

AKOBI SCHUSTER

Appellant

v.

BALTIMORE CITY BOARD OF SCHOOL  
COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-30

### OPINION

#### INTRODUCTION

In this appeal, the Appellant challenges the decision of the Baltimore City Board of School Commissioners (local board) to terminate him for misconduct. Appellant was a provisional teacher hired by the local board in August 2008.<sup>1</sup> He taught a technology course at the Friendship Academy of Science and Technology (Friendship Academy) for the 2008-2009 school year.

As is required in certificated employee termination cases, the State Board referred this case to the Office of Administrative Hearings (OAH) for proposed findings of fact and conclusions of law by an Administrative Law Judge (ALJ). COMAR 13A.01.05.07A(2). The ALJ issued a decision proposing that the State Board uphold the termination of Appellant for misconduct. Appellant did not file any exceptions to the ALJ's decision with the State Board.

#### STANDARD OF REVIEW

Because this appeal involves the termination of a certificated employee pursuant to §6-202 of the Education Article, the State Board exercises its independent judgment on the record before it in determining whether to sustain the termination. COMAR 13A.01.05.05(F)(1) & (2). The State Board is engaging in a *de novo* review in which it takes a fresh look at the evidence in the record in making its decision whether or not to sustain the termination. After considering the evidence *de novo*, the State Board may affirm, reverse, modify, or remand the ALJ's Proposed Decision.

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<sup>1</sup>Appellant had a one year contract that expired by its own terms on June 30, 2009. As of that date, the Appellant had no existing property interest in his employment. He was not entitled to a §6-202 evidentiary hearing. For some reason, it appears that the school system treated Appellant as a school system employee beyond the June 30, 2009 date. There is no explanation in the record for this. Thus, we review this case *de novo* as a §6-202 appeal.

## FACTUAL BACKGROUND

The evidence in the record is:

- On May 12, 2009, the Principal of Friendship Academy – Dr. Ian Roberts and other school personnel met with Appellant to discuss observations of Appellant’s work performance and the future direction of the technology classes that the Appellant taught. At that meeting, the Appellant raised various complaints against Dr. Roberts. Specifically, he had a disagreement about grading policy, claimed his technology course lacked textbooks, alleged misappropriation of money from a fundraiser and alleged that Dr. Roberts was having an inappropriate romantic relationship with a school staff member. Prior to the conclusion of the meeting, Appellant collected his belongings and left the school without making arrangements for the supervision of his students. (CEO 3). Appellant did not return to school for several days.
- On June 1, 2009, JoAnne Koehler, Chief Human Relations Officer, placed Appellant on leave with pay status pending an investigation of the May 12 incident. Ms. Koehler advised Appellant that he was not to report to the Friendship Academy or have contact with school staff. (CEO 4).
- On June 11, 2009, Appellant placed flyers on parked vehicles in the vicinity of Friendship Academy of Science and Technology, Dallas Nichols Elementary School and the City Schools’ headquarters that alleged wrongdoing by the school system with regard to grading policy and a personal relationship between Dr. Roberts and another school system employee.<sup>2</sup> (CEO 1).
- On June 26, 2009, Appellant delivered a baseball bat with a letter to the Human Resources Department addressed to Dr. Andres’ Alonso, Joanne Koehler and Jerome Jones – Labor Relations Associate. The letter made various accusations, including statements that school system officials had deliberately withheld Appellant’s pay, had abused labor laws, and had conducted themselves like hooligans. It concluded with the statement, “I hope it feels good to beat a teacher.” (CEO 6 & 19).
- On July 6, July 10, and July 16, 2009, Appellant was responsible or involved in the delivery of notes and memoranda to school system employees and local board members containing various statements and allegations against Dr. Roberts and other school system employees that were harassing in nature. Among other things, the writings accused school employees of abusing their power, inappropriate treatment of Appellant including withholding his pay, and of

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<sup>2</sup> The City Schools’ Labor Relations Department investigated the allegations and found them to be unfounded. *Id.*

violating the grading policy. (CEO 7 -- 11 & 19).

