

BARBARA BROCK

Appellant

v.

BALTIMORE CITY BOARD  
OF SCHOOL COMMISSIONERS

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-29

## OPINION

### INTRODUCTION

Appellant, a teacher with the Baltimore City Public School System (“BCPSS”), contests the City Board’s decision affirming the Chief Executive Officer’s (“CEO”) recommendation to terminate her for two consecutive years of unsatisfactory evaluations. The City Board’s decision was based on the recommendation of the local hearing examiner. This Board referred this case to the Office of Administrative Hearings (“OAH”) for review by an Administrative Law Judge (“ALJ”). The ALJ has issued a Proposed Decision recommending that the State Board affirm the City Board’s decision upholding Appellant’s termination. Appellant has filed exceptions to the ALJ’s Proposed Decision. The City Board has filed a response to those exceptions. The State Board heard oral argument on the exceptions on May 30, 2007.

### FACTUAL BACKGROUND

The Findings of Fact are set forth on pages 6 through 21 of the ALJ’s Proposed Decision. A brief summary is provided below:

Appellant has been employed as a teacher with BCPSS since 1972. On September 24, 2003, BCPSS assigned Appellant to Coldstream Park Elementary/Middle School (“Coldstream”) as the primary special education teacher of a self-contained class of students in grades one through three. Appellant had not taught special education students in a self-contained classroom since June of 1999 and was also not familiar with the Open Court<sup>1</sup> curriculum. Principal Williams assigned school staff to provide modeling and support for Appellant. (Findings of Fact 1, 2, 4, 7).

Appellant exhibited performance deficiencies during the 2003-2004 school year. Vice

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<sup>1</sup>Open Court is a BCPSS mandated language/arts curriculum for grades K-3 that has been in place since approximately the 1998/99 school year. It is a strategic program that is organized in an order where students are introduced to letters and letter sounds in a step by step series. (p. 6, n.6).

Principal Thomas formally observed Appellant on November 20, 2003, and issued a Formal Observation Report dated December 1, 2003, detailing areas in need of improvement in all four domains of the Performance Based Evaluation System (“PBES”).<sup>2</sup> The report recorded significant problems with Appellant’s lesson plans and classroom management. In Appellant’s Performance Review dated January 15, 2004, Principal Williams rated Appellant as unsatisfactory in the areas of Planning and Preparation and Instruction/Instructional Support and placed her on a Performance Improvement Plan (“PIP”). Appellant received support from school staff in addressing her problem areas. A staff member was also assigned to monitor Appellant’s performance and to provide her assistance with completing the tasks required in her PIP. (Findings of Fact 15, 16, 21, 22).

Appellant’s observations and evaluations continued throughout the school year. Appellant’s PIP was regularly reviewed, updated and continued. Despite support and assistance from school staff, over time Appellant’s formal and informal observations revealed that she had difficulty conveying lesson content from written plans and employing instructional strategies that had a positive impact on student learning.

On March 18, 2004, Principal Williams conducted a Formal Observation of Appellant’s lesson and issued a Formal Observation Report again detailing areas that needed improvement. Appellant responded to the Report, contending that the lesson was disjointed but ultimately came together in the end. She also asserted that she is bi-polar and planned to confer with her psychologist about adjusting her medication. On April 1, 2004, Appellant received an overall rating of unsatisfactory on her Annual Evaluation Report. She received unsatisfactory ratings in the specific areas of Learning Environment and Instruction/Instructional Support. Appellant did not appeal her Annual Evaluation Report. (Findings of Fact 30, 31, 34, 38).

On May 3, 2004, Dr. Bonnie Copeland, Chief Executive Officer of BCPSS notified Appellant that her teaching certificate was being reclassified from 1<sup>st</sup> class to 2<sup>nd</sup> class for the upcoming 2004-2005 school year. Dr. Copeland also advised that failure to demonstrate sufficient improvement could result in termination. (Finding of Fact 48).

Although Appellant only had 4 students in her class at the beginning of the 2004-2005 school year, her performance problems continued. Classroom observations revealed poor classroom management and problems with instruction, despite support and assistance by school staff in an effort to improve Appellant’s performance. In September, witnesses observed Appellant screaming at students, thus disrupting nearby classes. (Finding of Fact 51). In October, Appellant fell asleep in her classroom, thus allowing her students to fall asleep and miss dismissal. (Finding of Fact 53).

