

ANTHONY POPP,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-22

OPINION

Appellant, a bus driver employed by ABC Transportation, a private contractor for Howard County Public Schools (“HCPS”), appeals the decision of the supervisor of transportation for Howard County Public Schools to revoke Appellant’s certification to drive a school bus. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has submitted an opposition to the local board’s motion.

FACTUAL BACKGROUND

Appellant has been a bus driver for HCPS for approximately 12 years. On June 30, 2003, at approximately 7:50 a.m. on his way to pick students up for summer school, Appellant was involved in a collision with another vehicle belonging to Antoinette Hawkins. The incident occurred when Appellant missed a left turn by a few feet and decided to back up to make the turn. Appellant put on his four-way flashers and put the bus in reverse. The bus and Ms. Hawkins’ car collided, resulting in damage to the car. According to Appellant, because the students were becoming disruptive, Appellant decided to continue on to school. He exchanged information with Ms. Hawkins and left the scene.

Upon arrival at Murray Hill Middle School, Appellant went into the main office and called his employer, ABC Transportation, at 8:02 a.m. to report the accident. Appellant maintains that he spoke with Mr. Dale Ashwell, Jr., the owner of ABC Transportation, who assured Appellant that he would report the incident to the Pupil Transportation Office (“PTO”). Appellant maintains that he did not call the PTO directly because the PTO’s summer opening time was 8:30 a.m. Unfortunately, ABC Transportation did not contact the PTO on June 30 regarding the accident. Rather, the PTO became aware of the accident the following day through a telephone call from Murray Hill Middle School indicating that a student had reported the bus being in an accident on June 30. The afternoon following the accident, Mr. Ashwell informed Appellant that Glen Johnson, Director of Pupil Transportation, wanted to speak to him about the accident, at which time Appellant contacted Mr. Johnson to discuss the incident.

Appellant and Mr. Johnson met on July 14 to discuss the accident. Mr. Johnson summarized Appellant’s rendition of the incident as follows:

During our meeting, you explained that the accident occurred at approximately 7:50 a.m. There were about 25 students onboard. You were unable to reach ABC Transportation because your cell phone battery was dead and there was no place to plug in the phone on the bus. You exchanged information with the other party and proceeded to transport the students to school. Once you arrived at Murray Hill Middle School at approximately 8:02 a.m. you proceeded to the school office and called ABC Transportation. You also indicated that you were not totally sure whether you backed into the vehicle or the vehicle ran into you. It was your recollection that the bus probably did not move backwards more than a foot. You described the damage to the other vehicle as minimal with a crease in the hood. You were very surprised at the damage estimate of \$3,500 received by Dale Ashwell, Jr. In closing, you indicated that you would have taken other steps to summon assistance of there were any injuries involved.

See 7/21/03 letter from Johnson to Popp. Dale Ashwell, Jr. confirmed for Mr. Johnson that Appellant had called ABC Transportation at 8:02 a.m. the morning of the accident but that the call was answered by Mr. Ashwell's son who failed to notify him of the accident until late that evening.

By letter dated July 21, 2003, Mr. Johnson withdrew approval of Appellant as a school bus driver. In the letter, Mr. Johnson cited Appellant's failure to report the school bus accident as soon as practicable as required by COMAR; Appellant's involvement in six accidents, two of which were preventable, including the accident at issue; and a prior warning to Appellant after his failing to report a school bus accident in 1991, that failure to follow proper procedures could result in his disapproval as a school bus driver for HCPS. Acting as the superintendent's designee, Raymond Brown, Director of Operations for HCPS, affirmed Mr. Johnson's decision decertifying Appellant as a bus driver.

On further appeal, the local board affirmed the superintendent's decision disqualifying Appellant as a school bus driver for HCPS, noting that Appellant had failed to follow proper accident procedures by not contacting the police or the PTO as soon as practicable. Two members of the local board issued a concurring opinion affirming the decertification decision without concluding that Appellant had violated COMAR 13A.06.07.05A(5) because the State Board regulation does not specify to whom the accident report should be made. In its decision, the local board explained that HCPS procedures specifically require a bus driver to remain at the scene of an accident until instructed to leave by the police or by transportation authorities.

ANALYSIS

Because this case involves a local policy or dispute regarding the rules and regulations of a local school system, the decision of the local board is considered *prima facie* correct. 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.01.01.03E(1)(a).

Violation of Local Procedures

The local board has adopted its own procedures for school buses involved in accidents. The 2001 HCPS School Bus Driver and Assistant Handbook states that:

[a]ll accidents involving property damage and/or personal injury must be reported to the police department and the Pupil Transportation Office. Bus drivers are to remain at the accident scene until instructed to leave by the police or transportation authorities.

See Section V, Accident/Breakdown Procedures.¹ The Handbook also states that “the Howard County Police Department, the Transportation Office, and the School Bus Contractor must be notified. The Bus Driver Emergency Procedure Card which is located on every bus reiterates these instructions and advises the bus driver to call or have someone call the police, the PTO, and the bus contractor. School bus drivers are notified of these procedures during pre-service and in-service training classes.