- On July 17, 2009, the Chief of School Police sent Appellant a cease and desist letter advising Appellant to stop distributing the harassing communications to school system employees and members of the Baltimore City Board of School Commissioners, and denying him access to school system property. (CEO 19).
- On July 21, 2009, the Director of Employee Services advised Appellant that he was going to be recommended for termination based on misconduct and gave Appellant the date for his Loudermill hearing to refute the claims. (R-X-3).
- On September 3, 2009, Human Resources advised Appellant that Dr. Alonso had issued a Statement of Charges recommending that the local board terminate Appellant for misconduct. (CEO 5).
- On or about September 14, 2009, additional flyers and/or leaflets which were attributed to Appellant were found on vehicles parked at Friendship Academy, Dallas Nichols, and the City Schools' headquarters. (CEO 21). The flyers addressed many of the same issues the Appellant raised previously – allegations that Dr. Roberts was having an inappropriate relationship with a school system employee, wrongful treatment of Appellant by school system officials; grading policy concerns. One flyer stated the following in bold upper case letters, "Dr. Andres Alonzo it is time for you to leave BCPS before you destroy our children! Please email your suggestions for getting rid of the current superintendent to [email address]." (CEO 12). Another one began "This is why children are not learning . . . Gangsters at BCPS!" (CEO 13).

### LEGAL ANALYSIS

The ALJ concluded that the Appellant engaged in misconduct and that the local board's decision should be upheld. The Appellant did not file Exceptions to the ALJ's Proposed Decision.

The ALJ stated:

I find that the City Board has proven misconduct when the Appellant left a meeting without permission and engaged in various acts of harassment, such as accusing various employees of inappropriate romantic involvement and placing flyers on cars around the school and central office.

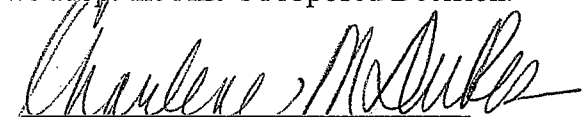
(ALJ Proposed Decision at 9). The ALJ concluded that termination was the appropriate sanction for Appellant's behavior. The ALJ stated:

[L]eaving a meeting with the Principal without permission then going to his classroom, collecting his belongings and leaving his assigned students unattended undermines any confidence, in the eyes of the parents, students and school officials, that the Appellant can conduct himself in a manner which fosters a safe and healthy learning environment. The Appellant exhibited a loss of emotional control in these behaviors, as well as in his repeated messages and accusations towards other school system personnel.

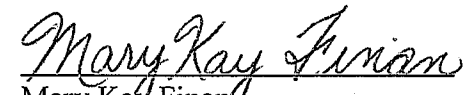
*Id.* We concur.

CONCLUSION

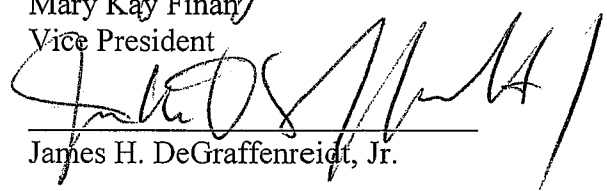
We agree with the ALJ that the Baltimore City Board of School Commissioners has shown by a preponderance of the evidence that the Appellant committed misconduct and that Appellant's termination was proper. Accordingly, we adopt the ALJ's Proposed Decision.



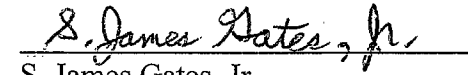
Charlene M. Duker  
President



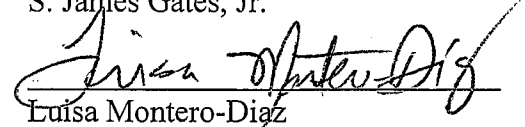
Mary Kay Finan  
Vice President



James H. DeGraffenreid, Jr.



S. James Gates, Jr.




Luisa Montero-Diaz

absent

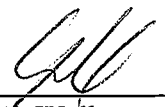
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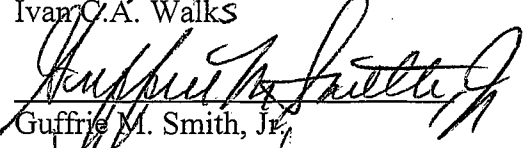
absent


Madhu Sidhu



Donna Hill Staton

  
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Ivan C.A. Walks

  
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Guffie M. Smith, Jr.

