

RICHARD S. DONALD

Appellant

v.

BALTIMORE CITY BOARD OF SCHOOL  
COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-34

### OPINION

Richard Donald (“Appellant”) filed an appeal maintaining that he was illegally terminated from his position as a School Stat Analyst with the Baltimore City Public School System (“BCPSS”). The local board submitted a Response and Motion to Vacate maintaining that Appellant’s due process rights were not violated and the termination decision was not arbitrary, unreasonable or illegal. Appellant filed a Reply.

### FACTUAL BACKGROUND

Appellant was employed by BCPSS in March 2002 as a business analyst in the Chief Operating Officer’s (“COO”) office. When the School Stat Office was established, Appellant was assigned to that office as a School Stat Analyst.<sup>1</sup> His supervisor was Mr. Thomas Kim. During the period that Mr. Kim was Appellant’s supervisor, Mr. Kim did not evaluate Appellant’s performance.

In June of 2005, Mr. Kim was reassigned to the COO office, and Mr. Bryan Richardson was hired as a Senior Analyst in the School Stat Office. Mr. Richardson had previously worked with School Stat from December 2004 through April of 2005. At the time of Mr. Richardson’s hiring, the School Stat office took on increased importance and visibility when that office was tasked with providing information for the BCPSS special education litigation in federal court as well as its internal management tasks. Mr. Richardson became Appellant’s supervisor.

Over the course of the summer, Mr. Richardson became increasingly aware of Appellant’s poor job performance. Appellant failed to analyze and report data in a meaningful way and was late with some tasks. Mr. Richardson informally counseled Appellant and reminded him of his work expectations. Mr. Richardson also informed his own supervisor, Mr. Douglas Austin, that he was having problems with Appellant’s performance, and his efforts to help Appellant improve were not working.

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<sup>1</sup> The parties agree that the duties of the two jobs were the same - data collection, data analysis and preparation of statistical and narrative reports.

When Appellant's performance did not improve, on September 16, 2005, Mr. Richardson provided Appellant with a point by point list of problems he had found with Appellant's work. He also provided him with a list of expectations for the School Stat Analyst position and with notice that, if Appellant's work did not improve within thirty days, he would recommend that Appellant's employment be terminated.

On September 20, 2005, Appellant provided to Mr. Richardson a point by point rebuttal of Mr. Richardson's examples of poor performance. Appellant also questioned whether BCPSS should have hired Mr. Richardson and noted that he believed that Mr. Richardson turned against him because he had asked Mr. Kim for a step-up in pay.

After the meeting on September 16, 2005, Appellant's work did not improve and his attitude toward Mr. Richardson became worse. Due to his concerns, Mr. Richardson scheduled a meeting with Appellant, Mr. Austin and himself for October 7, 2005 at 4:30 p.m. to discuss Appellant's job performance. Appellant advised Mr. Richardson via e-mail on October 7, 2005, that he would be seeking a transfer from School Stat to another position in BCPSS.

Approximately two hours before the scheduled meeting, Appellant informed Mr. Richardson that he was unable to attend the meeting because he had to meet with his attorney at that time and that the meeting with his attorney had been scheduled for two weeks. He did not request that their meeting be rescheduled.

Appellant failed to appear for the meeting. However, Mr. Richardson saw Appellant in the CEO's suite at 4:38 p.m. that same day. Obviously, Appellant was not meeting with his attorney, his alleged reason for not attending the meeting. Mr. Austin agreed with Mr. Richardson that Appellant's conduct was insubordinate.

Based upon Appellant's failure to attend the meeting and his poor performance, Mr. Richardson recommended that Appellant's employment be terminated effective October 31, 2005. Thereafter, Appellant filed a timely appeal.

The local board appointed Ms. Elise Jude Mason, Esquire, to be the hearing examiner. The appeal hearing was held on March 1, 2006 and continued on March 6, 2006. In a twenty-seven page decision Ms. Mason recommended that the local board sustain the decision of the CEO to terminate Appellant's employment. The local board adopted the recommendation at its May 23, 2006 meeting. This appeal followed.

