

WARREN WIGGINS,

Appellant

v.

BOARD OF SCHOOL COMMISSIONERS
OF BALTIMORE CITY,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-44

OPINION

This case is currently before the State Board on remand from the Circuit Court on a Petition for Judicial Review of a State Board decision. In MSBE Opinion No. 02-54 (October 30, 2002), the State Board unanimously affirmed the decision of the administrative law judge (ALJ) terminating Appellant from his position as a science teacher with the Baltimore City Public School System for willful neglect of duty based on his intentional failure to report to work.

Judge Cannon from the Circuit Court for Baltimore City based the remand on her determination that there was insufficient evidence in the record that Mr. Wiggins received a September 10, 1999 letter which the ALJ had deemed an important consideration for characterizing Appellant's failure to return to work as willful. The September 10, 1999 letter was sent by the director of human resources for the Baltimore City Public School System and informed Mr. Wiggins that his light duty slip did not excuse him from his teaching job and that it had no effect on his attendance.

Based on the judge's order, the State Board remanded the case to the ALJ to determine whether Appellant willfully neglected his duty and whether termination is the appropriate remedy. On remand, the ALJ again recommended upholding Appellant's termination, this time without reliance on the September 10, 1999 letter. As stated in the proposed decision:

The number of examinations which showed that the Appellant could return to work, the deceitful nature of the Appellant's characterization of his September 20th examination as allowing him to remain out until October 4, 1999, his failure to contact the school at all on September 14, 15, and 17, 1999, combine to demonstrate willful neglect of duty.

ALJ Proposed Decision at 10. A copy of the ALJ's proposed decision is attached as Exhibit I to this opinion.

The ALJ determined that Appellant was not a credible witness. He also determined that Appellant's reliance on his failure to receive an Incident Report form was inconsequential given

that Appellant's position was classified as sedentary and he could have returned to work at any time based on the September 20th return to work slip and on the light duty return to work slip from Appellant's own doctors.

Based upon our review of the record in this matter and consideration of the arguments of counsel for the parties, we adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge. We therefore affirm the termination decision of the Board of School Commissioners of Baltimore City.

Edward L. Root
President

Dunbar Brooks
Vice President

Lelia T. Allen

JoAnn T. Bell

J. Henry Butta

Beverly A. Cooper

Calvin D. Disney

Clarence A. Hawkins

Karabelle Pizzigati

Maria C. Torres-Queral

David F. Tufaro

December 8, 2004

WARREN WIGGINS	*	BEFORE GUY J. AVERY
APPELLANT	*	ADMINISTRATIVE LAW JUDGE,
v.	*	MARYLAND OFFICE OF
NEW BOARD OF SCHOOL	*	ADMINISTRATIVE HEARINGS
COMMISIONERS OF BALTIMORE	*	OAH No.: MSDE-BE-01-20000002
CITY	*	ON REMAND: MSDE-BE-01-04-11597
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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 October 25, 1999, Warren Wiggins ("Appellant" or "Wiggins"), a teacher employed by the New Baltimore City Board of School Commissioners ("Board"),¹ received notification from the Chief Executive Officer ("CEO") that he was recommending to the Board that the Appellant be terminated for willful neglect of duty. The Appellant filed an appeal, and a hearing before Hearing Examiner Elise Jude Mason was held on April 5, 2000. Md. Code Ann., Educ. § 6-203 (1999). On May 15, 2000, the Hearing Examiner found that the Appellant had willfully neglected his duties. She recommended to the Board that the Appellant be terminated. The Board voted to uphold the Hearing Examiner's recommendation, and the Appellant was informed of this decision on June 20, 2000.

¹ Since redesignated as the Baltimore City Board of School Commissioners.

The Appellant appealed the Board's order to the Maryland State Board of Education (“MSDE”) and the matter was scheduled before the Office of Administrative Hearings. Md. Code Ann., Educ. § 6-202(4) (1999).

I conducted a contested case hearing on November 8th and 9th, 2001 at the Office of Administrative Hearings, 11101 Gilroy Rd., Hunt Valley, Md. Richard Seiden, Esquire represented the Appellant. Brian K. Williams, Associate Counsel, represented the Board. Code of Maryland Regulations (“COMAR”) 13A.01.01.03P.

