

PAMELA HOFFLER-RIDDICK,

Appellant

v.

BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-09

### OPINION

In this appeal, Patricia Hoffler-Riddick challenges the local board's decision to place her on administrative leave without pay and to denying her use of sick leave after her arrest for money laundering in connection with a drug trafficking ring. The local board has submitted a motion for summary affirmance maintaining that its decision to place her on such leave was not arbitrary, unreasonable, or illegal. Appellant has filed an opposition to the local board's motion.

### FACTUAL BACKGROUND

In the 2004 -2005 school year, Appellant was an Acting Regional Assistant Superintendent of School in the Prince George's County Schools. On January 14, 2005 she was indicted in the United States District Court in Norfolk, Virginia on five counts of Conspiracy to Launder Money and Money Laundering to Promote and Disguise Drug Trafficking. On January 24, 2004, Appellant was arrested and transported by police to Norfolk, Virginia. After her arrest, she contacted Howard Burnett, then Chief Administrator for Human Resources,<sup>1</sup> to advise him of the situation and to inquire about her employment status. (Tr. 17). Mr. Burnett advised Appellant that typically school system employees who are charged with felonies are immediately recommended for termination to the Chief Executive Officer ("CEO"). After discussing the matter with CEO Andre Hornsby, Mr. Burnett advised Appellant in writing that she was being placed on administrative leave but that she could use her accumulated annual leave to "maintain her pay status at this time". ( Letter of January 24, 2005, Tr. 17).

On February 11, 2005, Appellant's annual leave expired. On that same date, she submitted a medical disability statement, signed by her psychologist, and a request that she be able to use her sick leave. On February 25, 2005, Appellant called Mr. Burnett about the status of her request (Tr. 14). Mr. Burnett told Appellant that no decision had been made yet as to her use of sick leave. (Tr. 14).

On or about March 2, 2005, Mr. Burnett informed Appellant by telephone that Dr. Hornsby had determined that Appellant was not entitled to use sick leave and that she would remain on administrative leave without pay until a final determination concerning her

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<sup>1</sup>Mr. Burnett is currently the Interim Chief Executive Officer.

employment could be made. (Tr. 15). According to school system practices, employees on administrative leave are not entitled to sick leave and sick leave bank benefits. (Affidavit of Howard Burnett and Tr. 26). He confirmed this decision by a letter dated March 10, 2005.

On March 18, 2005, Appellant filed an appeal to the local board concerning her placement on administrative leave without pay. On April 25, 2005, Dr. Hornsby informed Appellant that the local board had determined on April 7, 2005, not to renew her contract for the 2005-2006 school year and that her employment would end on June 13, 2005. Appellant did not appeal the nonrenewal.

After accepting written submissions from both parties, the local board heard oral argument on June 9, 2005. The local board deferred a decision that day pending receipt of additional information from the school system. After receipt of this information, on August 18, 2005, the local board voted to uphold the CEO's decision.

This appeal followed in which Appellant seeks as remedies: (1) reinstatement as a school system employee and compensation retroactively from January 24, 2005 to the date of the State Board decision; (2) reinstatement of all annual and sick leave that had or would have been earned. Alternatively, if the State Board finds that her contract was properly nonrenewed, she seeks retroactive payment from January 24, 2005 through June 13, 2005 and credit for all annual and sick leave that would have accrued during that period and full family health insurance (health, dental, and eye care) at school system expense for the 2005-2006 school year.<sup>2</sup>

#### STANDARD OF REVIEW

Because this case involves a local policy or dispute regarding the rules and regulations of a local board, the standard of review is that the decision of the local board shall be 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.01.05.05A.

#### ANALYSIS

Appellant first contends that she was placed on administrative leave with pay and that her later placement on administrative leave without pay was arbitrary and capricious.

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<sup>2</sup>On October 14, 2005, a jury returned a guilty verdict against Appellant on four counts of Conspiracy to Launder Money and Money Laundering to Promote and Disguise Drug Trafficking. Appellant has filed a Motion for Acquittal which was heard on January 23, 2006. Judge Walter D. Kelley, Jr., let stand the conviction for one count of conspiracy to commit money laundering but is considering dismissal of the other four counts. The Judge postponed sentencing until April 17, 2006.