Annie McIntosh, BCPSS Inclusion Specialist for Special Education, wrote Gayle Amos,

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<sup>2</sup>The four domains are Planning and Preparation, Learning Environment, Instruction/Instructional Support, and Professional Responsibilities. (Finding of Fact 11).

BCPSS Special Education Student Support Officer, seeking support for Principal William's efforts to improve Appellant's performance. She also advised Ms. Brown of her concern for student safety in the Appellant's classroom citing Appellant's candor about her bi-polar disorder and episodes of crying and other inappropriate behavior in front of the students. (Finding of Fact 57).

On November 4, 2004, Linda C. Brown, BCPSS Curriculum and Instruction Office/Special Education Instructional Support, informally observed Appellant. Based on this observation, review of Appellant's students' IEPs, and discussions with Principal Williams and support staff, Ms. Brown concluded that students in Appellant's class would not benefit from their present instructional setting unless Appellant provided an orderly environment. Ms. Brown also noted that Appellant's students appeared to respond to other staff members in a positive manner. (Findings of Fact 62, 63).

On November 24, 2004, Principal Williams conducted a Formal Observation of Appellant's lesson, identified areas of improvement needed in all four domains and met with Appellant to discuss the Formal Observation Report. Appellant's PIP was updated and continued. By January 2005, there were only two students in Appellant's classroom. On January 14, 2005, Principal Williams issued Appellant's Performance Review Report rating Appellant as unsatisfactory in Instruction/Instructional Support. (Findings of Fact 66, 68, 69).

In March 2005, Principal Williams conducted a Formal Observation of Appellant's lesson and found areas needing improvement in all four domains. Appellant's PIP was continued. On March 24, 2005, Appellant received an overall rating of unsatisfactory on her Annual Evaluation Report. Appellant did not appeal her Annual Evaluation Report. (Findings of Fact 71, 72, 73).

On June 16, 2005, Bonnie Copeland issued a Statement of Charges for the Appellant's timely and immediate dismissal for two consecutive years of unsatisfactory evaluations. (Finding of Fact 74).

### ALJ'S PROPOSED DECISION<sup>3</sup>

After reviewing the entire record and hearing arguments from the parties, the ALJ concluded that Appellant's termination for incompetency was supported by a preponderance of the evidence. The ALJ noted that Appellant entered Coldstream as an experienced certified special education instructor with BCPSS for 34 years who held Bachelor and Master degrees with a concentration in mental retardation and the emotionally disturbed. After BCPSS's implementation of the Performance Based Evaluation System in October 2003, Administrators at Coldstream observed Appellant and rated her overall unsatisfactory for the 2003-04 and 2004-05 school years. Appellant was given notice of formal observations, was evaluated by different

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<sup>3</sup>The ALJ sets forth his analysis of the case in the Discussion section of the Proposed Decision which is set forth on pp. 21-39.

professionals and was provided assistance to raise her performance level. Appellant consistently demonstrated problems with classroom management and instruction. By March 2005, Appellant had failed to improve her performance and she was dismissed from her position.

### LEGAL BACKGROUND

Section 6-202 of the Education Article, Annotated Code of Maryland, provides as follows, in pertinent part:

- (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:
  - (I) Immorality;
  - (ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of § 5-704 of the Family Law Article;
  - (iii) Insubordination;
  - (iv) Incompetency; or
  - (v) Willful neglect of duty.
- (2) Before removing an individual, the county board shall send the individual a copy of the charges against him and give him an opportunity within 10 days to request a hearing.
- (3) If the individual requests a hearing within the 10-day period:
  - (I) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; and
  - (ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing.
- (4) The individual may appeal from the decision of the county board to the State Board.

### STANDARD OF REVIEW

Because this appeal involves the dismissal of a certificated employee pursuant to § 6-202 of the Education Article, the State Board exercises its independent judgment on the record before it in determining whether to sustain the dismissal. COMAR 13A.01.05.05(F)(1) and (2). The local board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05(F)(3).

The State Board referred this case to OAH for proposed findings of fact and conclusions of law by an ALJ.

## EXCEPTIONS TO THE ALJ'S PROPOSED DECISION

Appellant argues three exceptions to the ALJ's proposed decision. Those arguments include allegations that she has not been afforded due process; that the local board failed to provide her with accommodations under the American's with Disabilities Act ("ADA"); and that her attorney provided ineffective assistance of counsel. In addition, the Appellant requested a new hearing to address these issues.