  
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Kate Walsh

August 28, 2012

**AKOBI SCHUSTER,**

**APPELLANT**

**V.**

**BALTIMORE CITY BOARD OF**

**SCHOOL COMMISSIONERS**

**\* BEFORE CHARLES BOUTIN,**

**\* ADMINISTRATIVE LAW JUDGE,**

**\* MARYLAND OFFICE OF**

**\* ADMINISTRATIVE HEARINGS**

**\* OAH No.: MSDE-BE-01-11-25531**

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
PROPOSED ORDER

**STATEMENT OF THE CASE**

On or about June 1, 2009, the Baltimore City Board of School Commissioners (City Board) notified Akobi Schuster (Appellant), a teacher at Friendship Academy of Science and Technology, that the City Board was recommending his termination. The Appellant appealed the recommendation to the City Board. On February 4, 2011, Elise Mason (Hearing Examiner) recommended the Appellant's termination to the City Board. On March 28, 2011, the City Board accepted the Hearing Examiner's recommendation and terminated the Appellant. Md. Code Ann., Educ. § 6-203 (2008).

The Appellant filed an appeal to the Maryland State Board of Education (State Board) and it, too, upheld the termination. On July 1, 2011, the Appellant appealed the State Board's decision, and the State Board referred the matter to the Office of Administrative Hearings (OAH) for further proceedings. Md. Code Ann., Educ. § 6-202(a)(4) (2008). I conducted a telephone prehearing

conference on August 22, 2011. Lisa Merchant, Esquire represented the City Board. The Appellant represented himself. I conducted a hearing on September 23, 2011 at the offices of OAH at Hunt Valley, Maryland. The Appellant represented himself. Lisa Merchant, Esquire, represented the City Board.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2011); Code of Maryland Regulations (COMAR) 13A.01.05; COMAR 28.02.01.

### ISSUE

Did the Appellant commit misconduct under Education Article § 6-202(a) and if so, should the Appellant's termination be affirmed?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits on behalf of the City Board:

Board Ex. 1 – Provisional Contract for Conditional or Resident Teacher Certificate Holders, dated August 19, 2008;

Board Ex. 2 – Letter from City Board to Appellant, dated September 3, 2009;

Board Ex. 3 – Uniform Grievance Report, dated August 18, 2009;

Board Ex. 4 – Letter from Baltimore Teachers Union (BTU) to City Board, dated September 3, 2009;

Board Ex. 5 – Letter from Keith Zimmerman, Esq., to City Board, dated January 19, 2010;

Board Ex. 6 – Letter from City Board to BTU and Lisa Merchant, Counsel for City Board, dated April 14, 2010;

Board Ex. 7 – Recommendation of the Hearing Examiner, dated May 13, 2010;

Board Ex. 8 – Letter to BTU and Dr. Andres A. Alonso, Chief Executive Officer (CEO), City Board, dated June 9, 2010;

Board Ex. 9 – Letter to the Appellant from the City Board, dated July 8, 2010;

Board Ex. 10 – Recommendation of the Hearing Examiner, dated February 4, 2011;

Board Ex. 11 – Letter from City Board to the Appellant, dated March 28, 2011;

Board Ex. 12 – Transcript of City Board Termination Hearing of the Appellant, dated December 10, 2010.

I also admitted a series of exhibits from the hearing below that were not included with the above, but were attached to a cover letter dated September 13, 2011 from Ms. Merchant.

The Appellant did not offer any exhibits for admission.

#### Testimony

There were no witnesses for either side as this was argument only with respect to the termination of the Appellant. Ms. Merchant, argued for the City Board. The Appellant presented argument on his own behalf.

#### FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Appellant has been a teacher with the Baltimore City Public Schools since 2008.
2. The Appellant was hired subject to a Provisional Contract for Conditional or Resident Teacher Certificate Holders.
3. The contract provides that Appellant is a provisional teacher and certificated employee of the City Board.
4. The term of the contract began on August 19, 2008.



5. The contract provides, in pertinent part, that “the local Board of Education, pursuant to the provisions of Section 6-202 of the Education Article of the Annotated Code of Maryland, as amended, may suspend or dismiss the employee at any time, upon the recommendation of the Local Superintendent, for immorality; misconduct in office, insubordination, incompetency; or willful neglect of duty, provided that the charge or charges be stated, in writing, to the employee, and that the employee be given an opportunity be heard by the Local Board.”
6. The Appellant was assigned to teach technology at Friendship Academy of Science and Technology, School # 338.
7. By letter dated September 3, 2009, from Fran Brown, Director, Human Resources Employee Services, Appellant was notified that he was being recommended for termination from his teaching position. Attached to the letter was a Statement of Charges.
8. The statement of charges, signed by Dr. Alonso, and attached to the letter recommending dismissal, indicated that the CEO recommended the immediate termination of the Appellant for misconduct, in the form of harassment, which included the following:
  - (A) On June 6, 2009, Appellant was responsible for the placement of flyers, or was a party to the placement of flyers on vehicles at School #338, Dallas Nichols Elementary School and at City Board headquarters, denigrating and defaming Dr. Ian Roberts, the Principal of School #338.
  - (B) On June 26, 2009, Appellant delivered a letter wrapped around a baseball bat to City Board headquarters, addressed to Dr. Alonso, Jerome Jones and Jo Ann Koehler, accusing those individuals of deliberately withholding his pay, breaking labor laws and conducting themselves like hooligans.

