

BEVERLY BYRD,

Appellant

v.

BALTIMORE CITY BOARD  
OF SCHOOL COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-34

## OPINION

### INTRODUCTION

Beverly Byrd (Appellant) appeals the decision of the Baltimore City Board of School Commissioners (local board) affirming the denial of her grievance concerning her ineffective evaluation for the 2013-14 school year. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

### FACTUAL BACKGROUND

Appellant began working as an art teacher for Baltimore City Public Schools (BCPS) in 2005. During the 2013-14 school year, Appellant was assigned to teach at two schools: Alexander Hamilton Elementary School (“Hamilton”) on Mondays, Wednesday mornings, and Fridays; and Mary Ann Winterling Elementary School (“Winterling”) on Tuesdays, Wednesday afternoons, and Thursdays. During this time, Hope Griffin O’Neil<sup>1</sup> was the principal of Hamilton and Nikia Carter was the principal for Winterling. Principal O’Neil was assigned as Appellant’s primary supervisor. (Motion, Ex. 3; T. 89-90).

BCPS conducts two formal observations for each of its teachers as part of the annual review process. During an observation, the observer rates the teacher in nine categories and assigns a rating of “ineffective”; “developing”; “effective”; or “highly effective.” Teachers are able to view these observation reports and make comments in response to them through a web-based computer program operated by BCPS. Once a teacher has reviewed a report, it is submitted through the web-based system to the observer to finalize the report. At the end of the year, teachers receive an overall rating and a final numeric score that is based, in part, on an average of scores from their first and second formal observations. (Motion, Ex. 3).

Principal O’Neil conducted the first observation of Appellant on October 1, 2013 at Hamilton. She rated Appellant as “developing” in seven of the nine evaluation categories. Appellant received an “effective” rating in one category and a “highly effective” rating in another. Appellant met with Principal O’Neil as part of pre- and post-observation conferences. Classroom management was one of Principal O’Neil’s chief concerns. After the observation, Appellant accessed her evaluation through the electronic system and did not add any comments

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<sup>1</sup> Principal O’Neil is also referred to by the last name “Jackson” in the record. We shall use the last name O’Neil because that is how she identified herself in the hearing before the local board.

to it. After Appellant submitted the report through the online system, it was marked complete by Principal O'Neil on November 27, 2013. (Motion, Exs., 2, 3; T. 76; T. 107).

Appellant was observed a second time on March 13, 2014 at Winterling by Principal Carter. Appellant received a pre-observation conference with Ms. Carter but did not receive a post-observation conference. Principal Carter rated her as "developing" in six categories and "ineffective" in three others. According to Appellant, she had difficulty accessing her evaluation through the web-based system. She requested help from Principal Carter who was able to open up the evaluation and then submitted it before Appellant could view or comment on it. Principal Carter did not recall the incident. Appellant was able to access and review the evaluation later that evening. The evaluation was marked completed on March 31, 2014. After reviewing the evaluation, Appellant sought a meeting with Principal Carter, but no meeting ever took place. (Motion, Ex. 3; T. 22-23, 120-128).

During the school year, Principals O'Neil and Carter developed strategies to assist Appellant in the classroom. These included "whisper coaching," informal observations with feedback, and partnering her with teachers in nearby classrooms. Principals Carter and O'Neil decided that these strategies would be better than placing Appellant on a Performance Improvement Plan ("PIP") because Appellant was open to the coaching and a PIP could carry negative connotations. (Motion, Ex. 3; T. 97-98). In addition, Appellant raised complaints with both principals concerning the difficulty of her split schedule, the lack of a budget for art supplies, and her class sizes. (Motion, Ex. 3).

Based in part on the observations of Appellant during the school year, the BCPS evaluation system calculates a final rating. The average of the two formal observations constitutes 85 percent of a teacher's final evaluation. For the 2013-14 school year, Appellant received a final rating of "ineffective." Neither principal was aware beforehand of what the final rating would be, but they knew that Appellant had struggled during the school year. Principal O'Neil was notified by email of the rating on April 29, 2014 and informed Appellant either that same day or the next. The two met on May 14, 2014 to discuss the evaluation report. At the end of the 2013-14 school year, Appellant retired from BCPS. (Motion, Ex. 3; T. 93-94, 110).