I issued my proposed decision upholding the Board’s decision to terminate the Appellant on February 2, 2002, and it was affirmed by MSDE on October 30, 2002 (Opinion No. 02-54). Subsequently, the Appellant filed a petition for judicial review with the Circuit Court of Baltimore City. On December 17, 2003, the Honorable Evelyn Omega Cannon remanded the case to MSDE for further proceedings. By letter dated March 2, 2004, MSDE remanded the case to me to determine whether the Appellant willfully neglected his duty and whether termination is the appropriate remedy.

On May 12, 2004, with the agreement of the parties, I conducted a hearing limited to oral argument and the scheduling of written briefs. The Appellant filed his brief before the hearing and the Board was given 15 days to reply. The Board filed its reply on June 7, 2004. The Appellant filed his reply on July 8, 2004, and the record was closed.²

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 of Education, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1999 & Supp. 2003); COMAR 13A.01.01.03P; COMAR 28.02.01.

ISSUE

² The Appellant, in his reply brief, asked for further closing argument to be scheduled. That request is hereby denied.

The issue on appeal is whether the termination imposed upon the Appellant pursuant to Md. Code Ann., Educ. § 6-202(a) (1999) for willful neglect of duties was proper.

SUMMARY OF THE EVIDENCE

A. Exhibits³

- The following exhibits were admitted into evidence on behalf of the Appellant:
 - App. Ex. 1 - St. Paul and Biddle Medical Associates, report of visit, dated June 3, 1999.
 - App. Ex. 2 - St. Paul and Biddle Medical Associates, reports of four visits, dated June 21, 1999, June 21, 1999, July 7, 1999, and August 11, 1999.
 - App. Ex.3 - Follow-Up visit report, dated August 26, 1999.
 - App. Ex. 4 - Light Duty Slip, dated August 26, 1999.
 - App. Ex. 5 - Memo, dated August 27, 1999, from Appellant to Assistant Principal.
 - App. Ex. 6 - Report from St. Paul and Biddle Medical Associates, dated August 31, 1999.
 - App. Ex. 7 - Sick Leave memo, dated September 1, 1999.
 - App. Ex. 8- St. Paul and Biddle Medical Associates, follow-up visit, dated September 10, 1999.
 - App. Ex. 9 - Fax Transmittal sheet, dated September 9, 1999.
 - App. Ex. 10 - Report from Division of Occupational Medicine, dated September 20, 1999.
 - App. Ex. 11 - Memorandum, from Appellant to school, dated September 22, 1999.
 - App. Ex. 12 - Memo from Division of Occupational Medicine, dated October 4, 1999, instructing the Appellant to return on October 5, 1999, providing he has an Incident Report Form.
 - App. Ex. 13 - Memo from Department of Personnel, dated December 15, 1997.
 - App. Ex. 14 - Employee's Incident Report, dated October 6, 1999.
 - App. Ex. 15 - Memo from Appellant to Principal, dated October 6, 1999.

³ These exhibits were admitted at the hearing on November 8th and 9th, 2001. No new evidence was admitted at the remand hearing of May 12, 2004.

App. Ex. 16- Memo from Appellant to Principal, dated October 17, 1999.

App. Ex. 17 - Series of Examinations at St. Paul and Biddle Medical Associates.

App. Ex. 18 - Mayor's Citation, dated May 1, 1994, and Governor's Citation, dated December 22, 1993.

• The following exhibits were submitted on behalf of the Board:

Bd. Ex. 1 - Memo from Theodore Thornton, Director, Department of Human Resources, to Principal, dated August 29, 1999.

Bd. Ex. 2 - Certified mail to Appellant, from Theodore Thornton, dated September 10, 1999.

Bd. Ex. 3 - Not admitted.

Bd. Ex. 4 - Fax sheet to Medical Care Operations, dated September 7, 1999 (same as Appellant's Exhibit number 9).⁴

Bd. Ex. 5 - Not admitted.

Bd. Ex. 6 - Fax from Doug Norris, Principal, to Anne Carusi, Southern Area Executive Officer, and Art Chenoworth, dated September 12, 1999.

Bd. Ex. 7 - Memo from Principal to Anne Carusi, dated September 15, 1999.

Bd. Ex. 8 - Memo from Anne Carusi to Principal, dated September 16, 1999.

Bd. Ex. 9 - Memo, dated September 17, 1999, from the Principal to Anne Carusi.

Bd. Ex. 10 - Memo from Principal to Anne Carusi, dated September 20, 1999.

Bd. Ex. 11 - Memo, by fax, to Ms. Dillow, Secretary to Principal, dated September 17, 1999.