None of the issues that Appellant presents in her exceptions were presented to the local board or to the ALJ. The State Board has consistently declined to address issues that have not been reviewed initially by local boards. *See Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997)(failure to challenge suspension before local board constituted a waiver on appeal); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997)(failure to raise issue of age discrimination below constituted a waiver on appeal). Appellant's failure to raise these matters before the local board or the ALJ results in a waiver of her right to raise these issues before the State Board.

Nonetheless, we turn to the merits of Appellant's arguments. Appellant's exception regarding due process lacks merit. The local board provided Appellant due process in accordance with Md. Education Code Ann. § 6-202. Notice of the charges were sent to Appellant with an opportunity for a local level hearing before an independent Hearing Examiner. Moreover, the Appellant was represented at the hearing by counsel. The hearing examiner recommended that the local board affirm the CEO's decision to dismiss the Appellant. The Appellant appealed the local board's decision and was afforded *de novo* review before an Administrative Law Judge. During the two-day hearing the Appellant was given the opportunity to present additional witness testimony and documentary evidence.

The Appellant also alleged in her exceptions that the local board failed to accommodate her "documented" Diabetes and Bi-Polar Disorders as required under the ADA. The parties stipulated, however, during the telephone Pre-hearing Conference with the ALJ that Appellant's medical condition was not the cause of her dismissal from employment with BCPSS. (Prehearing Report and Order, 10/3/06). Because the parties stipulated to this issue at the Pre-Hearing Conference, because Appellant failed to raise it before the local board, and because Appellant offered no new evidence at the hearing before the ALJ, we find that this exception is also without merit.

Lastly, Appellant argues that she received ineffective assistance of counsel from the attorney assigned to her by the Baltimore Teachers Union. As a matter of law, this is not an issue for the State Board. This is a matter that should be addressed as a grievance in another venue against her union and/or assigned counsel.

Appellant requests a new hearing to address her three exceptions. There is no statutory entitlement to a new hearing to address these issues or previously adjudicated matters. Therefore, a request for a new hearing is denied.

CONCLUSION

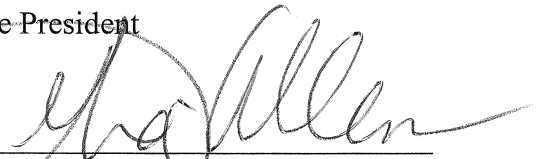
For all of the reasons stated, the proposed decision of the Administrative Law Judge is adopted as final and, thus, the decision of the local board is affirmed.



Edward L. Root  
President



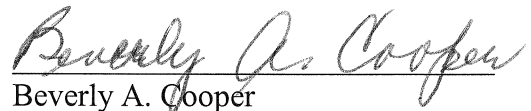
Dunbar Brooks  
Vice President




Lelia T. Allen



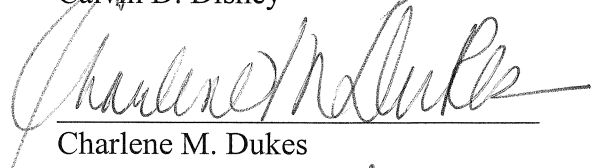
J. Henry Butta



Beverly A. Cooper



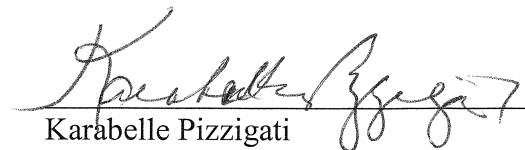
Calvin D. Disney



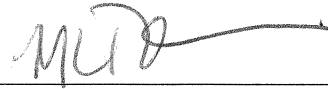
Charlene M. Dukes



Richard L. Goodall

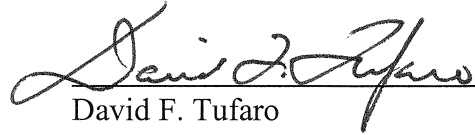


Karabelle Pizzigati



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Maria C. Torres-Queral



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David F. Tufaro

June 26, 2007

BARBARA BROCK,  
APPELLANT

v.

