EUGENIA PARK,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
PRINCE GEORGE'S COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 06-33

OPINION

INTRODUCTION

Appellant, a teacher with Prince George's County Public Schools (PGCPS), contests the local board's decision affirming the superintendent's recommendation to terminate Appellant for insubordination, incompetence, and willful neglect of duty. The local board's decision was based on the recommendation of the local hearing examiner. We sent this case to the Office of Administrative Hearings (OAH) for review by an Administrative Law Judge (ALJ). The ALJ has issued a Proposed Decision recommending that the State Board affirm the local board's decision upholding Appellant's termination. Appellant has filed thirty exceptions to the ALJ's Proposed Decision. The local board has filed a response to those exceptions.

FACTUAL BACKGROUND

The ALJ set forth the factual findings in this case on pages 3 – 6 of the Proposed Decision. We reiterate some of those findings below.

Appellant is from the former Soviet Union, where she earned a Bachelor of Science degree and taught for eight years. She came to the United States in 1979, obtaining a Master's degree in Special Education and an Ed.S degree. PGCPS hired her in 1991 as a special education teacher. (Finding of Fact [FOF], 1).

In 1997, Appellant taught at Thomas Johnson Middle School (TJMS). On June 19, 1997, she was reprimanded for a verbal confrontation with a guidance counselor and for making inappropriate comments. On November 5, 1997, Appellant was reprimanded for unprofessional behavior. Subsequently, in 1998, Appellant was administratively transferred to Laurel High School (LHS) where Appellant became a special education teacher. (FOF, 2 – 4, 6).

In 2000, Appellant became co-chair of the Special Education Department with Ms. Nadine Masone. Although special education chairs do not typically teach, Appellant continued

to teach her special education classes. Ms. Masone, however, did not teach any special education classes. After two months as co-chair, Appellant resigned. (FOF, 5, 8).

On August 23, 2001, Ms. Masone introduced a new teacher to the special education staff. She asked Appellant to escort the new teacher to the Appellant's classroom because the new teacher was going to teach one of Appellant's classes. Appellant was uncooperative and refused to do so. (FOF, 7).

In September 2003, Appellant filed a grievance concerning the number and type of students she was being assigned to teach. Appellant argued that she was assigned a larger and more difficult duty load than her colleagues because she is Russian. Her grievance was denied. The grievance officer found that the duty loads were not inequitable and that the assignments were based on the legitimate considerations of the needs of the department.

Prior to the 2003-2004 school year, Appellant had received satisfactory evaluations. However, for the 2003-2004 school year, she received an unsatisfactory rating on her interim evaluation. After a conference with PGPCS officials, some of the unsatisfactory ratings were changed to satisfactory and Appellant was given an opportunity to improve her work by way of a performance plan. (FOF, 9-10). The overall rating, however, remained "unsatisfactory."

Appellant continued to have problems during the second half of the 2003-2004 school year. For example, in February 2004, Appellant refused to readmit a suspended student into her class and argued with a Medicaid representative. In April, she refused to have her students complete a survey required by the school administration. (FOF, 12-13, 18).

These performance issues continued from the start of the 2004-2005 school year through December. Appellant refused to accept new students into her class when LHS class sizes had to be adjusted. She refused to administer the benchmark testing to her classes in September 2004. On October 8, 2004, she walked out of a meeting with a parent. In addition, Appellant was difficult for other teachers to work with. Thus teachers declined to co-teach special education classes with Appellant during the 2004-2005 school year. (FOF, 14-16, 19).

Appellant demonstrated other deficiencies in her performance. For example, Appellant used insulting and inappropriate language toward her students, such as calling them stupid. Appellant also removed students from her classroom for no appropriate reason and allowed them to wander the halls without a pass. In addition, Appellant was the only special education teacher who refused to download individual education programs from the computer system. Additionally, Appellant failed to have class plans available for use by substitutes, refused to complete Medicaid forms for her students, and was unable to perform her duties without guidance and direction from administrators. (FOF, 20-26).

On December 8, 2004, the Chief Executive Officer (CEO) Andre J. Hornsby recommended Appellant's dismissal to the local board. (FOF, 27). The local board referred the

matter to hearing examiner Jerome Stanbury, Esq. After conducting a full evidentiary hearing, Mr. Stanbury recommended Appellant's dismissal in accordance with the recommendations of the CEO. (Proposed Decision, p. 1).