Bd. Ex. 12 - Memo from the Principal to Douglas Norris, dated September 21, 1999.

Bd. Ex. 13 - Memo from Principal to Anne Carusi, dated September 22, 1999.

Bd. Ex. 14 - Letter to Anne Carusi, Southern Area Executive Director, from Douglas M. Norris, dated September 29, 1999, enclosing a certified letter sent to the Appellant by the Principal on September 23, 1999.

Bd. Ex. 15 - Memo from Anne Carusi to Michael Mayer, Director of the Office of Labor Relations, dated September 30, 1999.

⁴ Board Exhibits 3 and 5 were not admitted.

Bd. Ex. 16 - Memo from Robert Booker, Chief Executive Officer, to the Board, containing the Statement of Charges, dated October 25, 1999.

Bd. Ex. 17 - Attendance Reliability and Analysis Program, manual for teachers and paraprofessionals, approved March 1986.

B. Testimony

- The following witnesses presented testimony on behalf of the Appellant:
 - (1) Neil T. Ross, Baltimore Teachers Union, Field Representative.
 - (2) Rita Turner, Department of Health and Mental Hygiene.
 - (3) The Appellant testified on his own behalf.
- The following witnesses testified on behalf of the Board:
 - (1) Douglas Norris, Principal at Morrell Park Elementary/Middle School.

FINDINGS OF FACT

After careful consideration of the record, the testimony presented at the hearing of November 8 and 9, 2001, the briefs submitted pursuant to the May 12, 2004 hearing and instructions by the Honorable Evelyn Omega Cannon, I find, by a preponderance of the evidence, the following facts:

1. The Appellant had been employed at Patterson Park as a science teacher. In May of 1999, he had an accident at the school; he fell and suffered symptoms of head injury and muscular pain.
2. In June of 1999, the Appellant was informed of his transfer to Morrel Park School (School number 220). During the summer months, the Appellant was seen by various doctors at the St. Paul and Biddle Medical Associates in June, July and August, for treatment and follow-up of his May 1999 injuries (Wiggins's Ex. 1).
3. All of the reports from his examinations permitted him to return to work. When he reported to Morrel Park on August 23, 1999, he spent two days moving books and furniture in his newly assigned classroom. He again reported to St. Paul and Biddle Medical Associates, on August 26, 1999, stating that he had aggravated the May 1999 injury by his work at Morrel Park School. He was given permission to return to work on a light duty basis (Wiggins's Ex. 3).

4. The Appellant called in sick on August 25, 1999 and August 26, 1999. Also, on August 6, 2001, he submitted a “light duty” slip from St. Paul and Biddle Medical Associates, dated August 26, 1999 (Wiggins’s Ex. 3). He also submitted a slip from St. Paul and Biddle Medical Associates, dated August 31, 1999, stating that he had been seen for “gait instruction” that day (Wiggins’s Ex. 5). He subsequently submitted another “light duty” slip from St. Paul and Biddle Medical Associates, dated September 10, 1999, stating that he could resume “light” work duties on September 13, 1999 (Wiggins’s Ex. 8).
5. He failed to report to work on August 27, 1999, but called the Assistant Principal, Will McKenna, and stated that he would be continuing sick leave use, “possibly until the following Wednesday.” (*i.e.*, September 1, 1999). He also submitted a memorandum to the Assistant Principal, dated August 27, 1999 outlining his medical problem and complaining of McKenna’s alleged “harassment.” (Wiggins’s Ex. 4).
6. The Appellant did not report for work on August 30th or 31st, or on September 1, 1999; he faxed a memorandum to the Principal on September 1, 1999, stating that he would be using sick leave on September 1, 2, and 3, 1999, but that he would be returning to work on September 7, 1999 (Wiggins’s Ex. 6).
7. He did not return to work on September 7, 1999, but faxed the Principal again on that date, stating that he would be out on sick leave until further notice, and that a doctor’s slip would follow (Bd. Ex. 4).
8. On September 10, 1999, Theodore Thornton, from the Board’s Department of Human Resources, sent the Appellant a letter informing him that he was expected to report to school upon receipt of the letter or face termination. The letter was sent by certified mail, to the Appellant’s address of record – 2200 Lyndhurst Ave., Baltimore, Md. 21216 (Bd. Ex. 2). The Principal received a copy of the letter (Tr. p. 184, line 17). The Appellant called the school on September 10, 1999, and informed the school secretary that he would be reporting to work on Monday, September 13, 1999 (Bd. Ex. 7).⁵
9. On Monday September 13th, a woman called on his behalf, stating that he would not be reporting to work that day (Bd. Ex. 7).
10. He did not report to work on September 14, 15, or 17 (on September 16th, schools were closed). On September 17, 1999, he faxed a memorandum to the Principal stating that he would return to work on Monday, September 20, 1999 (Bd. Ex.’s 10 & 11).
11. The Appellant did report for work on September 20, 1999. He was referred to the Baltimore Industrial Medical Clinic (“Clinic”) for evaluation (Tr. p. 208, line 6; Bd. Ex. 10).