However, it is clear from the correspondence of January 24, 2005, that Appellant had been placed on administrative leave without pay, as the letter stated that annual leave could be used to maintain her pay status. Had she been placed on administrative leave with pay, there would have been no need to use annual leave to maintain her pay status. Further, in testimony before the local board, Appellant concedes she was on administrative leave without pay since January 24, 2005. (Tr. 17).

Appellant next contends that her placement on leave without pay was arbitrary and capricious because others in similar circumstances were put on leave with pay and that being on leave with pay would have permitted her to accrue annual and sick leave.

Appellant has presented no credible evidence that other employees were treated differently from her. In her “sworn” affidavit attached to her letter of appeal, she alleges that J. Y. was placed on administrative leave with pay despite drug related charges. However, that affidavit was not sworn before a notary and does not contain the language that such an affidavit requires. Moreover, Appellant has presented no evidence in support of her allegation. At oral argument, one local board member referenced a teacher indicted for cocaine possession but that person is not named nor are the circumstances of the teacher’s status with the school system discussed at all.

The school system concedes that there are no formal policies with respect to placement on administrative leave without pay when an employee is indicted for a crime. However, there was sworn testimony that it is the school system’s practice to place an employee on administrative leave without pay in such circumstances.<sup>3</sup> (Tr. 25, and submission to local board, June 29, 2005.)

Appellant next contends that the denial of her use of sick leave after her annual leave was depleted was arbitrary and capricious. She maintains that she was encouraged to submit a medical disability form and was never told that sick leave could not be used nor that the form must be completed by a physician. She contends that the school system has no policies concerning access to sick leave while on administrative leave without pay.<sup>4</sup>

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<sup>3</sup>We urge the local board to reduce this practice to writing and create a formal written policy dealing with this important personnel issue.

<sup>4</sup>In her letter of appeal to the State Board, Appellant posits that the CEO’s actions were “self-serving, discriminatory due to gender, employee classification (teacher versus regional superintendent) in an effort to shield him from additional scrutiny, due to his burgeoning allegations against him, which ultimately led to his resignation”. However, the Appellant apparently abandoned that issue and did not make that argument before the local board. The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary’s County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver on appeal). *McDaniel v. Montgomery County Board of Education*, MSBE Op. No 03-22 (June 27, 2003)(complaints from public not raised before local board deemed waived).

The school system concedes that there is no written procedure for using sick leave while on administrative leave without pay. However, there is sworn testimony that it is the practice and policy of the school system to permit use of annual leave while on administrative leave without pay but not sick leave.<sup>5</sup> (Tr. 25-26, 32, Affidavit of Howard Burnett and submission to local board, June 29, 2005). The school system argues that sick leave is to be used only when the employee's absence is due to illness. In this case, the employee's absence was due to her indictment and arrest on drug charges, not illness.<sup>6</sup>

Mr. Burnett did accept a Medical Disability Statement form from Appellant, but he did not tell her that she could use sick leave while on administrative leave without pay. He told her that the CEO would make that determination (Tr. 13, Appellant's affidavit, p. 5). He later informed Appellant that sick leave was not available to employees who are on administrative leave without pay. (Tr. 13-15). Therefore, it is irrelevant whether Appellant's disability form was signed by her psychologist. However, if sick leave had been available, the form itself and the policy that Appellant cites clearly state that the form must be signed by an "attending physician" not a psychologist. (Medical Disability Statement form and Policy 4151.IV.A.1.b)

For the first time here, the Appellant seeks reinstatement. Because she did not appeal her termination at the local board level, the State Board need not consider that part of her appeal.

#### CONCLUSION

Because we believe the local board did not act arbitrarily, unreasonably, or illegally in this matter, we affirm the local board's decision concerning Appellant's leave status.

Edward L. Root  
President

Dunbar Brooks  
Vice President

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<sup>5</sup>We again urge the local board to put such practices into written form.

<sup>6</sup>Appellant also claims for the first time in her response to the local board's Motion that she was denied access to health care benefits, not just sick leave. This claim is untrue as evidenced by Appellant's own Exhibit 6 to her Letter of Appeal which authorized continuing access to mental health benefits. In fact, keeping Appellant as an employee, albeit without pay, most likely allowed her access to her health care benefits for a longer period than if the local board had terminated her employment for cause before the end of her contract.

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March 29, 2006