing Transcript at 16). It appears from the record that, even if this was the case, the substitute driver was not aware of this fact, as he was contacted by school officials through his personal cell phone.
- October 11 and 12, 2011
 - o A new substitute driver on Bus 3C missed the same stop three times. Appellant claims it was because a student told the driver to let her off at a different location. (T. 77-79).
- December 7, 2011
 - o A parent complained that Appellant made inappropriate gestures and comments to students. Appellant disputed this and the school district did not press this incident as one of the reasons for the non-renewal. (T. 76).
- December 19, 2011
 - o Appellant failed to provide a certified driver for Bus 3C on November 3 and 4 and contacted drivers who were not certified as potential substitutes. The school system operated Appellant's route on those days and expressed concerns to Appellant about a lack of preventative maintenance on her buses and her inability to fulfill her contract. Appellant claims it was very difficult to find certified drivers in the school district at that point. (T. 91-92).
- April 4, 2012
 - o Appellant allegedly used her cell phone while driving; called students names; allowed an uncertified individual to drive a spare bus to the central office lot; changed parking locations of her buses without authorization; reported time inaccurately; and failed to follow proper railroad crossing procedures. The only one of these incidents emphasized by the school district before the local board was the use of an uncertified driver. Appellant acknowledged allowing the uncertified person to drive the spare bus, but stated that the driver did have a commercial driver's license and that no children were on the bus at the time. (T. 80-81).

After Appellant was notified of the cancellation of her two bus routes, some additional incidents occurred. (Motion, Ex. 5). On May 14, 2012, one of Appellant's bus drivers struck a fence at Sharpsburg Elementary School but did not report the accident. Appellant explained that the driver was new and she was not made aware of the incident until after the school district had already learned about it. (T. 89-90). Additionally, Appellant failed to have a driver available for one of her routes on May 17, 2012. She stated she had difficulty finding certified drivers. (T. 91-92).

Appellant appealed the decision canceling her two routes, and an administrative hearing was conducted on July 2, 2012, by Deputy Superintendent Boyd J. Michael, III. (Motion, Ex. 9). The hearing lasted two hours and included testimony from Appellant and another witness called by her, along with arguments from both sides. (Motion, Ex. 13, T. 13-14). In a letter accompanying her appeal, Appellant stated that she disputed the facts of the contract violations

and that many of the alleged violations were not timely or did not occur during the most recent contract period. (Motion, Ex. 10). She also claimed promissory estoppel based on June 6, 2011 letters from Supervisor of Transportation Scotto stating that Appellant needed to begin the process of purchasing new buses for routes 35C and 95C. The buses servicing those routes were both twelve years old and scheduled to be taken out of service on July 1, 2012. (Motion, Ex. 5). Appellant claimed she committed to buying the two new buses in reliance on the 2011 letters from Scotto. (Motion, Ex. 10). Appellant argued that she relied on Scotto's letter as a promise that her contracts for the bus routes would be renewed if she purchased new buses. She suggested that she be allowed to renew her bus contracts for a probationary period during which she would oversee the three routes and hire drivers to drive each of the three buses, rather than driving one of the routes herself as had been her practice. (Motion, Exs. 10, 12).

Deputy Superintendent Michael issued a written ruling on July 19, 2012, denying the appeal. He stated that, although the June 2011 letters implied that Appellant's contracts would be renewed, the letters did not absolve her of the responsibility of complying with her contract. He concluded that she had violated the terms of her contract and he upheld the decision to not renew her two bus routes. Michael noted that the school system was under no obligation to purchase the buses ordered by Appellant, but stated that the school district would attempt to help Appellant minimize her losses. (Motion, Ex. 13).

Appellant appealed to Superintendent Dr. Clayton M. Wilcox who conducted an administrative hearing on September 7, 2012. (Motion, Ex. 17). He denied the appeal in an October 9, 2012 letter. Dr. Wilcox acknowledged that some of the exhibits relied upon were "dated," but stated that there was timely, compelling, and substantive evidence that supported the decision not to renew the contract. He stated that he believed Appellant erroneously relied on the June 2011 letters as an assurance that her contract would be renewed. Dr. Wilcox noted, however, that he would direct the school system to help resolve any financial problems Appellant might have as a result of her bus purchases. (Motion Ex. 19).