⁵ There is some inconsistency regarding September 10th. The Appellant testified that he had gone to school that day and had been directed to the Baltimore Industrial Medical Clinic (Tr. p. 54, line 15). However, the record shows that he was examined by his own doctor at St. Paul and Biddle Medical Associates on September 10th (Wiggins’s Ex. 8). Additionally, the principal faxed a message to his supervisor, Anne Carusi, stating that the Appellant had *called* the school on September 10th, not that he had appeared for duty (Bd. Ex. 6).

12. He was examined at the Clinic on September 20th, it was determined that he was fit for work, and he was issued a return-to-work slip (Wiggins's Ex. 10).
13. He called the school on September 20, 1999, and stated that he would not be reporting to work on September 21, 1999, and that he should be designated "sick" for that day, because he had a final evaluation with the Clinic scheduled (Bd. Ex. 12).
14. On September 21, 1999, he called the Clinic and asked for another appointment, which was granted for October 4, 1999. No further evaluation was scheduled for September 21, 1999. On September 22, 1999 he reported to the Clinic asking for a return-to-work slip. The request was denied because he had not been properly referred (Bd. Ex. 13).
15. Also on September 22, 1999, the Appellant faxed a memorandum to the Principal stating that, as a result of his Clinic visit of September 20, 1999, he would continue on sick leave until October 4, 1999 (Wiggins's Ex. 11).
16. The Appellant did not receive permission from the Clinic to be absent from work. The result of his Clinic visit of September 20, 1999 was that he was issued a return-to-work slip, not a sick leave slip (Wiggins's Ex. 10).
17. On September 23, 1999, the Principal mailed a letter to the Appellant, by certified and regular mail, to his address of record – 2200 Lyndhurst Ave., Baltimore, Md. 21216, informing him that he was recommending the Appellant for dismissal because of abandonment of his position . Both letters were returned to the school on September 28, 1999 as undeliverable (Bd. Ex. 14).
18. The Appellant was recommended for termination on October 25, 1999; the Board terminated the Appellant on June 13, 2000.

DISCUSSION

The Board terminated the Appellant for "willful neglect of duty," because he failed, without reason, to report for work. His failure to report was determined to be intentional and knowing, as defined in *Nemish v. Anne Arundel County Bd. Of Educ.*, 4 Op. MSBE 836, 837 (1987).⁶ The Appellant willfully violated COMAR 13A.07.03.02A, which requires a teacher to submit satisfactory proof of illness or be subject to penalty. It provides:

⁶ Cited in the Board's brief at p. 5.

.02 Attendance and Absence of Certificated Employees.

A. Notification in Case of Absence. When it is necessary for a certificated employee to be absent for any reason, the employee shall report to the local superintendent or designated official. If a teacher acts contrary to this regulation, the employee shall forfeit his or her salary for the time lost and **incur such other penalty as the local board may prescribe**. A substitute who was not assigned to

the school by the local superintendent, or his or her designated official, or whose assignment is not approved by him or her, is not entitled to compensation. (Emphasis supplied).

In my original decision, I found as a fact that the Appellant had received the letter dated September 10, 1999, from Theodore Thornton of the Board's Department of Human Resources. This letter put the Appellant on notice that he had to report for work or face personnel action – including dismissal. The Appellant denied receiving the letter, and, in fact, no “green card” proof of delivery was submitted into evidence.

I did rely on the letter of September 10, 1999 in assessing whether the Appellant's actions in not reporting for work were “willful,” that is, intentional and knowing. Judge Cannon, in her remand decision, ruled that there was no evidence to support the finding that the Appellant had received the letter, and that my finding was, therefore, arbitrary and capricious.⁷ In accordance with Judge Cannon's instructions, I have not made such a finding in the instant decision, and I have not relied upon the letter in any way. Nevertheless, for the following reasons, I still find that the Appellant willfully neglected his duties and was properly subject to dismissal.

