

ROBIN SHAFFER

Appellant

v.

CALVERT COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-57

OPINION

INTRODUCTION

In this appeal, Robin Shaffer, Appellant, challenges the Calvert County Board of Education's (local board) decision affirming the placement of a letter of warning for inappropriate conduct in office in Appellant's personnel file. Appellant argues that the local board abused its discretion, that there was a flawed investigation, and that the letter of warning was undeserved. The local board initially filed a Motion to Dismiss maintaining that because Appellant had retired, that the issue was moot. The State Board denied the motion stating the Appellant's retirement did not render the issue moot, because the Appellant may want to apply for another teaching job in the future where the letter would be a factor. Alternately, the local board filed a Motion for Summary Affirmance. Appellant filed an Opposition to the local board's Motion for Summary for Summary Affirmance and the local board filed a Reply.

FACTUAL BACKGROUND

Appellant was the former Vice Principal at Calvert Elementary School (Calvert Elementary). A letter of warning was placed in Appellant's personnel file on November 28, 2011 for inappropriate conduct in office. The letter of warning stems from an incident that occurred on October 18, 2011.

On October 18, 2011, Appellant was called to the health room to assist in redirecting and de-escalating a student's behavior. On that same day, Calvert Elementary secretary Shelly Polko reported to her principal, Laurie Haynie, that she heard Appellant become very loud with the student in the health room and she observed Appellant grab the student's wrist and hold his arm above his head while pulling the student through the school office and into Appellant's office. Ms. Polko also reported that, as Appellant was pulling the student through the school office, he stopped, turned toward the student, jerked him and raised his voice, and then continued on toward his office, where he slammed the door and began yelling at the student again. On October 19, 2011, Ms. Haynie began an investigation. Three other individuals indicated they witnessed the incident and were asked to write statements.

One of the witnesses, Jennifer Gable, an assistant with the Intensive Structured Learning Environment (ISLE), stated that as Appellant was questioning the student in the health room while the two were sitting on a sick bed, Appellant got into a "power struggle" with the student and lost control of the situation. Ms. Gable also stated that the student attempted several times to stand up from the sick bed; and each time, Appellant yanked the student back down to a sitting position with such force, that she was concerned that the student would hit his head on the cinderblock wall behind him. She then observed the Appellant stand up, grab the student's wrist, pull his arm above his head and drag the student through the school office and into his office and shut the door. Once inside the office, Ms. Gable reported that Appellant began yelling at the student again. Ms. Gable also heard Ms. Polko, the secretary, tell the one-on-one assistant for students, Sandra McRae, to go into Appellant's office so that the student would not be alone with Appellant; however, the door was locked. Sandra McRae and Carla Gray, another secretary, also reported hearing Appellant yell at the student, grab his wrist and forcibly move him from the health room to his office.

On October 20, 2011, Ms. Kimberly Roof, Executive Director of Administration, and Ms. Haynie, met with each of the witnesses to clarify information in their respective statements. Following the questioning of the witness, Ms. Haynie and Ms. Roof met with Appellant to discuss the incident. Appellant claims that he spoke to the student in a de-escalating stern manner; and that he did not yell at the student. Appellant said he did not grab the student, but rather, that his hand guided the student to a seat in his office and that he decided to move the student from the health room only because the student was being disruptive. Appellant says that he was in his office with the student for approximately 30-45 minutes and that at no time was he in his office alone with the student. After a break, the questioning continued and upon revisiting the reason Appellant felt the need to move the student from the health room, this time Appellant indicated that the student was out of control and disruptive while in the health room. In response to the direct question of whether Appellant was ever alone in his office with the student, Appellant said the one-on-one aide was there with the student but he could not recall if she was there the entire time, he also claimed that the door to his office remained open the whole time the student was in the office with him.

On November 15, 2011, Appellant met with the Superintendent and Ms. Roof. Based on this meeting, the Superintendent recommended that a letter of warning be issued. On November 20, 2011, the Superintendent issued a letter of warning to Appellant for inappropriate physical and verbal interactions with a student. On November 30, 2011, Appellant appealed the Superintendent's decision to the local board. In a letter attached to his appeal to the local board, Appellant recanted, in part, his version of the events on October 18, 2011 and stated that although it was his recollection that his office door remained open, "it is possible that because the student posed a flight risk, [Appellant] had his door closed."

Also, in a response to the Superintendent's Memorandum of Law of December 22, 2011, Appellant recanted an earlier statement and stated that because of the height difference between him and the student, "[Appellant] could see why one might have seen his hand being raised in relation to [the student's] head. On February 23, 2012, the local board, with one member recused, unanimously voted to uphold the Superintendent's decision.

On April 19, 2011, Appellant appealed the local board's decision to the State Board arguing that the local board decision was arbitrary or unreasonable, that there were flaws in the investigation, and that the letter of warning was undeserved and should be removed from his personnel file.

STANDARD OF REVIEW

Because this appeal involves a decision by the local board involving a local policy, the local board's decision is considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless their decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05(A). *Chesapeake Charter v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 03-09 (Feb. 26, 2003). A decision is arbitrary if it is (1) contrary to sound educational policy; or (2) a reasoning mind could not have reasonably reached the conclusion the local board reached. A decision is illegal if it is:

- (1) Unconstitutional;
- (2) Exceeds the statutory authority or jurisdiction of the local board;
- (3) Misconstrues the law;
- (4) Results from an unlawful procedure;
- (5) Is an abuse of discretionary powers; or
- (6) Is affected by any other error of law.

COMAR 13A.01.05.05B & C.

The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05(D).

