

ROBERT LAWRENCE,

Appellant

v.

CALVERT COUNTY BOARD OF  
EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-18

### OPINION

#### INTRODUCTION

In this appeal, Appellant challenges the local board's decision affirming the placement of a letter of reprimand for misconduct in office in Appellant's personnel file. Appellant argues that he was denied an evidentiary hearing by the local board, that there were problems with the investigation of the incident preceding the letter of reprimand, and that the reprimand was undeserved. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has filed an opposition to the motion.

#### FACTUAL BACKGROUND

Appellant is the Vice Principal of Northern High School (Northern). The reprimand at issue stems from an incident that occurred on January 10, 2007, at a basketball game at Huntington High School (Huntington) between Huntington and Northern. At that game, a Huntington staff member asked Appellant to have Northern students relocate to seats outside of the Huntington section of the stands to prevent disturbances from occurring.<sup>1</sup>

Appellant told a Northern student, S.S., who was sitting with her friends from Huntington on the Huntington side of the gym, to move to the Northern side.<sup>2</sup> S.S. claims that Appellant told her to "get [her] ass to the other side of the gym." Appellant claims that he did not use profanity. S.S. and Appellant both agree, however, that when he first asked her to move, she did not change her seat because she thought he was joking. Appellant clarified that he was not joking, again told

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<sup>1</sup>This was merely a prophylactic measure. There were no reported problems between the Huntington and Northern students.

<sup>2</sup>S.S. was an eleventh grade honors student at Northern with no disciplinary record.

S.S. to move, and stated that she could move to the other side of the gym or have the police escort her out of the school. S.S. had her aunt pick her up from the game because she had to separate from her Huntington friends and did not see her friends from Northern there. (Statement of S.S.).

The student's mother went to Huntington to speak with Appellant while the game was still in progress. Appellant denied that he had used profanity with S.S. when he asked her to move her seat. The mother then spoke with the friends S.S. had been sitting with who reported that Appellant had said "move your ass." An unrelated adult who had been sitting near the girls also confirmed that Appellant had used profanity.

The mother confronted Appellant a second time about the incident. This time she was joined by a friend who is an employee of Calvert County Public Schools (CCPS). There was an exchange between the mother and Appellant. The mother was upset with the manner in which Appellant spoke to her. The CCPS employee who witnessed the event was also bothered by the way in which Appellant spoke to the parent. They were specifically disturbed by the fact that Appellant raised his voice and commented "we'll see about that" when the mother stated that Appellant owed her daughter an apology. The CCPS employee e-mailed another Vice Principal at Northern to express her concern about the unprofessional manner in which Appellant addressed the parent. (E-mail from L.C.).

On January 11, 2007, Kevin Michael, Director of Personnel and Employee Relations, and Kim Roof, Director of Student Services, received a phone call from the mother, followed by an e-mail from her on January 16. They also spoke with S.S. and got a written statement from her regarding the incident.

Mr. Michael and Ms. Roof spoke with the other witnesses. They conducted a phone interview of the adult witness who was sitting in front of S.S. and her friends at the game. The witness stated that Appellant asked S.S. to move to the other side of the gym several times, and on the last time told her to "move her ass" or "get escorted out by the police." They also met with the students who were sitting with S.S. Two of the students reported that Appellant asked S.S. to move twice, and that he used profanity and threatened to involve the police on the second request.

On February 7, 2007, Mr. Michael issued Appellant a letter of reprimand for misconduct in office. The reprimand stated that Appellant's actions at the basketball game were inappropriate, specifically the "unprofessional manner in which [Appellant] addressed a student." The reprimand noted that Appellant had previously been disciplined for immorality and misconduct in office stemming from his poor judgment, and that future incidents of this nature will result in more severe disciplinary action, including dismissal. (Letter of Reprimand).

Appellant filed a grievance on February 16, 2007 under Article VI Grievance Procedures

of the "Agreement between the Board of Education of Calvert County and The Calvert Association of Supervisors and Administrators" (CASA). Appellant claimed that he did not act inappropriately and should not have been reprimanded. He also maintained that the incident had not been handled at the lowest possible level as set forth in Article VI, Section 1 of the Agreement, and that he should have been given the opportunity for Step 1 review by his immediate supervisor as set forth in the Grievance Procedure in Article VI, Section 3, rather than by Mr. Michael.