The Appellant was not a credible witness. With the one exception of his August 24th memo (Wiggins's Ex. 4), he never did explain his numerous absences, except to state that he needed an Incident Report to be released by the Clinic to return to work. The Appellant makes much out of the

⁷ I relied to a certain extent on the presumption of receipt, see, *Mohr v. Universal C.I.T. Credit Corporation*, 216 Md. 197, 140 A.2d 49 (1958), but I did not articulate that in my decision, and there was no testimony by an employee or officer regarding the custom of addressing and mailing, *Mohr*, 216 Md. at 205. See also, *Border v. Grooms*, 267 Md. 100, 104, 297 A.2d 81 (1972) and *Bock v. Insurance Com'r of State of Maryland*, 84 Md. App. 724, 581 A.2d 857 (1990).

Principal's failure to provide him with a proper Incident Report for the August 24th incident, but the truth is that he could have returned to work at any time prior to the Principal's recommendation of dismissal, with or without an Incident Report. Even on September 20, 1999, when he was examined at the Clinic, he received a return-to-work slip. Although this slip might have been based on an inadequate examination, which did not take into account the "aggravating incident" on August 24, 1999, it allowed the Appellant to return to work. In fact, all of the *Appellant's own* evidence about his physical condition after August 24th showed him able to return to work, at least on a "light duty" basis (Wiggins's Ex.'s 3, 5, and 8).

While I don't dispute that there was bureaucratic ineptitude connected to the failure to issue the Appellant an Incident Report form, I view the argument that the Appellant could not properly return to work because of that failure as a "red herring." Why was the Appellant so concerned about the proper protocol involving an Incident Report if, as he testified, he wanted to return to work?⁸ I believe that the Appellant simply used the lack of an Incident Report form to justify his neglect of duty. It is highly unlikely that a proper examination at the Clinic would have resulted in a different diagnosis than that of the Appellant's own doctor's or that he would have been excused from work. The Appellant's allegations of misfeasance by the Principal regarding the Incident Report are all disingenuous, in my view. He could have returned to work at any point, even with a light duty slip (which his own doctors provided), because his position was classified as "sedentary."

If he were required to do some unusually strenuous lifting or moving, he certainly could have asked for help. In fact, during the entire period from August 26th to September 20, 1999, the Appellant made a number of calls stating that he would return to work on certain days, but never appeared. It may be true that he called or faxed the school on these days of absence, but he never gave a believable reason why he didn't show up for work. Finally, it was the Appellant's duty to inform the

⁸ Tr. p. 120, line 12.

school if he was living at a different address. He must have known that letters would be sent to his old address; after all, he was engaged in a running dispute with his employer over his absences. To inform the school of his new address during one of his many phone calls or faxes would have simply been common sense. It demonstrates, in my view, a lack of professionalism.

Additionally, the Appellant was not truthful about results of the September 20th return-to-work slip, which was issued after he was examined at the Clinic on that day (Wiggins's Ex. 10). In this connection, he called the school on September 20th and stated that he would not be returning on September 21, 1999 (the next day) because he had a "final evaluation" scheduled at the Clinic. In fact, on September 21, 1999, he called the Clinic insisting on another appointment because he was dissatisfied with the visit of September 20, 1999. He was given another appointment for October 4, 1999. No additional evaluation was scheduled or done on September 21, 1999.

On September 22, 1999, he again went to the Clinic and asked for another return to work slip, which was denied because he had not been referred. Yet, also on September 22nd, he faxed the Principal telling him that he would not be returning to work until October 4, 1999, *as a result of his examination on September 20th*. This was simply not the truth, because, as already noted, the September 20th visit resulted in a return-to-work slip, not permission to remain out sick until his next appointment. The number of examinations which showed that the Appellant could return to work, the deceitful nature of the Appellant's characterization of his September 20th examination as allowing him to remain out until October 4, 1999, his failure to contact the school at all on September 14, 15, and 17, 1999, combine to demonstrate a willful neglect of duty.

In his reply brief, the Appellant argues that the September 20, 1999 return to work slip (App. Ex. 10) should not be considered under Md. Rule 5-803(B)(4), but it was the Appellant himself who introduced it into evidence (Tr. 65, App. Reply, p.3).

I can find no violation of the *Accardi* doctrine, because the failure to issue an incident report for the alleged August mishap did not result in prejudice to the Appellant. *Pollack v. Patuxent Institution Bd. of Review*, 374 Md. 463, 823 A.2d 626 (2003).