This appeal to the State Board followed and the matter was referred to OAH for an evidentiary hearing on the termination decision. The ALJ issued a proposed decision upholding the termination. Appellant filed exceptions to the ALJ's decision. The State Board heard oral arguments in this case on September 26, 2006.

ALJ'S PROPOSED DECISION[1]

After reviewing the entire record and hearing arguments from the parties, the ALJ concluded that Appellant was incompetent in the delivery of instruction at Laurel High School, acted in an insubordinate manner, and willfully neglected her duties on numerous occasions during the 2003-2004 school year. Accordingly, the ALJ recommended upholding the local board's termination of Appellant.

The ALJ found sufficient evidence of Appellant's incompetency. He found that Appellant was unable to work independently and required an inordinate amount of administrative guidance and direction to perform simple tasks, such as administering a test. The ALJ also concluded that the evidence clearly demonstrated the Appellant's insubordination and willful neglect of duty.

The ALJ rejected Appellant's claim that her termination was in retaliation for a grievance she filed concerning her workload and found her claims of conspiracy to be unfounded. The ALJ found essentially that the Appellant was not a credible witness. He called some of her testimony untruthful and false.

The ALJ dismissed all of Appellant's other contentions as unfounded, irrelevant or unsubstantiated.

LEGAL BACKGROUND

Section 6-202 of the Education Article, Annotated Code of Maryland, provides as follows, in pertinent part:

> (a)(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;

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[1]The ALJ sets forth his analysis of the case in the Discussion section of the Proposed Decision which is set forth on pp. 6-13.

(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.

(2) Before removing an individual, the county board shall send the individual a copy of the charges against him and give him an opportunity within 10 days to request a hearing.

(3) If the individual requests a hearing withing the 10-day period:
(I) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; and
(ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing.

(4) The individual may appeal from the decision of the county board to the State Board.

STANDARD OF REVIEW

Because this appeal involves the dismissal of a certificated employee pursuant to § 6-202 of the Education Article, the State Board shall exercise its independent judgment on the record before it in determining whether to sustain the dismissal. COMAR 13A.01.05.05(F)(1) and (2). The local board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05(F)(3).

The State Board referred this case to OAH for proposed findings of fact and conclusions of law. In such cases, the State Board may affirm, reverse, modify, or remand the ALJ's Proposed Decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications, or amendments to the Proposed Decision. *See* Md. Code Ann., State Gov't § 10-216. In reviewing the ALJ's Proposed Decision, the State Board must give deference to the ALJ's demeanor based witness credibility findings unless there are strong reasons present that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

EXCEPTIONS TO THE ALJ'S PROPOSED DECISION

Appellant has set forth over 30 numerous exceptions to the ALJ's Proposed Decision. These exceptions attack many of the ALJ's findings of fact, and various statements and conclusions made by the ALJ throughout the proposed decision. Based on our review of the record and on consideration of the arguments of the parties, we find that Appellant's exceptions lack merit because the findings of fact, statements, and conclusions are supported by substantial

evidence or are based on credibility determinations made by the ALJ. There are several exceptions, however, which raise matters in need of correction, although none of these errors materially impacts our ultimate conclusion that Appellant's termination should be upheld. These harmless errors are addressed below:

Exception #1

Appellant argues that FOF, 3 is not supported by evidence in the record. The ALJ states in FOF, 3 that the Appellant was "reprimanded for willfully failing to attend a conference." (Proposed Decision, p. 4). Appellant claims that she was present at the conference. The local board does not dispute that she was present. Rather, the local board refers to CEO Exhibit 36, a November 5, 1997 letter to Appellant from her former Principal, in which the Principal states the following:

> On Wednesday, November 5, 1997, it was reported to me by Mr. Knight, Vice Principal of Thomas Johnson, that you stated to Mr. Knight to 'not bother to call' you for a conference the next time their [sic] was more than one administrator in the meeting unless you had representation from the teacher's union. Please be informed that if we need you to be present at a parent conference willful failure to attend will constitute "Insubordination".
>
> Failure to correct your acts of unprofessional behavior will not be tolerated.
>
> In closing, as a result of your unprofessional behavior, I will be making a second request that you be administratively transferred from Thomas Jefferson Middle School.

We believe that this letter is better described as a reprimand for Appellant's unprofessional behavior rather than a reprimand for "willfully failing to attend a conference." Thus, FOF, 3 should state : "On November 5, 1997, the Appellant was reprimanded for unprofessional conduct."