BALTIMORE CITY BOARD OF  
SCHOOL COMMISSIONERS

\* BEFORE THOMAS E. DEWBERRY,  
\* CHIEF ADMINISTRATIVE LAW JUDGE,  
\* MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH No.: MSDE-BE-01-06-33492

\* \* \* \* \*

**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 June 16, 2005, Barbara Brock ("Appellant"), a tenured teacher employed by the Baltimore City Public Schools ("BCPSS"), received notification from the Baltimore City Board of School Commissioners' ("School Board") Chief Executive Officer ("CEO") recommending dismissal for "two consecutive years of unsatisfactory evaluations." Appellant appealed the recommendation to the School Board and Edward J. Gutman, Esquire, a Hearing Examiner of the Board ("Hearing Examiner"), conducted a hearing on March 3, 2006, which concluded on March 15, 2006. Md. Code Ann., Educ. § 6-203 (2006). The Hearing Examiner recommended that the CEO's decision to dismiss the Appellant be affirmed. Appellant filed exceptions to the findings of fact, conclusions of law and recommendation of the Hearing Examiner. After reviewing the record compiled by the



Hearing Examiner, the Hearing Examiner's recommendation and Appellant's exceptions, the School Board voted to uphold the Hearing Examiner's recommendations and affirmed the CEO's recommendation to dismiss the Appellant for being incompetent. The Appellant appealed the School Board's order to the Maryland State Board of Education and the matter was scheduled before the Office of Administrative Hearings ("OAH"). Md. Code Ann., Educ. § 6-202(a)(4) (2006).

Following a telephonic prehearing conference on September 29, 2006, a de novo hearing was conducted on November 8 and 9, 2006, before Thomas E. Dewberry, Chief Administrative Law Judge ("ALJ"), at the offices of the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. Code of Maryland Regulations ("COMAR") 13A.01.05.07. Appellant was present and represented her own interests. Brian Williams, Associate Counsel, Office of Legal Counsel, BSPSS and Ronald Grove, Staff Counsel, BCPSS represented the Board.

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 (2004 & Supp. 2006); COMAR 13A.01.05.07; COMAR 28.02.01.

### ISSUE

The issue on appeal is whether the dismissal for incompetency imposed upon the Appellant by the School Board under Md. Ann. Code Ann., Educ. § 6-202(a)(iv) (2006) is supported by a preponderance of the evidence.

## SUMMARY OF THE EVIDENCE

### A. Exhibits

The parties agreed to the admission into this record of the exhibits entered before the Hearing Examiner (“hearing or record below”). Those include: Joint Exhibits 1 – 4; Board Exhibits 1 –30 and Respondent’s Exhibits 1 – 11.

The following exhibits were submitted by the School Board and admitted at the November 8 and 9, 2006 hearing:

- BCS A - Hearing Officer’s Report dated April 5, 2006
- BCS B - Performance – Based Evaluation Handbook
- BCS C - Transcripts of March 3 and 15, 2006 hearing before Hearing Examiner Gutman
- BCS D - Agreement between the Baltimore Teachers Union American Federation of Teachers, Local 340 AFL-CIO Baltimore City and the new Board of School Commissioners of Baltimore City (2003 – 2005)
  
- BCS #1- Formal Observation Report dated December 1, 2003
- BCS #2- Memorandum to Appellant from Tracey Thomas, Assistant Principal, dated September 24, 2004
- BCS #3- Memorandum to Elizabeth Williams, Principal, from Tracey Thomas dated October 6, 2004
- BCS #4- Performance Review Report dated January 14, 2004
- BCS #5- Cover memorandum to Appellant from Elizabeth Williams dated January 23, 2004
- BCS #6- Performance Improvement Plan dated January 15, 2004
- BCS #7- Performance Based Evaluation dated March 18, 2004
- BCS #8- Formal Observation Report dated March 10, 2004