Additionally, there has been no showing of a due process violation, as alleged by the Appellant. The Appellant was notified of his original hearing and attended that hearing. He also appealed the Hearing Examiner's decision to the Board, and was granted a *de novo* hearing when he appealed the Board's decision to terminate him. Moreover, on judicial review Judge Cannon found that there was no due process violation (Memorandum Opinion, p.6), and I cannot dispute that finding.

The Maryland Education Article⁹ provides, in pertinent part:

§ 6-202.

(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:

* * *

(v) Willful neglect of duty.

The Appellant willfully neglected his duty to appear for work and was properly dismissed by the Board.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Appellant, Warren Wiggins, a Teacher employed by the Baltimore City Board of School Commissioners, was properly terminated because of willful neglect of duty. Md. Educ. Code Ann. §6-202(a). COMAR 13A.07.03.02A.

⁹ Md. Educ. Code Ann. § 6-202(a) (1999).

PROPOSED ORDER

It is proposed that the decision of the Baltimore City Board of School Commissioners terminating the Appellant for willful neglect of duty be **UPHELD**.

July 15, 2004

Date

Guy J. Avery

Administrative Law Judge

NOTICE OF RIGHT TO FILE OBJECTIONS

Any party adversely affected by this Proposed Decision has the right to file written objections within ten (10) days of receipt of the decision; parties may file written responses to the objections within ten (10) 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.01.01.03P(4). The Office of Administrative Hearings is not a party to any review process.

WARREN WIGGINS

*** BEFORE GUY J. AVERY**

APPELLANT

*** ADMINISTRATIVE LAW JUDGE,**

v.

*** MARYLAND OFFICE OF**

NEW BOARD OF SCHOOL

*** ADMINISTRATIVE HEARINGS**

COMMISSIONERS OF BALTIMORE

*** OAH No.: MSDE-BE-01-20000002**

CITY

*** ON REMAND: MSDE-BE-01-04-11597**

*** * * * ***

FILE EXHIBIT LIST^T

• The following exhibits were admitted into evidence on behalf of the Appellant:

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App. Ex. 4 - Memo, dated August 27, 1999, from Appellant to Assistant Principal.

App. Ex. 5 - Report from St. Paul and Biddle Medical Associates, dated August 31, 1999.

App. Ex. 6 - Sick Leave memo, dated September 1, 1999.

App. Ex. 7- St. Paul and Biddle Medical Associates, follow-up visit, dated September 10, 1999.

App. Ex. 8 - Report from St. Paul and Biddle Medical Associates, dated September 10, 1999.

App. Ex. 9 - Fax Transmission Cover Sheet, dated September 7, 1999.

App. Ex. 10 - Report from Division of Occupational Medicine, dated September 20, 1999.

App. Ex. 11 - Sick Leave memo, dated September 22, 1999.

App. Ex. 12 - Report from Division of Occupational Medicine, undated, referring to attempted

³ These exhibits were admitted at the hearing on November 8th and 9th, 2001. No new evidence was admitted at the remand hearing of May 12, 2004.

Visits by Appellant on October 4, 1999 and October 5, 1999.

App. Ex. 13 - Memo from Department of Personnel, dated December 15, 1997.

App. Ex. 14 - Employee's Incident Report, October 6, 1999.

App. Ex. 15 - Memo from Appellant to Principal, dated October 6, 1999.

App. Ex. 16 - Memo from Appellant to Principal, dated October 17, 1999.

App. Ex. 17 - Documents from St. Paul and Biddle Medical Associates, dated December 3, 1999; Marcel A. Reischer, M.D., dated January 14, 2000 and February 14, 2000; and, The Rehabilitation Team, dated October 1, 1999.

App. Ex. 18 - Mayor's Citation to for Appellant, dated May 1, 1994, and Governor's Citation, Dated December 22, 1993.

• The following exhibits were submitted on behalf of the Board:

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⁴ Board Exhibits 3 and 5 were not admitted.

- Bd. Ex. 14 - Letter to Anne Carusi, Southern area Executive Director, from Douglas M. Norris, dated September 29, 1999, enclosing a certified letter sent to the Appellant by the Principal on September 23, 1999.
- Bd. Ex. 15 - Memo from Anne Carusi to Michael Mayer, Director of the Office of Labor Relations, dated September 30, 1999.
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