- (C) On July 6, 10, and 16, 2009, Appellant was either responsible for or he directed the personal delivery of notes and memoranda to City Board employees and Board members, which were harassing, defaming, inappropriate and denigrating in content, and publicly humiliating, concerning Principal Ian Roberts, and a teacher at School #338.
- (D) On May 12, 2009, Appellant was in a meeting with Principal Roberts and others when he left the meeting, collected his belongings, left his classroom, left his assigned students unattended, and exited the school building.
- (E) The Appellant also delivered a letter, wrapped around a baseball bat, to Dr. Alonso, Mr. Jones and Ms. Koehler, stating at the conclusion of the letter the following: "I hope it feels good to beat a teacher down."
- (F) Marshall T. Goodwin, Chief of Baltimore City Public School Police, sent a letter to Appellant, by certified and regular mail, dated July 17, 2009, notifying Appellant that he was engaging in conduct that was disorderly and harassing, and he was engaged in repeated acts of trespass. The letter warned the Appellant to cease and desist from such conduct.
- (G) On or about September 14, 2009, additional flyers and/or leaflets attributed to the Appellant were found on vehicles at School # 338, School # 97 and on the parking lot at City Board headquarters.
- (H) These flyers and/or leaflets alleged, among other things, an inappropriate relationship between Principal Roberts and a teacher on his staff at School # 338 and made various other allegations against Dr. Alonso.

- (I) The Appellant left a meeting without permission and engaged in various acts of harassment, such as accusing various employees of inappropriate romantic involvement and placing flyers on cars around the school and central office.
- (J) The Appellant exhibited a loss of emotional control in these behaviors , as well as in his repeated messages and accusations toward other school system personnel.
- (K) Appellant received a letter, dated September 3, 2009, notifying him that he had been recommended for dismissal from employment with the City Board, based upon an attached "Statement of Charges."

### DISCUSSION

Section 6-202 of the Education Article of the Maryland Annotated Code provides that "[o]n the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant" for reasons including "misconduct in office." Md. Code Ann., Educ. § 6-202(a)(1)(ii)(2008). It further states that the individual "may appeal from the decision of the county board to the State Board." Md. Code Ann., Educ. § 6-202(a)(4). Under COMAR 13A.01.05.07A(2), the State Board "shall transfer an appeal to the [OAH] for review by an administrative law judge" under circumstances including an "appeal of a certificated employee suspension or dismissal" pursuant to section 6-202 of the Education Article. Under COMAR 13A.01.05.05F(1)&(2), the standard of review for dismissal actions involving certificated employees is *de novo*: "[t]he State Board shall exercise its independent judgment on the record before it in determining whether to sustain the . . . dismissal of a certificated employee." I understand this to mean in this case that I am to make a new decision, that is, a *de novo* determination based upon the record created before the matter came to me. The parties did not

offer any additional testimony before me. The local board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05F.

Accordingly, on behalf of the MSBE and on the record before me, I am exercising my independent judgment in a *de novo* decision to determine whether the City Board has established, by a preponderance of the evidence, that the Appellant committed misconduct, and, if so, whether dismissal from his employment is an appropriate sanction. COMAR 13A.01.05.05F(2)&(4).

Although I can make credibility assessments based upon testimony and other evidence in the case record and from the transcripts, since there was no testimony before me, I am generally unable to make demeanor-based credibility assessments of those who did not testify before me.

The City Board argues that the record shows, by a preponderance of the evidence, that it was justified in terminating the Appellant for misconduct. The Appellant, on the other hand, argues that the previously unproven allegations against him and his termination were retaliation for previous allegations of misconduct and misappropriation of funds. Section 6-202 of the Education Article provides the framework under which a teacher may be suspended or dismissed. Section 6-202(a) states:

(1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:

- (i) Immorality;
- (ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of § 5-704 of the Family Law Article;
- (iii) Insubordination;
- (iv) Incompetency; or
- (v) Willful neglect of duty.