LEGAL ANALYSIS

Appellant requests that the State Board reverse the local board's decision and order removal of the letter of warning from his personnel file. Appellant argues that there were flaws in the investigation and that the local board's decision was arbitrary or unreasonable.

Alleged Problems with the Investigation Process

Appellant alleges that the investigative process was flawed. The event involving Appellant and the student occurred on October 18, 2011 and was reported to the principal, Ms. Haynie the same day. On October 19, 2011 Ms. Haynie began her investigation and asked each staff member who witnessed Appellant's interactions with the student to provide a written statement. Four witnesses submitted written statements. The school nurse, Tara Braun, was questioned regarding anything she may have observed. She indicated she was giving medications to another student and did not observe Appellant's interactions with the student while in the health room.

On October 20, 2011, Ms. Haynie and Ms. Kimberly Roof, Executive Director of Administration, met with each of the four witnesses to clarify information in their statements. All four witnesses reported that Appellant displayed inappropriate conduct while dealing with the student's behavior. Afterwards, Ms. Haynie and Ms. Roof met with Appellant. Appellant explained that his conduct in de-escalating the student's hyperactive behavior followed proper procedures and techniques.

Appellant had a follow-up meeting with Ms. Haynie and Ms. Roof again on November 7, 2011 to discuss details of Appellant's de-escalation strategies, among other things. At this meeting, Appellant was represented by the president of the Calvert Association of Supervisors and Administrators (CASA). On November 15, 2011, Appellant met with the Superintendent to discuss the incident and was again represented by the president of CASA. On each of these occasions, Appellant had an opportunity to provide additional information to support his position. Appellant spent a significant amount of time talking about his concerns that he was the subject of rumors at Calvert Elementary and that individuals were defaming him, none of which is relevant to his conduct on October 18, 2011; and when asked to provide more details so that his allegations could be investigated, he did not provide any additional information. Based on our view of the record, we do not find anything improper or flawed with the investigation. It appears to have been conducted in a timely, fair, efficient and thorough manner.

Was the Decision to Issue a Letter of Warning to Appellant Arbitrary, Unreasonable or an Abuse of Discretion by the Local Board?

Appellant claims that the local board decision was arbitrary and unreasonable and that the letter of warning was undeserved because he did nothing improper. We disagree. Calvert County Public Schools Policy #3215 regarding Student Behavior Interventions requires that positive behavioral interventions be implemented with students who exhibit potentially dangerous behavior. CCPS Policy Statement #1750 regarding employee discipline provides, in part, that all employees are expected to perform their duties in a professional manner. The procedures for Policy #1750 identify the kinds of available disciplinary actions, such as a written warning, that can be taken against an employee for misconduct. Misconduct in Office is a stated basis for discipline and is defined as "any wrongdoing by an employee in relation to the duties of his/her assigned position." (Administrative Procedures for Policy #1750 (I.B.) and (II.E.2.)). The specific form of discipline utilized in any particular case, however, is at the discretion of the Superintendent. (Administrative Procedures for Policy #1750 Regarding Employee Discipline Implementation).

In this case, the Superintendent and local board determined that Appellant committed misconduct in office by his inappropriate physical and verbal interactions with the student. The local board based its factual findings on the four witness statements and the Appellant's statements. The four witness statements were corroborative of one another in terms of the main points of the incident. Appellant's statements however, were inconsistent.

It is well established that determinations concerning witness credibility are within the province of the local board as trier of fact. *See, e.g., Board of Trustees v. Novik*, 87 Md.App. 308,

312 (1991) *aff'd*, 326 Md. 450 (1992)(it is within the board's province to resolve conflicting evidence; where conflicting inferences can be drawn from the same evidence, it is for the board to draw the inferences.) Thus, it was appropriate for the local board to weigh the issue of witness credibility. In this case, the local board found the four witnesses more believable than the Appellant.

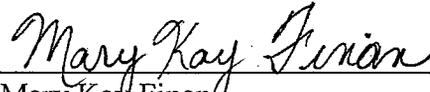
In its decision, the local board said, "[Appellant's] actions in the subject case were clearly inappropriate. The Board recognizes that we are all human and can at times respond in a less than favorable manner to situations. It never excuses the conduct or our call to act appropriately at all times. Nonetheless, one instance does not necessarily define a career either. In fact, the Board takes note of the fact the discipline instituted by the Superintendent in this matter may well have been more severe had the Superintendent believed this one incident was representative of a history of poor judgment by the Appellant. Consequently, we view this incident as an aberration ..." Based on the record in this case, we agree and find there exists a reasonable basis for the local board to uphold the Superintendent's decision to issue a written letter of warning to the Appellant for his inappropriate physical and verbal interactions with the student. We will not disturb the local board's decision by ordering its removal.

CONCLUSION

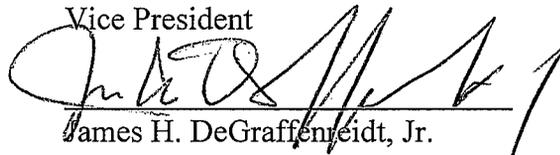
For these reasons, we find that the local board did not act arbitrarily, unreasonably, or illegally. Accordingly, we affirm the local board's decision.



Charlene M. Dukes
President



Mary Kay Finan
Vice President



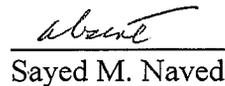
James H. DeGraffenreidt, Jr.



S. James Gates, Jr.



Luisa Montero-Diaz



Sayed M. Naved

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Madhu Sidhu

Donna Hill Staton

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Gurrie M. Smith, Jr.

Kate Walsh

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December 17, 2012