- BCS #9- Annual Evaluation Report dated April 1, 2004
- BCS #10- Letter to Gayle Amos, Special Education Student Support Officer from Annie McIntosh, Educational Specialist, dated October 4, 2004
- BCS #11- Letter to Appellant from Elizabeth Williams dated April 13, 2004
- BCS #12- Performance Improvement Plan dated April 13, 2004
- BCS #13- Memorandum to Elizabeth Williams from Appellant dated April 13, 2004
- BCS #14- Letter from Bonnie Copeland, BCPSS Chief Executive Officer, to Appellant dated May 3, 2004
- BCS #15- Initial Planning Conference Form dated October 7, 2004
- BCS #16- Individual Development Plan dated October 7, 2004
- BCS #17- Performance Improvement Plan dated October 7, 2004
- BCS #18- Formal Observation Report dated October 21, 2004
- BCS #19- Pre-Observation Conference Form dated October 7, 2004
- BCS #20- Division of Curriculum and Instruction, School/Area Consultation/Technical Assistance Forms dated November 4 and November 11, 2004
- BCS #21- Formal Observation Report dated November 24, 2004
- BCS #22- Performance Improvement Plan dated November 24, 2004
- BCS #23- Performance Review Report dated January 14, 2005
- BCS #24- Formal Observation Report dated March 24, 2005
- BCS #25- Annual Evaluation Report dated March 24, 2005
- BCS #26- Memorandum to Board of School Commissioners from Bonnie Copeland dated June 16, 2005 (w/attachments)

The following exhibits were submitted by the Appellant and admitted at the

November 8 and 9, 2006 hearing:

- Brock Exhibit A - Daily Behavior Report
- Brock Exhibit B - April 13, 2005 report on student's behavior at 30 minute intervals.
- Brock Exhibit C - Behavior Description

B. Testimony

The School Board offered the testimony of Tracey Thomas<sup>1</sup>, Principal at Coldstream Park Elementary/Middle School (Coldstream) and Elizabeth Williams<sup>2</sup>, Area Academic Officer, BCPSS Area III Schools.

The Appellant testified on her own behalf and called the following witnesses: Doris Graham, Principal at Gilmore Elementary during the 1998 school year; Deborah McClure, Intervention Teacher at Coldstream; Herbert Cornish, Inclusion Teacher at Coldstream during the 2004/05 school year; Brenda Claiborne Williams<sup>3</sup>, retired teacher with BCPSS from 1972 until 2006; Marina Christ, Master Teacher/Instruction Support Teacher/Academic Coach<sup>4</sup> at Coldstream who was assigned to Appellant; and Edgar Chinn, Program Leader for emotionally disturbed students at John Ruhrah Elementary School and certified trainer in crisis intervention.

The parties also made oral arguments and relied on the record below. In the hearing below, the following witnesses testified in support of the CEO's decision to terminate the Appellant's employment: Tracey Thomas; Marina Christ; Elizabeth Williams; and Annie

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<sup>1</sup> Ms. Thomas was the Assistant Principal at Coldstream during the 2003/04 and 2004/05 school years.

<sup>2</sup> Ms. Williams was the Principal at Coldstream during the 2003/04 and 2004/05 school years.

<sup>3</sup> Ms. Brenda Williams was a teacher from 1972 – 1990; Master teacher/academic coach from 1990 to June 2006. Ms. Williams did not teach at Coldstream.

<sup>4</sup> This is a BCPSS teaching position which has been given several different titles over the years.

McIntosh<sup>5</sup>, Area Intervention School Improvement Coordinator. At the hearing below, the Appellant testified on her own behalf and offered the testimony of Michael Bowman Mitchell, Sr., member of the Baltimore City Council for 11 years and former Maryland State Senator.

### **FINDINGS OF FACT**

I find by a preponderance of the evidence the following facts:

1. The Appellant has been employed as a teacher by BCPSS since 1972.
2. On September 24, 2003, BCPSS assigned Appellant to Coldstream as the primary special education teacher of a self-contained class for students in grades one through three.
3. The job of a primary self-contained special education teacher is to instruct students who have Individualized Education Plans (“IEP”), to work toward the achievement of the goals outlined in the student’s IEP and to implement the curriculum that is mandated by the city and state.
4. Appellant had not taught special education in a self-contained classroom since June 1999. She advised Principal Williams that she was not familiar with the Open Court<sup>6</sup> curriculum and that she would need support.
5. Principal Williams assigned Marina Christ, Academic Coach, to assist Appellant.
6. Ms. Christ explained and reviewed the components of Open Court to Appellant at weekly team meetings with three other teachers and on an individual basis.

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<sup>5</sup> For the 2003/04 and 2004/05 school years, Ms. McIntosh was the Inclusion Specialist in the BCPSS Office of Student Learning Support.

<sup>6</sup> Open Court is a BCPSS mandated language/arts curriculum for grades K-3 that has been in place since approximately the 1998/99 school year. It is a strategic program that is organized in an order where students are introduced to letters and letter sounds in a step by step series.