In response, Robin Welsh, Assistant Superintendent of Administration and Legal Services, advised Appellant that the Directors of Personnel and Student Services were the most appropriate individuals to conduct the initial investigation and make a determination because Appellant's immediate supervisor, the principal at Northern, lacked authority to investigate the incident at Huntington. She advised Appellant to appeal the reprimand directly to the Superintendent.

Appellant appealed to the Superintendent. The Superintendent provided Appellant opportunities to meet with him to provide additional evidence in support of his position and to raise any concerns he might have about the reprimand. Appellant met with the Superintendent on March 26, 2007 and on May 3, 2007. A CASA representative was present at those meetings. Appellant did not present any additional evidence to rebut the claims against him except for his own assertion that he did not use profanity with the student or act improperly with the mother.

On further appeal, the local board found no evidence that the Superintendent's decision was arbitrary, unreasonable or illegal. The local board found that Appellant was guilty of misconduct in office for using profanity with S.S. when asking her to move across the gym and for unprofessional conduct while interacting with S.S.'s mother. The local board concluded it would have reprimanded the Appellant based on his interaction with the parent even if there was no use of profanity. The local board determined that there was no evidence to corroborate Appellant's version of the incident. The board questioned Appellant's credibility due to the fact that he was not forthcoming regarding his actions in a prior disciplinary incident.<sup>3</sup> The local board found that the reprimand was not too severe a penalty given Appellant's actions here and his previous disciplinary history for a recent event. (Local Board Decision at 7).

This appeal to the State Board followed.

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<sup>3</sup>The local board stated that during the investigation of the previous incident, Appellant was not truthful about his inappropriate and unprofessional behavior until he was confronted with evidence. (Local Board Decision at 7). The prior incident involved inappropriate actions toward a staff member for which Appellant received a five day suspension for misconduct in office and immorality.

## STANDARD OF REVIEW

Because this appeal involves a decision of 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 the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.03E(1).

## ANALYSIS

Appellant requests that the State Board reverse the local board's decision and order the removal of the letter of reprimand from his personnel file. Appellant argues that he was denied an evidentiary hearing by the local board, that he has concerns about the timeliness, fairness, and integrity of the investigation, and that the reprimand is unwarranted.

### *Request for Evidentiary Hearing Before Local Board*

Appellant maintains that he was entitled to an evidentiary hearing before the local board. In his appeal to the local board, Appellant requested an evidentiary hearing, citing Article VI, Section 6.3, Step 3 of the Agreement between the local board and CASA . The local board maintains that, although Appellant filed a Grievance under the terms of the Agreement, he alleged nothing that was subject to the grievance process given that the issue in question was a written reprimand, and not a termination or suspension.

There seems to be some confusion about whether the grievance procedures apply here based on a letter from Robin Welsh, Assistant Superintendent of Administration and Legal Services, who advised Appellant on February 23, 2007 that his grievance was starting at Step 2 with the Superintendent. Appellant assumed that his next step was Step 3 of the process.

Based on our review, the grievance procedures do not entitle Appellant to an evidentiary hearing before the local board, nor do they even appear to apply to this case. First, Appellant has failed to demonstrate that the letter of reprimand is something that can be grieved under the Agreement.<sup>4</sup> Second, the provision cited by Appellant states that a grievant may appeal to the local board after a Step 2 response pursuant to §§6-202 and 6-203 of the Education Article. Section 6-202, which provides for an evidentiary hearing upon request, concerns the procedure for the suspension or dismissal of teachers. That provision is inapplicable here because there is no suspension or dismissal at issue. Section 6-203 establishes the authority of county boards to use hearing officers for select proceedings, and sets out some requirements if that option is

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<sup>4</sup>Grievance is defined as a "claim by the Association or a member of the Association of an alleged violation, misinterpretation, or misapplication of provisions of the Negotiated Agreement."

chosen. Because the local board did not refer the matter to a hearing officer, §6-203 is inapplicable here as well.