In addition, Appellant was specifically advised of the local procedures in writing by memorandum dated October 16, 1991, in response to an incident in which he failed to call or have someone call the PTO to report a bus accident. *See* 10/16/91 memorandum to Popp from Johnson. The memorandum stated that “[f]ailure to follow the proper accident procedure in the future may result in your disapproval as a school bus driver for the Howard County Schools.”

As reasons for his actions after the accident occurred, Appellant claims that he was unable to make phone calls from the scene of the accident because his cell phone was not charged. He also claims that it was not reasonable for him to remain at the scene to wait for authorities to arrive because the students were becoming disruptive and the driver of the other vehicle had exchanged information and left the scene. Additionally, he maintains that he contacted ABC Transportation as soon as he arrived at the school because the PTO was not yet open and that he was assured that ABC Transportation would notify the PTO regarding the accident.

¹According to the local superintendent, the Handbook is distributed to all HCPS school bus drivers.

Despite Appellant's contentions, based on the record in this case we believe that Appellant failed to follow proper procedures when he left the scene of an accident without contacting and waiting for a response from the appropriate authorities. Although his cell phone was not operational, there is no evidence that Appellant made any other reasonable efforts to notify authorities from the accident scene. For example, it is possible that Appellant could have asked Ms. Hawkins, a resident, a passerby, or even a student with a cell phone to contact the police. Instead, Appellant exchanged information with the other vehicle driver and left the scene without any record determination of fault or injury and/or property damage.

Although Appellant contacted ABC Transportation upon his arrival at the school and relied upon ABC Transportation to notify the PTO, Appellant made no effort to follow up with ABC Transportation or the PTO² to ensure that the appropriate notifications were made. The fact remains that neither Appellant nor anyone on his behalf contacted the PTO regarding the accident. Appellant first contacted the PTO the following afternoon, after hearing that Mr. Johnson wanted to speak with him. Appellant violated local procedures despite his prior warning after failing to report an accident to the PTO that failure to follow proper procedure could result in his disqualification as a bus driver.³

The reporting requirements and the directive to remain at the scene of an accident are designed to assure student safety and to create a prompt and accurate record of the accident for liability purposes. In a memorandum to the local board, the local superintendent stated as follows:

It has always been the procedure of the Transportation Office that school bus drivers remain at the scene of an accident. This includes the pre-cellular telephone era. For liability reasons, it is imperative that a police officer from the appropriate police department and/or a supervisor from the Transportation Office respond to all school bus accidents. Mr. Popp's accident is a classic example of why this procedure is in place. During Mr. Johnson's meeting with Mr. Popp on July 14, 2003, Mr. Popp indicated that he was not sure whether he backed into the vehicle or the vehicle struck him prior to executing the backing maneuver. The other party claimed the bus struck her car. Had Mr. Popp remained at the scene of the accident as required, the responding police officer would have made a determination of who hit whom. Because there was no police report to indicate who was at fault,

²Had Appellant called the PTO when he arrived at the school, it is possible that he could have left a message on a recording.

³Appellant also had prior performance issues regarding his driving. See 10/16/91, 1/30/98, 4/22/98, 4/28/98 memoranda regarding prior incidents.

our insurance provider, MABE, has paid out \$5,000 to the claimant.

COMAR Violation

We also find that Appellant violated COMAR provisions. COMAR 13A.06.07.05C(3)(a) requires a bus driver to report a vehicle accident involving personal injury or property damage to the supervisor of transportation “as soon as practicable after the accident.” COMAR 13A.06.07.05A(5) provides that “[a] school vehicle driver or trainee who fails to report an accident as soon as practicable following the accident is permanently disqualified from operating a school vehicle.” *Black’s Law Dictionary* defines “practicable” as “that which may be done, practiced, or accomplished; that which is performable, feasible, possible”. *Id.* at 1172 (6th ed. 1990). Here, we do not find that Appellant took every effort to make the appropriate contacts and wait for the appropriate authorities at the scene of the accident.

CONCLUSION

The State Board has consistently upheld the decision of local boards disqualifying bus drivers who have failed to meet requirements expected under State regulations or under local rules and procedures. *See Jones v. Board of Education of Kent County*, 7 Op. MSBE 149 (1995)(bus driver dismissed for leaving disabled student unattended on school bus); *Blumenstock v. Board of Education of Howard County*, 7 Op. MSBE 730 (1997)(contractor’s employee determined to be unfit to transport students). For all of these reasons, we find that Appellant has failed to meet his burden of proving that the local board acted arbitrarily, unreasonably, or illegally in this matter. We therefore affirm the decision of the Howard County Board of Education disqualifying Appellant as a bus driver.

Edward L. Root
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Vice President

Philip S. Benzil

Dunbar Brooks

Calvin D. Disney

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Maria C. Torres-Queral

John L. Wisthoff

April 21, 2004