7. Deborah McClure<sup>7</sup>, Intervention Teacher, was also assigned to assist the Appellant and model the appropriate instruction of the Open Court curriculum.
8. During the 2003/04 school year Appellant had no more than six students in her classroom.
9. An IEP must be prepared for each special education student. The IEP is a legal document and BCPSS is required to provide documentation demonstrating each special education student's progress toward achievement of goals to justify grades that are given.
10. In October 2003, BCPSS instituted the Performance Based Evaluation System ("PBES") to improve education for all BCPSS students. PBES was developed to hold all teacher level staff members accountable for increased student achievement.
11. PBES provides that each teacher be evaluated as either proficient, satisfactory or unsatisfactory on: Domain One - Planning and Preparation; Domain Two - The Learning Environment; Domain Three - Instruction/Instructional Support and Domain Four - Professional Responsibilities.
12. Under PBES, each evaluation must include at least two formal observations during the school year. A Performance Improvement Plan ("PIP") is required for each teacher who is rated unsatisfactory in any domain.
13. PBES requires that each teacher develop an Individual Development Plan, which describes the teacher's plan for continued professional growth and/or a remediation plan for areas of improvement.

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<sup>7</sup> Ms. McClure previously taught the self-contained special education class at Coldstream.

14. Vice Principal Thomas, a Qualified Observer<sup>8</sup> under PBES, held a Pre-Observation Conference with Appellant.
15. On November 20, 2003, Vice Principal Thomas conducted a Formal Observation of Appellant's lesson, issued a Formal Observation Report on December 1, 2003 detailing areas of improvement for the Appellant in all four domains and met with Appellant to discuss her Report.
16. Appellant's planned lessons had little structure and were implemented in a disorganized manner; the time allocations for the lessons were unrealistic for students with learning disabilities and included too many skills in one lesson; the modifications for students with special needs were not sufficiently indicated and there was no evidence that IEP goals were being addressed; all of the students, regardless of their functional levels, were receiving the same instruction/information; Appellant did not follow the Open Court curriculum; the students were cursing, hitting, kicking and throwing objects at one another; and the students' work folders contained vague documentation as to their progress toward achievement of goals contained in their IEPs.
17. Appellant responded to the Formal Observation Report advising that the janitor waxed the classroom floor the night before the observation and she was unable to place work and objectives on the board and had to use transparencies and copies. She indicated that she had allowed for breaks and movement throughout the lesson. However, at times the students would jump up and move around for no apparent reason. Appellant offered

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<sup>8</sup> A qualified observer is the principal, assistant principal, area officers or area staff who have gone through training to certify as qualified observers for classroom teaching.

that the students did not respect directions or orders. She acknowledged that she needed more directions with the Open Court format and pacing special education students.

18. Vice Principal Thomas continuously met with Appellant to discuss classroom management issues and methods to ensure that Appellant's students behaved properly.
19. The students in Appellant's classroom were loud and disruptive; the noise level disturbed other classrooms. Vice Principal Thomas, Ms. Christ and the teacher across the hall from Appellant's classroom repeatedly removed disruptive students from Appellant's class and gave them assignments that did not implement the student's IEP goals. Principal Williams, Vice Principal Thomas, Ms. McClure and Ms. Christ frequently entered Appellant's classroom to work with her students.
20. Ms. McClure was on maternity leave for a twelve-week period beginning January 6, 2004.
21. On January 15, 2004, Principal Williams prepared Appellant's Performance Review Report and rated Appellant unsatisfactory in the areas of Planning and Preparation and Instruction/Instructional Support. Several deficiencies were noted in that Appellant's learning activities were not always suitable to students' IEPs or instructional goals. The Appellant needed improvement with instructional techniques and modifications to meet the students' IEP needs. Appellant was placed on a PIP.
22. On January 22, 2004, Principal Williams met with Appellant and reviewed her PIP. The Appellant was to write and make available lesson plans that were clear, up-to-date and appropriate to the different instructional goals; devise plans that reflected knowledge of the varied learning styles, basic skills and special needs of her students; read articles from "*Teaching Styles & Strategies*;" employ successful instructional strategies



observed during her observation of successful teachers; check her students' comprehension during lessons and adjust teaching and/or plans for remedial action when necessary. To assist Appellant, Principal Williams was to provide Appellant with articles and release time to attend demonstration lessons on effective teaching techniques and strategies; and assign Ms. Christ to review Appellant's lesson plans weekly and make recommendations for alternative strategies. Ms. Christ was also assigned to monitor Appellant's lessons to ensure that instructional materials and resources were suitable to the instructional goals and Appellant was productively engaging students in meaningful learning at all times. Appellant's PIP was scheduled to be reviewed on March 26, 2004.

