

RAMONA B. DICKERSON,

Appellant

v.

WICOMICO COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-06

OPINION

In this appeal, Appellant, a noncertificated employee, challenges her termination from her position as a food service worker, asserting procedural due process violations and lack of sufficient evidence. The local board has submitted a motion for summary affirmance maintaining that Appellant received ample due process and that her termination was based on longstanding performance problems. Appellant has submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

Appellant was employed by the Wicomico County Board of Education as a food service worker for approximately thirteen years. During her employment with the local board, Appellant worked at various schools starting at Wicomico Senior High School; transferring in 1993 to Wicomico Alternative Learning Center; transferring in 1996 to Pinehurst Elementary School; transferring in 1997 to Bennett Middle School; and then transferring in 2003 to North Salisbury Elementary where she worked until her termination, effective May 21, 2004.

Chronology of Employment History

Appellant's chronology of employment contains the following notable incidents and evaluations:

- On November 27, 1991, Appellant was involved in a verbal altercation with employees at the Schmidt Baking Company while purchasing bread for the Wicomico County Board of Education. As reported by management at Schmidt, the incident was an unpleasant exchange in which Appellant was belligerent and used foul language. Appellant was suspended without pay for a period of ten working days and was asked to write a letter of apology to the Schmidt Baking Company.

- In her June 4, 1992 evaluation at Wicomico Senior High, Appellant received a needs improvement rating in the category *Relationships with people*.¹
- In her June 15, 1994 evaluation, Appellant received a needs improvement rating in the *Relationships with people* category. The written comments stated the following: “In developing relationships with school staff, choose the proper time and manner to discuss concerns with the appropriate supervisor. Be conscious of what you say and how others perceive it. Take time to think about what you say and how you speak to others.”
- Appellant received three unsatisfactory marks on her June 12, 1996 interim evaluation at Pinehurst Elementary in the areas of *Develops positive relationships with students, other school staff and the community; Practices proper safety standards; and Uses appropriate housecleaning methods*.
- Appellant received seven unsatisfactory marks on her December 3, 1996 evaluation at Pinehurst Elementary in the areas of *Develops positive relationships with students, other school staff and the community; Accepts constructive criticism; Displays good judgment in dealing with emergencies and difficult situations; Follows county/school rules, policies, procedures; Displays positive attitude toward assignment; Completes assignments in timely manner; and Uses appropriate housecleaning methods*. Appellant was advised to “work on developing an attitude of responding to people in the most positive manner” and was advised to make suggestions “in a non-offensive manner.” She was given specific examples of how to correct her deficiencies, placed on probationary status, and warned that failure to correct the actions within three months could result in suspension without pay.
- Appellant received a satisfactory rating in all categories on her April 1997 evaluation at Pinehurst Elementary with the following comments: “Please continue to develop positive relationships with the adult staff as well as students. Continue also to be respectful of the manager’s position.”
- Appellant received unsatisfactory ratings on her June 10, 1998 annual evaluation at Bennett Middle in the areas of *Develops positive relationships with students, other school staff and the community; and Accepts constructive criticism*. The comments state: “Always beware of maintaining a positive rapport with students as well as staff. Develop a more receptive attitude to constructive criticism which enables you to be a team player.”
- On her 1999 annual evaluation at Bennett Middle, Appellant received outstanding ratings in three categories and satisfactory ratings in the remaining categories.

¹This category rates how the employee “gets along with others” and the effectiveness of the employee in “dealing with the public, other employees, teachers, students, and administrators.”

- On her June 15, 2000 annual evaluation at Bennett Middle Appellant received three outstanding ratings. She also received three unsatisfactory ratings in the categories *Develops positive relationships with students, other school staff and the community; Accepts constructive criticism; and Follows county/school rules, policies, procedures.* She was also placed on probation at this time. The comments noted that “students choose to patronize other lines to avoid [Appellant’s] presence and unkindness” and that the “food service staff has also felt [Appellant’s] negative attitude in their daily work.” The comments also advised Appellant to “[a]ccept constructive criticism so that resentment is not reflected in [her] work and attitude.” Appellant was further advised not to treat administrators and supervisors in an insubordinate manner.
- Appellant again received three unsatisfactory ratings on her June 8, 2001 annual evaluation at Bennett Middle School in the categories *Develops positive relationships with students, other school staff and the community; Accepts constructive criticism; and Follows county/school rules, policies, procedures.* The comments state: “It has been observed that you have not followed the recommendation of the last evaluation and complaints from staff members continue.”
- Appellant received no unsatisfactory marks on her June 11, 2002 annual evaluation at Bennett Middle.
- Appellant transferred to North Salisbury Elementary School in 2003. On March 18, 2003, a conference was held with Appellant, the food service manager, Pat Stevens, the principal of North Salisbury, Janet Veditz, and Loretta Savoy, supervisor of food services. A March 21, 2003 letter to Appellant summarized the conference and set forth concerns regarding a recent incident involving a student and conduct displayed toward the school staff and manager by Appellant. The letter pointed out that this was not the first time there had been such problems and emphasized that Appellant’s conduct was offensive to co-workers and customers and was considered disorderly. The letter stated in part:

Raising your voice to students, school staff and co-workers will not be tolerated. You must respect the manager’s position as the person in charge and not question her authority to direct the kitchen operation. This is a final warning to you regarding your conduct. Effective April first, you are on probation. Any additional reports from the manager or principal will lead to a recommendation for further disciplinary action, which could result in dismissal. (Emphasis added.)
- Appellant received an unsatisfactory rating in the category *Displays positive attitude toward assignment* on her December 15, 2003 probationary evaluation. Her ratings moved to satisfactory in the areas of *Develops positive relationships with students, other*

school staff and the community; Accepts constructive criticism; and Follows county/school rules, policies, procedures. Appellant's probationary status was continued.

- Appellant's February 2004 performance review rated her unsatisfactory in the *Teamwork and Customer Service* categories. The comments stated:

I continue to have complaints from students and staff about your demeanor and grumbling. Their perception of you is that you are 'rude,' 'negative,' 'cross' and some have used the word 'mean.' This review is to remind you of how you are perceived by our customers and to counsel you to make definite improvements in these areas.

- Appellant's March 31, 2004 performance review again rated her unsatisfactory in the *Teamwork and Customer Service* areas. Pat Stevens commented that "I want to inform you that I have continued to receive negative comments from students and staff about your demeanor. And to ask you to give serious thought to 'customer perception'."
- Appellant received unsatisfactory ratings on half of the categories on her April 2004 evaluation. The categories are: (1) *Develops positive relationships with students, other school staff and the community;* (2) *Accepts constructive criticism;* (3) *Displays perseverance and diligence in assigned tasks;* (4) *Practices good time management;* (5) *Follows county/school rules, policies, procedures;* (6) *Displays positive attitude toward assignment;* (7) *Completes assignment in timely manner;* and (8) *Completes tasks at an acceptable level of competency.* The evaluation recommended termination.

Recommendation for Termination and Termination

By letter dated May 6, 2004, Charles Bounds, Assistant Superintendent for Administrative Services, advised Appellant that he was recommending her termination to the superintendent, stating as follows:

I am in receipt of your probationary evaluation dated April 4, 2004 from Mrs. Savoy. As you are aware, your termination has been recommended as a result of numerous areas marked unsatisfactory. You have been on probation since April 1, 2003 regarding, most specifically, your lack of ability to display a positive attitude toward staff and students and unwillingness to form positive working relationships with others. Your constant negative attitude and outbursts are unacceptable as it disrupts a productive work environment as well a conducive learning environment for the students.

The letter further advised Appellant that she could contact him to discuss the recommendation.

Pursuant to Appellant's request, Mr. Bounds conducted a meeting at which Appellant presented arguments against the recommendation for termination. Thereafter, Mr. Bounds informed Appellant that he was recommending her termination. He indicated that it had been a year since Appellant was placed on probation and informed of the areas that needed improvement and the way in which to make the improvements, but that a reasonable time had passed without improvement. See 5/18/04 letter from Bounds to Dickerson. Charlene Cooper Boston, Wicomico County Superintendent of Schools, concurred with the recommendations and terminated Appellant, effective May 21, 2004. See 5/20/04 letter from Boston to Dickerson.

Appellant appealed the termination decision to the local board. After a full evidentiary hearing, the local board unanimously upheld the termination.

ANALYSIS

Preliminary Issues

As a preliminary issue, Appellant maintains that the local board's decision was illegal because it was based on items from her personnel file of which she was unaware prior to their introduction at the hearing on behalf of the Superintendent.² The items are as follows: (1) a December 16, 2003 letter from Pat Stevens to Loretta Savoy, that was an attachment to the 12/15/03 evaluation; (2) the daily journal of Appellant's work performance maintained by Pat Stevens; and (3) the writing on the bottom of the last page of Appellant's February 2004 Performance Review. The local board in its decision stated that it had ignored all of these items in reaching its decision, giving them no consideration whatsoever. See local board decision at p.1 and p.5.³ Thus, Appellant's argument on this point is moot.

As another preliminary issue, Appellant maintains that her due process rights were violated. In *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), the Supreme

²The Wicomico County Board of Education Classified Employee's Handbook states as follows:

No unfavorable material related to an employee's conduct, service, character, or personality will be placed in a personnel file without the employee's knowledge. The employee shall acknowledge his awareness of material by fixing his signature to the material to be filed with the understanding that such signature does not necessarily indicate agreement with the contents thereof. . . .

³Because the local board did not consider these items, we have not reviewed the documents.

