

IN THE MATTER OF

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BEFORE THE

BOARD OF EDUCATION

OF CARROLL COUNTY

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DECISION OF THE BOARD OF EDUCATION OF CARROLL COUNTY

The Appellant, _____, brought this appeal before the Board of Education of Carroll County (the "Board" or "Carroll County Public Schools" or "CCPS"), pursuant to Section 4-205(c) of the Education Article to the Annotated Code of Maryland. On October 15, 2012, Jonathan D. O'Neal, Assistant Superintendent of Administration and the Superintendent's Designee in this matter, upheld the decision to decertify _____ as a bus driver for one of CCPS' bus contractors. Mr. O'Neal also determined that _____ was ineligible to serve in any capacity with the CCPS in the future. The primary reason for this decision was that _____ sent text messages and talked on his cell phone while operating his school bus and sent a student text messages of a sexual nature. He also engaged in other inappropriate conduct, as detailed below. Subsequently, _____ filed a timely appeal to the Board. For the reasons set forth more fully below we shall affirm.¹

¹ The State Board has long held that there is no need for an evidentiary hearing or oral argument when, as in this case, the appeal does not involve an alleged liberty or property interest deprivation thereby invoking the protections of the Fourteenth Amendment Due Process Clause. *See Bricker v. Frederick County Board of Education*, 3 Op. MSBE 99 (1982); *Anderson and Blake v. Board of Education of Prince George's County*, 5 Op. MSBE 415, 417 (1989). For this reason, and because there is no dispute between the parties as to _____ underlying conduct, we decline to conduct an evidentiary hearing or oral argument on this appeal and instead shall render a decision based upon the written record presented to us by _____ and by the Superintendent.

FINDINGS OF FACT

The following constitutes the relevant factual background underlying the decisions to decertify [redacted] as a school bus driver for the CCPS and to find [redacted] ineligible for future service in the CCPS. These underlying facts are not in dispute. Indeed, [redacted], both during his meetings with staff from the Transportation Services Department and in his correspondence to the Board, admitted to, and expressed regret for, the conduct described below.

Between May 21 and 24, 2012, [redacted] then a certified bus driver, was operating bus [redacted] belonging to [redacted] a CCPS bus contractor. On May 22, 2012, a student at [redacted] High School reported to the principal that he had received inappropriate phone text messages from [redacted] while he was riding on the bus. Copies of the text messages the student received from [redacted] were included in the materials submitted by the Superintendent's Designee. The content of the messages was highly inappropriate and sexual in nature. Specifically, the messages involved, among other things, [redacted] querying the student about his sexual orientation, his sexual history, and attempting to set up a meeting with the student.

As a result of the student's allegations and a review of the text messages by CCPS administrators, [redacted] was removed from his position as a substitute bus driver, the matter was referred to the Department of Social Services for investigation, and the Transportation Services Department reviewed the camera footage from the AngelTrax system on bus [redacted] for the period from May 21 to 24, 2012.

Having reported the matter to the Department of Social Services for investigation, CCPS halted its investigation into [redacted] conduct pending a finding by the

Department of Social Services.² Upon receiving notice from the Department of Social Services that their child abuse investigation had been concluded, CCPS resumed its investigation into conduct.

CCPS Department of Transportation administrators' investigation included a review of the text messages retrieved from the student's cell phone and the camera footage retrieved from the AngelTrax camera system on bus . The camera footage from bus revealed the following conduct by :

1. On May 21, 2012, used his cell phone while driving the school bus for both talking and texting, including activity while students were on the bus;
2. On May 21, 2012, pulled over and exited the bus for approximately one minute during his route;
3. On May 22, 2012, left the bus unattended and running for five minutes while he entered a convenience store;
4. On May 22, 2012, used his cell phone and texted multiple times while driving the bus, sometimes for several consecutive minutes at one time, including times when students were on board the bus;
5. On May 23, 2012, used his cell phone and sent text messages thirteen times while driving, including times when he had students onboard the bus;
6. On May 24, 2012, used his cell phone and sent text messages while driving, including times when he had students on board the bus;

² A county board of education has authority to conduct an internal personnel investigation, independent of the investigation by the local department of social services or the police, if the suspected abuser is a school system employee or contractor. However, the county board's personnel investigation must not take place until after the matter has been reported to, and investigated by, the local department of social services or the police. *See*, 76 Op. Atty Gen. Md. 220 (1991); 82 Op. Atty Gen. Md. 65 (1997).

7. On May 24, 2012, _____ sent inappropriate text messages of a sexual nature to a student; and
8. On May 24, 2012, _____ stopped the bus and directed a student to exit the bus to retrieve cleaning supplies from an external compartment on the bus. Upon the student's return, _____ directed the student to clean the windows on the bus.

