

DEITRA HIGGS,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-13

OPINION

This is an appeal of the local board's award of pay and benefits to the Appellant through June, 2003, which was the end of Appellant's contract year. The Appellant asserts that she is entitled to an award of pay and benefits through the end of her contract year, and for the 2003-2004 school year. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has submitted a reply opposing the local board's motion, and the local board has filed a response to that opposition.

FACTUAL BACKGROUND

Appellant had been a teacher in the Prince George's County Public School System under a one year provisional contract when she was suspended without pay and recommended for termination on April 4, 2003 for allegedly orchestrating and/or encouraging an adult companion to assault and batter a student. She was charged with incompetence, misconduct and immorality in office. (Hearing Examiner report, 10/13/04).

Appellant requested to be heard on the charges and a hearing was held before the local board's Hearing Examiner on January 13, 2004. Ms. Higgs presented evidence that the student had been sexually harassing her physically and making graphic sexual remarks to her for some time and no action had been taken by the school.

On the day of the incident, she was in her car with her boyfriend and her child going home from work when the student again yelled offensive sexual epithets. Her boyfriend heard the remarks, became incensed, and started a fist fight with the student. After a few moments, the boyfriend got back into the car, but was very angry. Ms. Higgs was driving the car away from the school when the boyfriend, she says, forced her to go back to the school yard. Another fight with the student would have occurred but the vice principal intervened.

The Hearing Examiner found that Ms. Higgs chose to expose the student to danger, that she was not always truthful in her testimony, and failed to take any responsibility for her own acts. He recommended that the superintendent's decision to terminate Ms. Higgs without pay be upheld. (Hearing Examiner report, 10/13/04).

The matter came before the local board on October 6, 2005. At that time, the local board heard testimony that stressed how the student had been sexually harassing Ms. Higgs, both verbally and physically, for a long period of time with few, if any, repercussions from the school. They also heard that she had no control over her very large male companion. On October 27, 2005, the local board issued an order rejecting the Hearing Examiner's recommendation and ordering that the Appellant be "awarded full pay status and benefits from the time of her termination through June 20, 2003, the end of her contract term". This order reversed the termination.

Appellant then filed this appeal, claiming that she should have been awarded pay and benefits for another full year – through June 2004 rather than June 2003. (Letter of Appeal, 11/23/05). Later, in response to the local board's Motion for Summary Affirmance, Appellant claimed that she was entitled to pay and benefits through June of 2005.¹ (Opposition, pp. 3, 6).

STANDARD OF REVIEW

Appellant would only be entitled to pay and benefits for subsequent years if she were entitled to another teaching contract. COMAR 13A.07.02.01C sets forth the terms of the Provisional Contract for Conditional or Resident Teacher Certificate Holders and provides in pertinent part:

The term of this contract shall extend from the date of its signing until the thirtieth day of June next succeeding said date of signing, and this contract shall automatically terminate and expire on the thirtieth day of June next succeeding the date of its signing.

Because this contract exists for only one year, the only basis for reversal of the local board's decision not to enter into a new contract is if the decision were made for illegal or constitutionally discriminatory reasons. *See Board of Regents v. Roth*, 408 U.S. 564, 578-79 (1972) (finding absent a constitutional violation, there is no other process due a non-tenured teacher).

¹Appellant claims for the first time before the State Board that she was not provided with due process when she was not notified by May 1, 2003 that her contract would not be renewed. The State Board will not consider issues that were not first presented to 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). Thus, we find that Appellant has waived her right to raise this due process argument for the first time on appeal to the State Board. Further, the obvious reason why the local board did not issue a nonrenewal letter to Appellant was because she had been terminated as of April 4, 2003.

ANALYSIS

The Appellant crafts her argument for two years of pay using certification law rather than contract law. Her argument is flawed. Appellant first claims that had she not been terminated, her conditional teaching certificate would have been renewed for two years. In support of this claim, she notes that her March 28, 2003 pay stub indicated a \$10 deduction for a "recert fee". From this claim, she asserts that she had an expectation of employment for two more years.

Under COMAR 13A.12.01.08A(4), a conditional certificate is issued for a period of two years. Under COMAR 13A.12.01.11C(2), a conditional certificate may be renewed for one two-year term if certain requirements are met.

Appellant contends that she "was on schedule to complete the required coursework in May 2003, and would have received another provisional conditional license that would have extended her contract through June 2004 had she not been suspended and recommended for termination in April, 2003". (Letter of Appeal, 11/23/05).

Appellant confuses a valid certificate to teach with a contract to teach. Issuance of a certificate does not extend a teaching contract. COMAR 13A.07.02.01C sets forth the provisional contract for holders of conditional certificates. As stated above, by its own terms, every provisional contract is for a period of one year.

Because the local board reversed the termination, they gave Appellant what she was entitled to under her contract: pay and benefits through June 2003, the end of her contract year. Because the provisional contract is for one year, Appellant could have no expectation of employment through the end of the 2003-2004 school year or the 2004-2005 school year, and therefore she could have no expectation of pay and benefits through that time.

CONCLUSION

Appellant has not provided any evidence that the decision of the local board to pay her only through her contract term and not enter into a new teaching contract with her for the 2003-2004 or 2004-2005 school years is illegal or unconstitutional. For all these reasons, we therefore affirm the local board's decision.

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