We are not aware of any other legal provision that would entitle Appellant to an evidentiary hearing in this case. There is no requirement for an evidentiary hearing before the local board under the local board's Policy Statement #1600 (Regarding Appeals), the Administrative Procedures for Policy #1600, and the Rules of Procedure for Appeals and Hearings. Nor does the reprimand deprive Appellant of a constitutionally protected liberty or property interest for which a hearing is required. *See Board of Regents v. Roth*, 408 U.S. 562 (1972). Nevertheless, we note that, despite the fact that Appellant was not entitled to an evidentiary hearing before the local board, he was provided the opportunity to argue his position and submit evidence in his case before the superintendent on two separate occasions.

#### *Alleged Problems With the Investigation*

Appellant generally states that he has concerns about the timeliness, fairness, integrity, and thoroughness of the investigation. The incident occurred on January 10. On January 11, CCPS personnel received a phone call from S.S.'s mother, with a follow up e-mail from her on January 16. Mr. Michael and Ms. Roof began the investigation immediately. They conducted interviews of key witnesses on January 12 and January 15. They spoke with the parent witness sitting in front of S.S. and two girls who were sitting with S.S. at the game. Although these witnesses did not give written statements, Mr. Michael and Ms. Roof took notes during the interviews. Mr. Michael and Ms. Roof also received a written statement from S.S. and a statement from the CCPS employee in the form of e-mails. S.S., the two girls, and the parent witness all reported the use of profanity by the Appellant. S.S.'s mother and the CCPS employee both reported that Appellant conducted himself inappropriately while interacting with S.S.'s mother. Appellant provided a written statement which denied all allegations of inappropriate behavior.

Mr. Michael, as the Director of Personnel, and Ms. Roof, as the Director of Student Services, conducted the initial investigation because the incident took place at Huntington, which is not Appellant's home school. This was because the principal of Huntington did not have jurisdiction to investigate an employee who was not under his supervision. Similarly, the principal of Northern did not have jurisdiction to investigate an incident at another school. Thus, Mr. Michael and Ms. Roof were assigned to conduct the inquiry into the incident. After the initial investigation, Appellant met with the Superintendent on two occasions to discuss the matter. Although he had the opportunity at these meetings to provide additional evidence to support his position, he did not provide any. Based on all of this, we do not find anything improper about the investigation. It appears to have been conducted in a timely, fair, efficient, and thorough manner.

### *Appropriateness of Written Reprimand*

Appellant claims that the written reprimand was undeserved because he did nothing improper. We disagree. CCPS Policy Statement #1750 regarding employee discipline provides that all employees are expected to perform their job duties in a professional manner as specified in the appropriate job descriptions for their respective positions. Policy Statement #1750(II). One of the duties of a high school vice principal is to develop and maintain effective communication and positive relations with students, staff, parents, members of the community, and school-related resources. (Job Description, Duties and Responsibilities, #11). The procedures for Policy #1750 identify the kinds of available disciplinary actions, such as a letter of reprimand, and the reasons for imposing discipline. 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)). 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 inappropriately communicating and interacting with a student and/or a parent. The witness statements corroborated S.S.’s claim that Appellant used profanity while asking her to move to the other side of the gym. The CCPS employee witness corroborated the claims of S.S.’s mother that Appellant interacted with her inappropriately by raising his tone of voice with her and speaking to her in an improper manner. Appellant provided no evidence to refute these claims other than his own statements.

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. The local board found the complainant and the witnesses more believable than the Appellant, citing a prior disciplinary event in which Appellant was not truthful with school personnel.

The State Board may not substitute its judgment for that of the local board unless there is independent evidence in the record to support the reversal of a credibility decision. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994). Based upon our review, we find that Appellant has provided no basis for reversing the evidentiary determinations made by the local board. Rather, there exists a reasonable basis for the local board to find that the written reprimand was warranted based on Appellant’s failure to maintain effective communication and positive relations with a student and a parent.

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 denying Appellant's request to remove the letter of reprimand from his personnel file.

  
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March 26, 2008