On July 18, 2012, Transportation Area Supervisor, John O'Meally, conducted a conference with _____ to discuss the above described conduct. At the conference, _____ did not dispute that he had been using his cell phone to send text messages while operating his bus in the manner described above. Furthermore, _____ did not dispute that text messages received by the _____ High School student had been sent by him. By way of explanation, _____ explained he believed the text messages were being received from a friend and that he immediately ceased these communications when he realized that he was communicating with a student. When asked how he had obtained the student's cell phone number, _____ explained that he had "friended" the student on Facebook without realizing that he was a student.

_____ reported that the investigation by Child Protective Services and the Carroll County Sheriff's Department had been concluded and that he was not going to be charged with either child abuse or sexual abuse. Finally, _____ advised that he regretted the above described conduct and requested that he be allowed to resume his role as a substitute bus driver on a probationary basis on buses equipped with the AngelTrax camera system so his future conduct could be monitored.

As a result of CCPS' investigation of _____ conduct and a conference held on July 18, 2012, _____ received notice by letter on July 19, 2012, that he had been decertified as a bus driver for CCPS. _____ appealed the decertification decision to Michael J. Hardesty, Director of Transportation Services. On September 6, 2012, Mr. Hardesty held a conference with _____. By letter dated September 6, 2012, Mr. Hardesty informed _____ that his undisputed acts of misconduct while operating a school bus were unacceptable and that the previously imposed sanction of decertification was affirmed.

On September 19, 2012, _____ filed a timely appeal of his decertification to the Superintendent. After having the opportunity to review his file at the Department of Transportation, _____ submitted a written addendum to his appeal on October 2, 2012. After reviewing the information submitted by _____ and the information submitted by Mr. Hardesty, the Assistant Superintendent of Administration and Superintendent's Designee in this matter, informed _____ by letter dated October 15, 2012, that the decision to decertify him as a bus driver was affirmed and that in addition he would be precluded, in the future, from serving in any capacity for CCPS. _____ then filed a timely appeal to the Board.

CONCLUSIONS OF LAW

An appellant in an appeal under Section 4-205(c) of the Education Article of the Annotated Code of Maryland bears the burden of demonstrating by a preponderance of the evidence that the decision of the local board was either arbitrary, unreasonable, or illegal. A decision may be arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the same conclusion.

COMAR 13A.01.05.05B. Further a decision may be illegal if it is (1) unconstitutional, (2) exceeds statutory authority or jurisdiction, (3) misconstrues the law, (4) results from an unlawful procedure, (5) constitutes an abuse of discretionary powers, (6) or is otherwise affected by an error of law. COMAR 13A.01.05.05C.

; raises the following issues which he argues support vacating the decision to decertify him as a bus driver for CCPS and the determination that is ineligible to serve in any capacity for Carroll County Public School in the future:

1. argues that the Superintendent's decision is procedurally flawed because of the amount of time it took CCPS to inform him of the decision to decertify him as a bus driver.
2. argues that the Superintendent's decision was rendered in error because his conduct was investigated by DSS and no charges were pursued against him.
3. argues that sanctions imposed against him are the result of gender discrimination.
4. argues that the Superintendent's decision was improper because he was not properly apprised of applicable driver policies during his training.
5. argues the Superintendent's decision was improper because he was not informed that the AngelTrax camera system on his bus was operational.

Based on the foregoing arguments, argues that the imposition of a six month probationary period to include monitoring by the AngelTrax camera system on his bus is the appropriate sanction for his misconduct. Each argument will be addressed in further detail below.

argues that the amount of time required to investigate and inform him of his decertification constitutes procedural error requiring reversal of the Superintendent's decision. [redacted] has cited no authority in support of this asserted procedural error. In fact, §4-205 of the Education Article of the Annotated Code of Maryland contains no timeline within which an appeal of this type must be concluded.

As noted above, CCPS' initial investigation into [redacted] conduct began after inappropriate text messages from [redacted] were reported to CCPS administrators by a [redacted] High School student. Due to the sexual nature of those text messages, CCPS was required to report the incident to the local department of social services for investigation of possible abuse. Md. Code Ann., Fam. Law §5-704. Furthermore, the commencement of such an investigation by the local department of social services or local law enforcement requires that CCPS suspend any independent personnel investigation pending the outcome of the abuse investigation. 76 Op. Atty Gen. Md. 220 (1991); 82 Op. Atty Gen. Md. 65 (1997). In this matter, CCPS appropriately waited for the conclusion of the investigation into [redacted] conduct by the local department of social services prior to conducting its own personnel investigation. Upon being cleared to conduct its own personnel investigation, CCPS conducted its investigation into [redacted].

