

**STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS**

**Kathy S. Lefler, Petitioner  
Below, Petitioner**

**vs) No. 11-0650** (Kanawha County 10-AA-170)

**West Virginia Department of Education  
Respondent Below, Respondent**

**FILED**

**February 14, 2012  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

**MEMORANDUM DECISION**

Petitioner Kathy S. Lefler appeals the circuit court's order affirming the order of the State Superintendent of Schools, which revoked petitioner's school bus operator certification. This appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. The West Virginia Department of Education ("WVDOE") has filed its response.

This Court has considered the parties' briefs and the appendix on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the appendix on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the appendix presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Petitioner Kathy Lefler was a school bus operator in Wyoming County, West Virginia, for twenty-nine years. During the 2009-2010 school year, she was assigned the duty of transporting students to Wyoming East High School, and then transporting students to the elementary and middle schools. This morning assignment was considered two runs with three drops. On February 4, 2010, petitioner arrived at the high school and all students were supposed to exit the bus. Petitioner failed to conduct a walk-through of the bus, and proceeded on to the remainder of her run. Approximately nineteen minutes into the remainder of her run and prior to picking up any additional students, she noticed a high school student who had fallen asleep had just awoken and was still on the bus. She informed the student that she would take him to school but she would complete her other run first. She failed to report this incident to the school or the bus garage, even though she had a four minute wait in a parking lot after the student was discovered. While waiting at the elementary school, she made arrangements for another bus to transport her middle school

students and called the bus garage to cancel a scheduled service for the bus, but still failed to inform anyone of the incident. She then returned to the high school and dropped off the student, but did not escort him into the school to explain why he was late. She assured the school principal the next day that she had indeed done a walk-through of the bus, but the recording of the incident from a camera placed on her bus shows that she did not. The video further shows that she failed to do a walk-through on more than one occasion.

Prior to the incident in question here, in January 2009, petitioner had been disciplined for a similar incident of failing to perform a walk-through after a second grade student was left on petitioner's bus at the end of the morning run after petitioner left the bus to return to her home. At that time, petitioner was suspended for twenty days, given additional training, and a digital video recorder was installed on her bus to monitor her.

The Wyoming County Board of Education declined to adopt the County Superintendent's recommendation of termination, and thereafter the Superintendent recommended a forty day suspension. The Superintendent notified the West Virginia Department of Education in compliance with regulations. The WVDOE reviewed the DVD of petitioner's runs and found that she violated several other safety regulations in addition to the failure to perform a walk-through, including failure to set the parking brake during stops, leaving bus stops prior to students being seated, unnecessary use of the radio to chat, and drinking a beverage while driving. The Director of Transportation of the WVDOE did not recommend revocation of petitioner's certificate in 2009 because petitioner had a long history with no incidents and she agreed to be monitored. However, after this incident, the Director of Transportation recommended revocation. The State Superintendent of Schools accepted the Director of Transportation's recommendation and informed petitioner of his intention to revoke her school bus operator's certificate, and petitioner requested a hearing. The hearing was held on May 5, 2010, before Hearing Examiner Jack C. McClung, the designee of the State Superintendent of Schools.

The Hearing Examiner recommended revocation of petitioner's school bus operator's certificate for her frequent violations of safety regulations, and her failure to report the incident in question. The Hearing Examiner also took into account petitioner's prior discipline for failure to conduct a walk-through and her additional training on this point. The State Superintendent adopted the recommendation in full by order dated September 2, 2010, and petitioner appealed. The Kanawha County Circuit Court upheld the Superintendent's decision on March 4, 2011.

“‘On appeal of an administrative order from a circuit court, this Court is bound by the statutory standards contained in W. Va.Code § 29A-5-4(a) and reviews questions of law presented de novo; findings of fact by the administrative officer are accorded deference unless the reviewing court believes the findings to be clearly wrong.’ Syllabus Point 1,

*Muscatell v. Cline*, 196 W.Va. 588, 474 S.E.2d 518 (1996).” Syl. Pt. 1, *Ullom v. Miller*, 227 W.Va. 1, 705 S.E.2d 111 (2010).

On appeal, petitioner first argues that she did not intentionally and knowingly violate state and federal laws by failing to walk through her bus between the high school and elementary school portions of her morning schedule. The only alleged violation was of a state regulation, West Virginia Board of Education Policy No. 4336, West Virginia Code of State Rules § 126-92-11.5.a.2.G (2008). This provision requires that a bus operator is to “walk through the bus and check for hiding/sleeping students and items left by the students.” Petitioner agrees that she is bound by this regulation, but contends that she was unaware of the regulation. She argues that she followed what she believed to be the county practice in this matter.

The WVDOE responds, arguing that county policy incorporates state policy, as paragraph twenty-two of the Wyoming Transportation handbook provides that “[o]perators are responsible for having a thorough knowledge of the West Virginia School Transportation Regulations” and paragraph four states that “the operator shall abide by all rules, regulations and policies governing the transportation of pupils as approved by the Wyoming County Board of Education, State Board of Education, State Department of Public Safety and the Superintendent.” Testimony showed that each operator was provided a copy of the State Transportation Manual in 2008, when it was revised. Further, the WVDOE points out that inservice agendas for bus operators show that operators were reminded repeatedly from 2004 through 2010 to walk through the bus at the end of each run. The WVDOE points out that in 2004, all operators had to be tested on the information in the Federal Motor Carrier Safety Administration Regulations in order to obtain the S endorsement now required, and the information on a walk-through is likewise in this manual. At the hearing, petitioner did not claim that she was unaware of the walk-through, but thought it was only required at the end of her run. The WVDOE argues that petitioner was disciplined for this same situation in January 2009.