Court recognized that the core requirement of due process is that an individual be given notice of the intended action and an opportunity to present the individual's response before being deprived of any significant property interest.

Here, Appellant was advised over a period of years regarding deficiencies in her performance, specifically in her interactions with co-workers, staff, and students. Appellant was advised of the basis for her termination in a May 6, 2004 letter from Charles Bounds and was given the opportunity to respond to those reasons prior to the termination during her conference with Mr. Bounds. After Mr. Bounds forwarded the termination recommendation to the superintendent, the matter was assigned to William Cain as the superintendent's designee, who gave Appellant the opportunity again to present her case. Mr. Cain issued Findings of Fact and Recommendations, accompanied by documentation supporting the termination recommendation. The superintendent concurred with the termination recommendation. Dissatisfied with the superintendent's decision, Appellant appealed to the local board where she was afforded a full evidentiary hearing. At each level, the recommendation for termination was upheld. For these reasons, we do not believe that Appellant has established any due process violations.⁴ See *Lowe-Yates v. Prince George's County Board of Education*, MSBE Opinion No. 03-21 (2003).

Merits of Termination Decision

In *Livers v. Charles County Board of Education*, 6 Op. MSBE 407 (1992), *aff'd* 101 Md. App. 160, *cert. denied*, 336 Md. 594 (1994), the State Board held that a noncertificated support employee is entitled to administrative review of a termination pursuant to § 4-205(c)(4) of the Education Article.⁵ The standard of review that the State Board applies to such a termination is that the local board's decision is *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless its decision is arbitrary, unreasonable, or illegal. See COMAR 13A.01.05.05A.

⁴Even if procedural errors had occurred prior to Appellant's appeal to the local board, such errors were cured based on the local board's full evidentiary hearing on appeal. See *Williamson v. Board of Education of Anne Arundel County*, 7 Op. MSBE 649 (1997) (failure to give prompt notice would be cured by local board's full evidentiary hearing on appeal); *West & Bethea v. Board of Commissioners of Baltimore City*, 7 Op. MSBE 500 (1996) (failure to hold conference within ten days was cured by the *de novo* administrative hearing on merits before the local board); *Harrison v. Somerset County Board of Education*, 7 Op. MSBE 391 (1996) (failure to grant conference with superintendent or his representative in timely fashion was cured by local board's full evidentiary hearing on appeal).

⁵In its 2002 session, the Maryland General Assembly amended § 6-510 of the Education Article by providing that due process for discipline and discharge of noncertificated employees is a permissive subject of bargaining.

Based on our review of the record in this case, we find that there is sufficient evidence supporting the superintendent's decision to dismiss Appellant from her position. While Appellant's evaluations fluctuated throughout the years, her performance history demonstrated ongoing and continuing problems of the same type at each school where she worked. Appellant was unable to maintain a positive working relationship with students, staff, and co-workers, and unable to accept constructive criticism of her job performance. Appellant's deficiencies in the area of relationships with students, school staff and the school community resurfaced at each new assignment. Appellant's behavior negatively affected the customer service aspect of her job as well as her dealings with co-workers. In addition, Appellant had problems interacting with those in supervisory positions over her. Although there were times when it appeared that Appellant had made improvements, the improvements were short lived. She consistently reverted to unacceptable behavior, despite the fact that she had been repeatedly warned throughout the years that she needed improvement and was ultimately placed on probation with potential termination status.⁶

As stated in the written decision of the local board:

The Board finds that Ms. Dickerson has had ongoing problems in the same area of performance. These have been addressed with her time after time and although improvement has been made, it has never lasted. Each time she receives a new assignment, the problems have resurfaced and have been noted not just by her current supervisor, principal and manager, but by others. In light of the ongoing history of similar and related problems and the inability of Ms. Dickerson to improve her evaluations in these areas, the Board unanimously upholds the decision of the Superintendent.

Local Board Decision at 6. Based upon our review of this record, we concur. Appellant's termination was not a sudden action. It was based on her failure to correct deficiencies in her performance that persisted over several years.

⁶While not entirely clear in her initial letter of appeal to the State Board, in Appellant's response to the local board's motion for summary affirmance she suggests a violation of procedure during her probationary status which began on April 1, 2003. To the extent that there was any violation of procedure by conducting an evaluation more than three months after being placed on probation, Appellant must demonstrate that she was prejudiced by this action in order for the agency decision to be struck down. *See Pollack v. Patuxent Institution Bd. of Rev.*, 374 Md. 463 (2003). The evidence is clear that Appellant was not harmed by the evaluation taking place on December 15, 2003, given that some of her ratings improved.

CONCLUSION

Because we do not find the local board's decision to be arbitrary, unreasonable or illegal, we uphold the decision terminating Appellant from her position as a food service worker with the Wicomico County Board of Education.

Edward L. Root

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February 23, 2005