[redacted] conduct and concluded its disciplinary proceedings against [redacted] in a timely manner. The amount of time required to conduct disciplinary proceedings against [redacted].

[redacted] in this matter does not constitute reversible error or error at all, on the Superintendent's part.

[redacted] argues that Superintendent's decisions in this matter are in error because they are contrary to the result of the investigation of potential abuse by the local

department of social services and the Carroll County Sherriff's Department. Again,

cited no authority to support the proposition that CCPS is bound by the results of the investigation by the local department of social services and the Carroll County Sherriff's Department. Indeed, argument ignores the disparate purposes for the two types of investigations. The purpose of the local department of social services and the Carroll County Sherriff's Department's investigation of potential abuse is to determine whether instances of child abuse have occurred and whether criminal charges should be pursued. On the other hand, CCPS' personnel investigation into conduct is aimed at determining whether violations of applicable transportation polices have occurred and is designed to ensure that CCPS' transportation system remains safe and that any deficiencies in the operation of said system are rectified. The Board finds no merit to contention that the actions taken against him in reference to his misconduct are rendered infirm by the determination of local law enforcement authorities not to pursue criminal charges against him.

claims for the first time in this matter that the Superintendent's decision was the result of gender discrimination. In support of this allegation, states that, since he has been decertified, on more than three occasions he has reported female bus drivers for texting and that no disciplinary actions have been taken in reference to these incidents. does not identify the individuals reported, the dates of said reports, or the source of the information upon which said reports were based.

Maryland State Board of Education precedent is clear; the mere allegation of discrimination without any supporting factual specifics is insufficient to sustain a claim

of discrimination. *Keene v. Washington County Bd. of Educ.*, Op. No. 04-02 (2004) (citing *Hurl v. Howard County Board of Education*, 6 MSBE Op. 602 (1993)). Furthermore, [redacted] failed to raise the issue of gender discrimination in his appeal before the Superintendent. The State Board has consistently declined to address issues that have not been reviewed initially by the local board; this Board takes the same position as to issues not raised on appeal before the Superintendent. *Cf. Brown v. Wicomico County Bd. of Educ.*, Op. No. 12-44 (2012). Based on [redacted] failure to raise the issue of gender discrimination before the Superintendent and his failure allege supporting factual specifics regarding his claim for discrimination, the Board finds the claim of discrimination to be insufficient.

[redacted] argues that the Superintendent's decision was made in error because he was not properly apprised of policies relating to texting and the use of a cell phone during the operation of a school bus. Carroll County Public Schools' unacceptable behavior chart indicates that bus driver's will be decertified on the first instance of texting while driving. Similarly, cell phone use when a bus is in motion will lead to suspension and decertification on the second instance. Endangering students or creating an unsafe environment calls for a suspension followed by decertification on the second offense. Belittling or harassing students calls for decertification on the fourth offense. Reckless driving calls for decertification on the second offense. [redacted] conduct between May 21 and May 24, 2012, constitutes all of the above described unacceptable behaviors.

Even if [redacted] allegations regarding his lack of notice regarding cell phone use and texting policies were credible, which they are not, [redacted] repeated use of his cell phone to send, receive, and read text messages as he was driving his bus represents a

violation of Maryland traffic law applicable to all motorists. Md. Code Ann., Transp. §21-1124.1. Furthermore, the use of his cell phone while driving his bus constitutes a violation of §21-1124.2(c)(1).

Applicable state regulations also require that bus drivers must "demonstrate the capacity to make appropriate decisions." COMAR 13A.06.07.06B(2). In addition, COMAR 13A.06.07.07D expressly contemplates driver decertification for drivers who commit unsafe actions while operating a school vehicle. Specifically, a driver may be disqualified for "[m]isfeasance, incompetence, insubordination, or any act or omission that adversely affects transportation or safety." *Id.*

Not only are [redacted] allegations of lack of notice and misapprehension of applicable policies regarding cell phone use and text messaging while driving unconvincing and unavailing, [redacted] actions on his bus between May 21 and May 24, 2012, demonstrate a pervasive and gross disregard for student safety and that of the community at large.

Finally, [redacted] contends that the Superintendent's decision was rendered in error because [redacted] was unaware that the camera system in his bus was recording his conduct. The Board notes at the outset that the AngelTrax system which recorded [redacted] conduct between May 21 and May 24, 2012, (1) recorded both audio and video and (2) was marked with clear signage as to its presence.