Appellant appealed to the local board which held a hearing on March 26, 2013. (Motion, Ex. 26). Appellant argued that the incidents used as a basis for not renewing her contract were unproven allegations. (T. 10-11). Appellant maintained that any violations prior to her most recent contract year were not timely and should not be considered. (T. 11-12). Appellant complained that the first administrative hearing before Deputy Superintendent Michael was not recorded and she questioned her ability to bring further appeals as a result. (T. 14-15). Appellant contended that the previous decisions made by the superintendent and deputy superintendent were rendered on the basis of a written record of allegations, not testimony from witnesses. (*Id.*). Appellant renewed her promissory estoppel claim. (T. 18-19, 56).

The school district responded by noting that Appellant was frequently warned that various behavior could jeopardize her bus contract. (T. 31-33). The school district agreed that the local board should only look at incidents from 2011-12 in making its decision, and stated that earlier incidents included in the record were provided merely for background. (T. 39, 51-54).

On June 4, 2013, the local board issued a written decision upholding the superintendent's decision. The local board concluded that the incidents documented between July 21, 2011 and

April 23, 2012 were enough to demonstrate Appellant's inadequate performance and to justify the decision to not renew the two routes. The local board noted that, despite being warned about the potential termination of her contract on April 4, 2012, Appellant or her employees continued to violate school district policies. The local board stated that just one of the incidents – the failure to report an accident in which a bus struck a fence at Sharpsburg Elementary School – could serve as grounds for termination of her contract. As for Appellant's estoppel argument, the local board noted that Appellant's contract specified that it could be terminated due to inadequate performance, without any exception listed for the purchase of new buses. In addition, the local board concluded it would be against sound public policy to not terminate a contract due to inadequate performance solely because the contractor purchased new buses. (Motion, Ex. 25).

This appeal to the State Board followed. Appellant "disputes the factual validity" of the allegations against her and claims the allegations were not timely and based on insubstantial evidence. She argues that the local board's findings are not supported by the record "as submitted." Finally, Appellant claims that promissory estoppel applies because she detrimentally relied on letters from the school district indicating she should purchase new buses and could sign new contracts with the district once the purchase was accomplished. (Appeal to State Board).

STANDARD OF REVIEW

This appeal involves the decision of a local board concerning a local policy. The local board's decision is presumed to be *prima facie* correct. COMAR 13A.01.05.05A; *see Bell v. Calvert County Bd. of Ed.*, MSBE Op. No. 13-33 (2013). The State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable, or illegal. *Id.* The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05D

LEGAL ANALYSIS

As a preliminary matter, Appellant requests that this appeal be referred to the Office of Administrative Hearings ("OAH") because there is a genuine dispute of material fact. *See* COMAR 13A.01.05.07(A)(3). In support, Appellant states that she disputes "the factual validity and timeliness of the alleged violations." The timeliness of the allegations was addressed during the hearing before the local board. Although incidents that predated Appellant's most recent contract were presented to the local board, it stated that it did not base its decision on these earlier incidents. As for the factual validity of the violations, Appellant conceded at the hearing that she committed some of the violations and offered explanations for her behavior. The only incident she outright disputed was one that the school district did not press before the local board. Due process does not require a hearing on issues that do not involve a genuine dispute of material fact. *See Lessie B. v. Caroline County Bd. of Ed.*, MSBE Op. No. 11-16 (2011). Appellant presents no material facts that are in dispute. Therefore, this case does not need to be transferred to OAH.

Additionally, Appellant requests a transfer to OAH because she claims that the record is incomplete without a transcript of the July 2 hearing that took place before the deputy

superintendent. The local board, in making its decision, relied upon the exhibits provided by the parties and the argument offered during the March 26, 2013 board hearing, which included Appellant's explanation for some of the incidents. The State Board reviews the record "made before the local board." COMAR 13A.01.05.06.A. Because the local board did not rely on the July 2 hearing, we have all the information we require to review this appeal. Consequently, the lack of a recording or transcript of the July 2 hearing does not require a referral to OAH.