Pursuant to the West Virginia Code of State Rules § 126-92-19.1.10 (2008), the State Superintendent of Schools may revoke a school bus operator’s certificate for:

Demonstrations by a preponderance of the evidence of frequent violations of traffic laws, sound safety practices, regulations or ordinances, or any single violation that threatened the safety of student passengers, or other users of streets or highways.

Petitioner failed to conduct a walk-through which is required by West Virginia Code of State Rules § 126-92-11.5.a.2.G (2008). Had she performed the walk-through, she would have seen the student sleeping. Petitioner also argues that she did not violate any state or federal

law, but rather “policies.” According to *West Virginia Bd. of Educ. v. Hechler*, 180 W.Va. 451, 376 S.E.2d 839 (1988), the WVDOE has rule-making authority under its constitutional responsibility to supervise state schools, and that its rules have the force and effect of law. Thus, this Court finds no error in the finding that petitioner knowingly and intentionally violated state and federal laws by failing to conduct the required walk-through.

Petitioner next argues that her failure to walk-through her bus between the high school and elementary school portions of her morning schedule did not justify revocation of her certification. She argues that loss of certification for a bus driver is akin to termination and that the issue, therefore, is if her conduct justifies termination. As a school employee under contract, she argues that she may not be summarily dismissed without the opportunity to improve.

The WVDOE responds, arguing that it is not her employer and is not contractually bound to her. The WVDOE simply issues her driving certificate. However, the WVDOE argues that petitioner has been given the chance to improve after the previous incident but failed to do so. The WVDOE argues that the evidence is that she is not competent to perform her duties.

“The State Superintendent may suspend, revoke or refuse to renew the certification or impose any condition upon the certification of any school bus operator upon evidence that the school bus operator is not otherwise qualified to perform the duties of school bus operator . . . .” W.Va. C.S.R. § 126-92-19.1(2008). The WVDOE carefully considered the seriousness of petitioner’s conduct, her other violations, her cover-up, and her prior discipline on the same issue. The decision that petitioner should not be driving a school bus in any county is well-founded and this Court finds no error in the circuit court’s order affirming revocation of petitioner’s certification.

Finally, petitioner argues that her actions and statements after her failure to walk through her bus between the high school and elementary school segments of her morning schedule did not violate the Employee Code of Conduct. The “violation” of this code of conduct alleged by the WVDOE is petitioner’s attempt to “cover-up” the matter. Petitioner has already argued that she did not lie to the Board, but rather misunderstood the question as to whether she indeed did the required walk-through. Further, she was unaware that the school would automatically call the parents of an absent child, and therefore did not realize the necessity to immediately inform the school or transportation director to inform them that the child was still on the bus. She was likewise unaware that she was to do a walk-through of the bus at each school where students are unloaded. She did not knowingly violate the code of conduct.

The WVDOE responds, arguing that petitioner was charged with violating the Employee Code of Conduct by failing to comply with federal and state laws. By her own admission and through the unrefuted video evidence, petitioner committed several safety violations. However, the WVDOE argues that what occurred after her violations demonstrates a lack of integrity or ethical behavior. She blamed the student, attempted to cover the incident up, failed to report it, changed her bus route without permission, and failed to even accompany the student into the school to tell them what happened. The WVDOE argues that petitioner then lied about doing the walk-through, but later attempted to change her story to say that she did not know that a walk-through was required, even though every student was to exit her bus.

The Employee Code of Conduct, set forth at West Virginia Code of State Rules § 126-162-4.2 (2002) states:

4.2 All West Virginia school employees shall:

4.2.1. exhibit professional behavior by showing positive examples of preparedness, communication, fairness, punctuality, attendance, language, and appearance.

4.2.2. contribute, cooperate, and participate in creating an environment in which all employees/students are accepted and are provided the opportunity to achieve at the highest levels in all areas of development.

4.2.3. maintain a safe and healthy environment, free from harassment, intimidation, bullying, substance abuse, and/or violence, and free from bias and discrimination.

4.2.4. create a culture of caring through understanding and support.

4.2.5. immediately intervene in any code of conduct violation, that has a negative impact on students, in a manner that preserves confidentiality and the dignity of each person.

4.2.6. demonstrate responsible citizenship by maintaining a high standard of conduct, self-control, and moral/ethical behavior.

4.2.7. comply with all Federal and West Virginia laws, policies, regulations and procedures.

In the present matter, it is clear that petitioner violated federal and state laws, policies, regulations and procedures on several occasions. Thus, this Court finds no error in the circuit court's finding that petitioner violated the Employee Code of Conduct.

For the foregoing reasons, we affirm.

Affirmed.

**ISSUED:** February 14, 2012

**CONCURRED IN BY:**

Chief Justice Menis E. Ketchum  
Justice Robin Jean Davis  
Justice Brent D. Benjamin  
Justice Thomas E. McHugh

**DISQUALIFIED:**

Justice Margaret L. Workman