Under the Maryland Wiretap and Electronic Surveillance Act, the interception of wire, oral, or electronic communications is prohibited without the consent of the parties. Md. Code Ann., Cts. & Jud. Proc. §10-402(a). The recording of video, however, is neither proscribed nor regulated under this statute. *Ricks v. State*, 70 Md. App. 287

(1987), *aff'd* 312 Md. 11, *cert. denied*, 488 U.S. 832 (1988). Furthermore, when a party to a conversation expressly or implicitly consents to the interception of their communication, the recording of said communication may be admitted as evidence against them. *Maddox v. State*, 69 Md. App. 296, 301 (1986).

Turning to the video and audio of _____ conduct, which was captured by the AngelTrax system installed on his bus, the Board notes that the Maryland Wiretap and Electronic Surveillance Act is inapplicable to the video component of these recordings. Second, although the Act applies to the audio component of the recordings, the audio recordings were permissible and are admissible in this proceeding if _____ either explicitly or implicitly consented to the use of the AngelTrax system. Based on the fact that the AngelTrax system on _____ bus was marked by signage, the Board finds that _____ voluntary operation of his school bus with knowledge of the AngelTrax systems presence constitutes implicit consent to the operation of the system and the attendant recording of audio on the bus. Further, drivers are trained that there are video cameras on the buses. For the foregoing reasons, the Superintendent's consideration of the camera and audio footage obtained from _____ bus was neither illegal nor constitutes legal error.

Although none of _____ allegations of error directly relate to the content of the text messages he sent to a _____ High School student, the Board would be remiss if it did not address this issue because these messages constitute a substantial justification for the Superintendent's decision and the Board's decision to affirm the Superintendent. The content of the text messages _____ sent to this student were highly inappropriate, explicit, sexual in nature, and represented a total departure from the

his duties of his position. Furthermore, text messages with the student involve repeated attempts to get the student to agree to meet with him. claims he was unaware that he was communicating with a minor student and that the text communications were precipitated by the student "friending" him on Facebook. Questioning the credibility of explanation, the Superintendent notes that the student was clearly identified as a High School student on Facebook. The Board shares the Superintendent's doubts regarding the credibility of explanations for his text communications with this student.

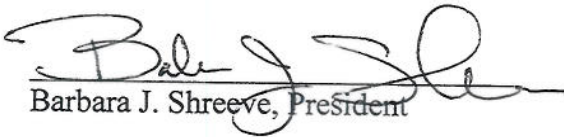
The Superintendent's Designee in this matter determined that in addition to decertification as a bus driver for the CCPS, it was appropriate to bar from serving in any capacity in the CCPS in the future. disputes this decision. He is in error. In Maryland, county boards of education are charged with the duty to "seek in every way to promote the interests of the schools under its jurisdiction." Md. Code Ann., Educ. §4-101(b). Pursuant to COMAR 13A.01.04.03, all students in Maryland's public schools have the right to an educational environment that, in pertinent part, is safe and free from any form of harassment. stunning lack of concern for the safety of the students on his bus, as evidenced by his texting and leaving students unattended on the bus, clearly violates the requirement that students be provided with a safe educational environment. Also, actions in sending text messages of an explicit sexual nature to a student clearly violated the Board's duty to provide students with an educational environment free of harassment. conduct in this matter is so glaringly inappropriate and demonstrates such an utter lack of judgment as to both appropriate conduct with students and matters of basic highway safety, the Board finds

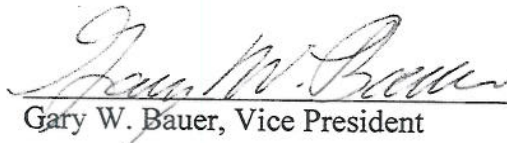
itself in total agreement that it is not only reasonable, but is necessary, to bar from serving in CCPS, in any capacity, in the future, in order to ensure that students are educated in an environment which is safe and free from harassment.

DECISION

For the reasons discussed above, this Board affirms the decision of Jonathan D. O'Neal, Assistant Superintendent of Administration and the Superintendent's Designee in this matter, in its entirety. Should he choose to do so, _____ may appeal this decision to the Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing, within thirty (30) days of the date of this decision.

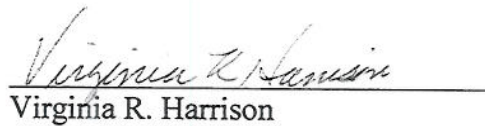
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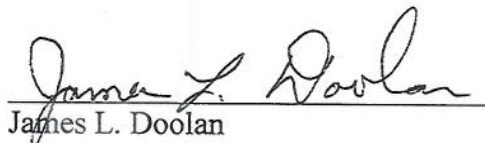

Barbara J. Shreeve, President


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