Exception #3

Appellant argues that FOF, 6 is not supported by evidence in the record. The ALJ states in FOF, 6 that "LHS has 12 special education teachers. The Appellant's class lists were randomly assigned, as were all other class lists. The Appellant only taught her students one period a day." (Proposed Decision, p.4). Appellant maintains that she taught three classes, PACM AL EXP for period 05-05, ENG 9 AL EXP for period 07-07, and ENG 9 AL EXP for period 08-08, with each class being taught on both A and B days, and that she taught some students for more than one period per day. The local board does not dispute Appellant's claim

concerning her classes, but asserts that it is irrelevant to the issues in this appeal. Nonetheless, the last sentence of FOF, 6 should be deleted.

Exception #5

Appellant argues that FOF, 11 is not supported by the evidence in the record. Finding No. 11 states: "In 2004 the Appellant requested that Ms. Masone only communicate with her in writing." (Proposed Decision, p. 5). Appellant maintains that there were long-standing problems between Ms. Park and Ms. Masone. Appellant points out that as early as April 18, 2001, then Principal, Janis Mills, had directed that "[a]ll departmental communications between [Appellant] and Ms. Masone will go through Ms. McFarland" and that "[a]s much as possible, information will be given in writing." (*See* Defendant's Exhibit 39).

The local board responds that Appellant's testimony discloses that it was her request which prompted the principal to issue the memorandum regarding communications between the two women. (State TR 149). In addition, in a September 7, 2001 letter from Appellant to Ms. Masone, Appellant requests that communication between the two of them only happen in writing. (*See* Defendant's Exhibit 51).

Neither the Appellant nor the local board refer to any part of the record that concerns the 2004 date specified in the factual finding. FOF, 11 should therefore state: "Appellant requested that Ms. Masone only communicate with her in writing."

Exception #9

Appellant argues that a portion of FOF, 16 is not supported by the evidence in the record. FOF, 16 states, in part: "The Appellant would erase work from the board, or move materials used by other teacher [sic] making it difficult for the teacher to perform his or her job." (Proposed Decision, p. 5). This finding pertains to a situation involving Aimee Pressley, a teacher who shared a classroom with Appellant. Appellant maintains that it was Ms. Pressley who would move Appellant's materials and who would erase Appellant's work from the board.

CEO Exhibit 17 is an e-mail sent to the Principal by Ms. Pressley explaining the difficulties she was having performing her job due to constraints that Appellant had placed on her use of the blackboard, desk , and printer. For example, Appellant placed restrictions on Ms. Pressley's use of the blackboard space which Ms. Pressley believed affected her students' ability to learn because they could not easily see the designated area. Although it appears that the ALJ correctly assessed the fact that Appellant made it difficult for Ms. Pressley to perform her job, the local board concedes that the ALJ erroneously stated that Appellant would erase work from the board or remove materials. FOF, 16 should state, "Appellant made it difficult for the teacher to perform her job.".

Exception #18

Appellant maintains that the ALJ erred in making the following statement in his proposed decision:

> The Appellant ignores the fact that her unfavorable evaluation was changed to favorable following her grievance. This is not consistent with an administration that was trying to terminate her. The school system had abundant cause to terminate the Appellant but actually gave her another chance by changing her evaluation.

(Proposed Decision, p.8). Appellant specifically argues that her unfavorable evaluation was not changed to favorable. She cites CEO Exhibit 12 which is her 2003-2004 Interim Evaluation and CEO Exhibit 13 which is her revised 2003-2004 Interim Evaluation. Both evaluations contain an overall rating of unsatisfactory.

Although the overall unsatisfactory evaluation rating was not changed to satisfactory, the exhibits cited by Appellant clearly indicate that the Interim Evaluation was revised to reflect more favorably upon Appellant. Appellant originally received seven areas of needs improvement which were reduced to three areas in the revised Interim Evaluation. The first sentence of the ALJ's statement should state: "The Appellant ignores the fact that, although the overall unsatisfactory rating remained, several ratings in her evaluation were changed to reflect more favorably upon her following her grievance." The rest of the statement may remain unaltered given that the fact that the Interim Evaluation was revised in Appellant's favor is also "not consistent with an administration that was trying to terminate her."

CONCLUSION

The record in this case discloses that Appellant had numerous performance problems. Furthermore, Appellant has failed to set forth sufficient evidence that her termination was in retaliation for filing a grievance. Based upon our review of the record in this matter and consideration of the arguments of counsel, we adopt the Findings of Fact and Conclusions of Law as set forth in the ALJ's proposed decision with the minor alterations set forth above. We therefore affirm the Prince George's County Board of Education's decision to terminate Appellant.

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October 25, 2006