#### 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.01.05.05.



## ANALYSIS

The local board upheld the CEO's decision to terminate, which was based upon the Hearing Examiner's findings. The Hearing Examiner made nine specific findings of fact in support of her decision recommending that Appellant's termination for poor performance and insubordination should be sustained:

1. A report prepared by Respondent on "Violation Codes" was submitted to Bryan Richardson three weeks after it had been requested, and Richardson determined that the information contained in the report was not useful for the required purpose. Richardson also concluded that the data in the report was not understandable or meaningful.
2. Respondent failed to submit a report to Richardson on compensatory services, within the time requested, and he failed to provide Richardson with information in the status of the report, as Richardson had requested him to do.
3. Respondent failed to submit a data analysis report on special education discipline, within the timelines requested, and Respondent failed to understand the objectives of the report and the need to have certain data contained within the report.
4. Richardson received a report from Gary Thrift that Respondent interacted with him unprofessionally and lacked an understanding of the tasks Respondent was expected to perform in regard to creating a template for filling certain employee vacancies. Richardson worked with Thrift to complete the template.
5. Respondent failed to complete an assigned template on HR operation.
6. On September 7 and September 28, 2005, Respondent failed to load the School Stat presentation by the designated times previously established by Bryan Richardson.
7. Between August 8, 2005 through October 6, 2005, Bryan Richardson met with Respondent on a regular basis and offered him guidance and direction. Richardson also provided Respondent with examples of formats of work products that met Richardson's expectations, and these were examples of how Richardson wanted data formatted by Respondent.
8. Respondent questioned whether Richardson should have been hired and increasingly displayed hostility toward Richardson, after Richardson began to document Respondent's job performance.
9. On October 7, 2005, at 2:38 p.m., Respondent informed Bryan Richardson, his supervisor, that he would not attend a scheduled meeting at 4:30 p.m. with Richardson and Douglas Austin, Chief of Staff. Despite his decision to not attend the scheduled meeting with his superiors, Respondent was observed, by Richardson, in the suite of the CEO, at the time that the meeting was to have occurred.

(Hearing Examiner recommendation. (pp. 24-25)

The Hearing Examiner also found that Appellant was informed of his job duties, that his performance would be evaluated for thirty days and that if he did not meet performance expectations, his employment would be terminated. Finally, she found that it was incumbent on Appellant to either perform to his supervisor's expectations or seek a transfer, an option he failed to pursue. (Hearing Examiner recommendation. (p. 24, 26)

In addition, although Appellant had few problems with his previous supervisor, Mr. Kim, Mr. Kim testified at the hearing that Appellant required more supervision than a School State Analyst should require and did not perform at the level he expected. (Tr. 151-155). Mr. Kim also testified that Appellant performed less than satisfactorily on tasks that required independent work. (Tr. 149)


Appellant contends that BCPSS failed to establish a legitimate cause for his termination, that his termination was "retaliation against his consistent exposure of errors in public SchoolState documents by senior-level employees" and the allegations against him "are a pretext to overshadow their professional shortcomings and a strategic intent to replace Appellant with those that fit their looks and lifestyles - in stark violation of Title VII of the Civil Rights Act of 1964...". (Letter of Appeal to State Board, June 22, 2006) He also claims that he was subjected to a hostile work environment.

Under COMAR 13A.01.05.05D, the Appellant has the burden of proving that the local board's decision was arbitrary, unreasonable or illegal. Other than his own opinion as to the incompetency of his superiors, Appellant offered no proof to countermand that offered by BCPSS as to his inadequate work. And Appellant offered no evidence whatsoever that he was discriminated against in violation of Title VII of the Civil Rights Act.

In contrast, the record is replete with evidence of Appellant's poor performance. Both Mr. Richardson and Mr. Kim testified extensively as to Appellant's performance issues and presented evidence of Appellant's poor work product.

## CONCLUSION

Based upon the record in this proceeding and the lack of evidence produced by Appellant in support of his claims, we affirm the decision of the Baltimore City Board of School Commissioners terminating Appellant from his position as a School State Analyst.

  
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Vice President

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October 25, 2006

*David F. Tufaro*  
David F. Tufaro