On June 2, 2014, Appellant filed a grievance of the evaluation. Appellant argued that BCPS failed to follow all of the required steps for her annual evaluation, specifically by failing to hold a post-observation conference after the second observation. (Motion, Ex. 3).

The BCPS Office of Labor Relations held a hearing on the grievance in July 2014 and issued a decision denying the grievance on July 21, 2014. BCPS reasoned that Appellant was aware of her second observation scores and that the lack of a post-observation conference did not nullify her final "ineffective" rating. (Motion, Ex. 3).

Appellant appealed the decision to the local board, which assigned the matter to a hearing examiner. The hearing examiner conducted a hearing on November 12, 2015. On or around January 9, 2016, the hearing examiner issued a recommended decision upholding the denial of the grievance. The hearing examiner concluded that Appellant failed to meet her burden to show that BCPS failed to follow the required steps in the evaluation process. The hearing examiner observed that Appellant challenged only the procedures applied to her, not the substance of the ratings themselves. The hearing examiner concluded that the post-observation conference was not a legal requirement and that the failure to conduct it did not impact the ability of the school

system to rate her as “ineffective.” (Motion, Ex. 3).

On February 2, 2016, the local board adopted the hearing examiner’s recommendation and affirmed Appellant’s “ineffective” evaluation. (Motion, Ex. 5). This appeal followed.

### STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board 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. COMAR 13A.01.05.05A. In appeals of an unsatisfactory evaluation, the burden of proof is on the certificated individual. COMAR 13A.07.04.04.

### LEGAL ANALYSIS

Appellant raises several arguments challenging her “ineffective” evaluation. She asserts that BCPS violated State regulations and local policies and, therefore, her evaluation should be changed to effective for the 2013-14 school year.

#### *Mootness*

As a preliminary matter, we must consider whether this appeal is now moot in light of Appellant’s retirement from BCPS. Although Appellant no longer works for BCPS, she explains that she may seek another teaching position and that her “ineffective” evaluation hampers those efforts. On that basis, we agree that the appeal is not moot.

#### *Failure to offer a post-observation conference*

Appellant argues that she was not provided with a post-observation conference following her second observation in violation of the negotiated agreement between the school system and her union. The negotiated agreement requires BCPS to follow its Performance-Based Evaluation Handbook, which states that an observation report must be completed, and a post-observation conference take place, within 10 working days after an observation. (Appeal, Ex. 2 at 15; Appeal, Ex. 3). The PBES handbook states that the “primary goal of the post-observation conference is to allow the teacher and the qualified observer to jointly analyze the lesson/activity observed. It also serves as an opportunity to increase student achievement by refining and strengthening the teacher’s skills.” (Appeal, Ex. 2 at 16). This post-observation meeting is separate from the ability of the teacher to comment on the observation itself.

The local board does not dispute that Appellant did not receive a post-observation conference. It argues, however, that a post-observation conference was not mandated by State regulations. The local board maintains that the failure to conduct such a conference had no impact on Appellant’s “ineffective” year-end evaluation.

Although the post-observation conference is not mandated by the Code of Maryland Regulations, the conference is a component of the local board’s Performance-Based Evaluation Handbook, which is described as official board policy in the negotiated agreement. (Appeal, Ex. 3). The *Accardi* doctrine requires that a government agency “scrupulously observe rules, regulations, or procedures which it has established.” *Glover v. Baltimore City Bd. Of Sch.*

*Comm'rs*, MSBE Op. No. 15-25 (2015) (citing *Accardi v. Shaughnessy*, 347 U.S. 260 (1954)). In order to strike down an agency's decision under *Accardi*, a complainant must show that he or she was prejudiced by the agency's failure to follow its rules, regulations, or procedures. *Id.* (citing *Pollack*, 274 Md. at 504).

Appellant argues that a post-observation conference would have been beneficial to her and that the procedural failure to conduct the conference therefore invalidates her final year-end rating. As the hearing examiner observed, however, a post-observation conference would not have changed the ratings Appellant received on her second observation. That second observation, in turn, comprised a portion of Appellant's year-end "ineffective" evaluation. The purpose of the conference, as described in the PBES handbook, is to allow the teacher and evaluator to discuss the observation and find ways to build off of it. Such a process is certainly worthwhile, but Appellant has failed to show that she was prejudiced by BCPS's failure to offer her a post-observation meeting.