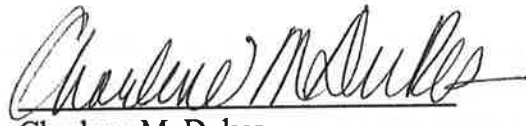
Throughout these proceedings, Appellant has argued that promissory estoppel should bar the school district from being able to cancel her contract for the two bus routes. Appellant claims she detrimentally relied upon the July 2011 letters from Scotto that advised her she should "begin the process" of purchasing new buses. The letters informed Appellant that she should contact the transportation office after receiving a bus delivery date so that staff could "prepare the contract for signature." Another letter from Scotto, sent to all school bus contractors, informed them that, once they took delivery of a new bus, they should contact the transportation department to "execute a new contract." Appellant argues that these letters, taken together, led her to believe she was guaranteed a new contract if she purchased new buses and the school district cannot now deny her that contract.

It was not unreasonable for the local board to reject this argument as being against sound educational policy. The local board reasoned that to accept Appellant's position would allow for bus drivers to violate school regulations with impunity so long as they had made arrangements to purchase new buses. Appellant's contract required her to follow school policies. Although the July 2011 letters could have given Appellant the impression that she would receive a new contract, this was undercut by the various warnings the school district gave her about her performance deficiencies. In light of the warnings, it was unreasonable for Appellant to conclude that she was guaranteed a new contract even if her performance was deficient. Given these facts, the decision to reject Appellant's estoppel argument was not arbitrary, unreasonable, or illegal.

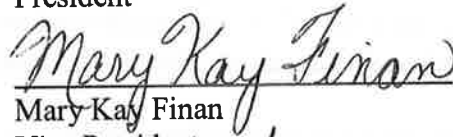
Appellant's contract stated she could be terminated for "inadequate performance." In making its decision not to renew her bus routes, the local board focused on several incidents, supported by documents in the record, which occurred during the span of Appellant's most recent contract year. Appellant conceded she violated school policies by failing to provide a certified driver on two days in November 2011 and by allowing an uncertified person to drive a spare bus to the central office lot. Although she claimed to have placed cell phones on each of her buses, this information was not conveyed to one of her substitute drivers, who had to be contacted on his personal cell phone. After her contract for the two routes was not renewed, one of Appellant's drivers failed to report a bus accident and Appellant again failed to provide a driver for one of her routes. These incidents provided ample support for the local board's conclusion that Appellant violated school policies, performed inadequately, and should not have her contract for the two routes renewed.

CONCLUSION

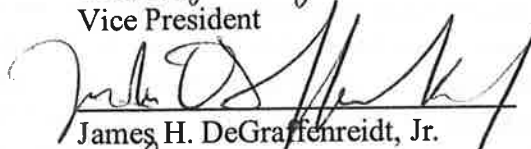
For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.



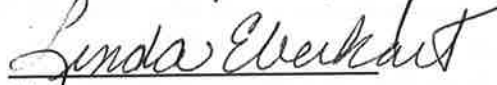
Charlene M. Duker
President



Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.



Linda Eberhart

Absent

S. James Gates, Jr.

Absent

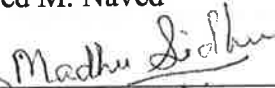
Larry Giammo

Absent

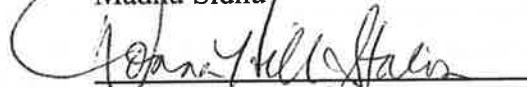
Luisa Montero-Diaz

Absent

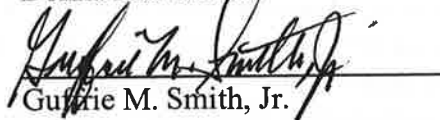
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffie M. Smith, Jr.

February 25, 2014