Appellant was dismissed from his employment as a teacher on the grounds of misconduct.

“Misconduct” is defined in *Black's Law Dictionary*, (Rev. 8<sup>th</sup> Ed., 2004) as “[T]he deliberate

disregard by an employee of the employers interests, including its work rules and standards of conduct, justifying a denial of unemployment compensation if the employee is terminated for the misconduct....” In *Rogers v. Radio Shack*, 271 Md. 126, 132 (1974), the Maryland Court of Appeals noted that misconduct is a “transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, or a course of wrongful conduct committed by an employee, within the scope of his employment relationship....”

In this case a primary legal issue is how Education Article Section 6-202 defines “misconduct in office.” In *Resetar v. State Board of Education*, 284 Md. 537 (1979), the Maryland Court of Appeals for the first time addressed this legal issue. Before defining “misconduct” as contemplated by Education Article Section 6-202, the *Resetar* Court engaged in a comprehensive review of how “misconduct” has been defined or applied from a broad variety of sources, including cases from other jurisdictions, Black’s Law Dictionary, and a Maryland case defining the term in the context of the unemployment insurance statute. The type of conduct reviewed in *Resetar* covered several broad areas, including but not limited to sexual misconduct, insubordination, unauthorized absences, incompetency, unprofessional conduct, intemperance, gambling, and use of profane language. *Resetar*, 284 Md. at 556-561. After its review of the law and the broad range of conduct which may be considered “misconduct”, the Court in *Resetar* never clearly defined which type of “misconduct” is contemplated by Education Article § 6-202, but found relevant that whatever the transgression by a teacher, the conduct must bear upon a teacher’s fitness to teach. *Id.* at 561.

The record evidence supports the conclusion that the Appellant was a provisional teacher, hired by the City Board in August 2008, whose contract of employment automatically terminated

and expired on June 30, 2009. On May 12, 2009, the Appellant was in a meeting with Ian Roberts, the Principal of School #338. The Appellant expressed disagreement with Principal Roberts regarding City Board grading policies for failing students, and also his concerns that he had not been provided textbooks and other teaching resources for his class. The Appellant walked out of the meeting before it was over. He then proceeded to his classroom, gathered his personal belongings, left his students unattended and left the school building. The Appellant also delivered a letter wrapped around a baseball bat to City Board headquarters addressed to Dr. Andres A. Alonso, Jerome Jones and JoAnne Koehler accusing those individuals of deliberately withholding his pay, breaking labor laws and conducting themselves as "hooligans." I find that the City Board has proven misconduct when the Appellant left a meeting without permission and engaged in various acts of harassment, such as accusing various employees of inappropriate romantic involvement and placing flyers on cars around the school and central office.

Having concluded that the Appellant engaged in misconduct, the remaining issue is whether termination of his employment is an appropriate sanction. As found by the *Resetar* Court the salient point is whether the misconduct bears upon the Appellant's fitness to teach.

As discussed above, leaving a meeting with the Principal without permission then going to his classroom, collecting his belongings and , leaving his assigned students unattended undermines any confidence, in the eyes of parents, students and school officials, that the Appellant can conduct himself in a manner which fosters a safe and healthy learning environment. The Appellant exhibited a loss of emotional control in these behaviors, as well as in his repeated messages and accusations towards other school system personnel. I conclude that the Appellant's misconduct does bear upon his fitness to teach, and that termination is the appropriate sanction.

**CONCLUSION OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Baltimore City Board of School Commissioners has proven, by a preponderance of the evidence, that the Appellant was guilty of misconduct, and that the Appellant's termination was proper. Md. Code Ann. Educ. § 6-202(a); COMAR 13A.01.05.05F.

**PROPOSED ORDER**

I **PROPOSE** that the decision of the Baltimore City Board of School Commissioners terminating the Appellant for misconduct be **UPHELD**.

December 22, 2011  
Date Decision Mailed

  
Charles Boutin  
Administrative Law Judge

CRB  
#128456

**NOTICE OF RIGHT TO FILE OBJECTIONS**

Any party adversely affected by this Proposed Decision has the right to file written objections within fifteen days of receipt of the decision; parties may file written responses to the objections within fifteen days of receipt of the objections. Both the objections and the responses shall be filed with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

Copies mailed to:

Akobi Schuster  
6107 63<sup>rd</sup> Avenue  
Riverdale, MD 20737

Lisa Merchant, Esquire  
200 E. North Avenue, Suite 208  
Baltimore, MD 21202