*Failure to notify Appellant of her ineffective rating prior to May 1*

Appellant argues that there was no evidence that she received her ineffective evaluation prior to May 1. Contrary to Appellant's assertions, Principal O'Neil testified during the hearing that Appellant was informed of the ineffective evaluation on April 29, 2014, or the next day. Principal O'Neil maintained that Appellant received notice of the evaluation prior to the May 1 deadline. (T. 109-111). Appellant disputed this and claimed to have not received the evaluation until May 14, 2014. (T. 44). The Hearing Examiner did not credit Appellant's testimony on this issue. (Motion, Ex. 3).

A hearing examiner weighs the evidence before him or her and issues decisions based on the evidence found to be credible and relevant. *See Glover v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15-25 (2015). A hearing examiner is not required to give equal weight to all of the evidence and a failure to agree with Appellant's view of the evidence does not mean the hearing examiner's decision is arbitrary, unreasonable, or illegal. *Id.* The hearing examiner's finding that Appellant received timely notice of her "ineffective" evaluation had support in the record and, as a result, we do not find the local board's adoption of that finding to be arbitrary, unreasonable, or illegal.

*Failure to allow Appellant to comment on the second observation report*

COMAR 13A.07.04.02(A)(9) requires that a teacher evaluation "shall provide for written comments and reactions by the individual being evaluated, which shall be attached to the evaluation report." Appellant argues that she was denied this ability to comment on her second observation. According to Appellant, she had trouble accessing her second evaluation and, when she asked Principal Carter to assist her, the principal opened the evaluation and submitted it for Appellant without her having had the chance to review and comment upon it. The principal, meanwhile, did not recall this incident.

Although Principal Carter submitted the evaluation before Appellant had a chance to review it, there is no indication in the record that Principal Carter did so in a deliberate attempt to prevent Appellant from reviewing the information. In fact, Appellant was able to view the full evaluation that evening when she arrived home. (T. 22-23). The next time Appellant was at

school, she requested a meeting with Principal Carter, but Principal Carter did not get back to her about scheduling a meeting. (T. 23). Appellant never followed up on the matter. In our view, Appellant had ample opportunity to explain the technical difficulties she had experienced and still submit comments for review. She has failed to demonstrate that the school system violated State regulations by preventing her from commenting on her evaluation.

*Failure to offer guidance and supports after the first observation*

Appellant argues that, because she was not provided support and a reasonable timeframe in which to show improvement, that her negative evaluation should be overturned. The record indicates that Appellant received coaching on classroom management, as well as other informal feedback and observations stemming from her formal observations. (T. 76, 105, 107, 142). The hearing examiner found that Appellant did not request additional support or ask to be placed on a PIP. Based on this record, Appellant has failed to meet her burden to show that the local board's decision was arbitrary, unreasonable, or illegal.

*Failure to have a second observation from someone other than an immediate supervisor*

Appellant's final argument is that she did not receive a second observation from someone other than her immediate supervisor, in violation of COMAR. This issue was not raised during the hearing or before the local board. We have consistently declined to address issues that have not been reviewed initially by the local board. *See Jenai B. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 08-52 (2008) (citing cases). Appellant had ample opportunity to raise this issue before the hearing examiner or the local board. Accordingly, we decline to consider it now.

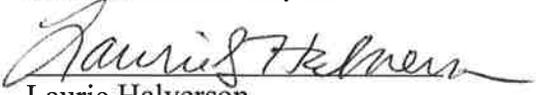
CONCLUSION

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

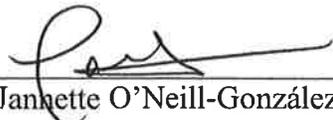
  
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President

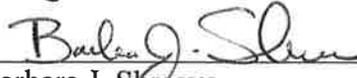
  
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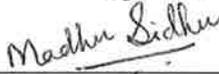
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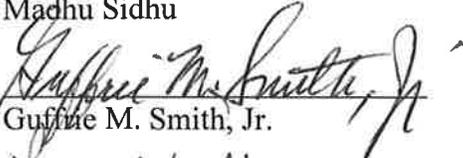
  
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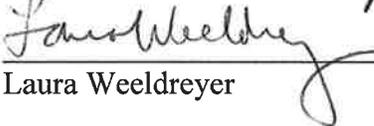
  
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August 23, 2016