23. On January 23, 2004, Appellant received "*Teaching Styles and Strategies*," to provide her with techniques for meeting the diverse needs and learning styles of her students. A follow-up meeting with Principal Williams was scheduled for Friday, January 30 to discuss suggestions for improvement.
24. Ms. Christ worked with Appellant every day, during and after school, assisting with the development of Appellant's lesson plans, reviewing Appellant's lesson plans, recommending alternative strategies, ensuring that Appellant's lesson plans aligned with each student's IEP, providing Open Court instruction and assisting with student behavior.
25. Ms. Christ assisted Appellant with every task for which that she was responsible.
26. Appellant was easily frustrated with the students, would often cry and was unable to effectively implement lesson plans.

27. Although Appellant was not provided with release time to observe teachers in other classrooms following the development of her January 22 PIP, she had opportunities to observe Principal Williams, Vice Principal Thomas, Ms. Christ and Ms. McClure when they assisted Appellant in her classroom and modeled Open Court.
28. At Principal Williams's request, Annie McIntosh, BCPSS Inclusion Specialist for Special Education, conducted a Formal Observation of the Appellant's lesson. Within fifteen minutes of the observation the Appellant interrupted instruction on 11 different occasions to address inappropriate student behaviors. The skills identified in Appellant's lesson plan were not achieved. Appellant's areas of strength were her use of visual materials and verbal praise; her review of previously detailed lesson plans; and her knowledge of the students' IEP goals and skills. Appellant's weaknesses were reflected in recommendations that she needed to implement a concrete, concise and consistent classroom management plan, continuously instruct students to allow for little "down time", model sounds for students to ensure they were sounding letters and blends correctly; closely monitor students' activities to ensure accuracy of responses and directions and review lesson plans/activities to determine if adequate time is available for successful completion of all tasks.
29. Appellant's classroom management and instruction were of grave concern to Ms. McIntosh.
30. Principal Williams conducted a Formal Observation of the Appellant's lesson, issued a Formal Observation Report on March 18, 2004 and detailed areas of improvement in Planning and Preparation, Learning Environment and Instruction. Appellant's lesson plans included a logically sequenced set of appropriate learning activities and effective

assessment and closure activities; however, the activities failed to reflect the objective of the lesson. Appellant's classroom environment conveyed inconsistent expectations for student behaviors and achievement; several students were not productively engaged in learning; the lesson plan reflected activities to support the IEP goals for the students but Appellant did not adequately address them in the delivery of the lesson. Principal Williams recommended that Appellant monitor classroom behavior and take necessary measures to return students to task when they deviate, incorporate a greater array of techniques and material into her teaching style and make certain that she clearly identified and articulated the specific behaviors expected of her students before, during and after completion of tasks.

31. Appellant responded in writing on the Formal Observation Report that Principal Williams observed a disjointed lesson that fell apart in the middle but came together in the end, that she is bi-polar and planned to confer with her psychologist to see if her medication should be adjusted and indicated that her sugar was 345 that day.
32. Appellant continued to work with Ms. Christ, with a focus on the area of Planning, and showed improvement in her ability to write lesson plans that were clear and reflected activities that supported the IEP goals of her students.
33. Formal and informal observations conducted by Principal Williams and Vice Principal Thomas revealed that the Appellant's lesson plans were clear, up-to-date and in conformance with the approved format. However, the Appellant continued to have difficulty demonstrating proficiency in conveying lesson content from written plans and employing instructional strategies that had a positive impact on student learning. On March 26, 2004, Appellant's PIP was reviewed, updated and continued.

34. On April 1, 2004, Appellant received an overall rating of unsatisfactory (48 points) on her Annual Evaluation Report. She was rated unsatisfactory in Learning Environment because her instructional goals and activities and interactions in the classroom conveyed only modest expectations for student achievement and because Appellant inconsistently implemented management procedures. She was also rated unsatisfactory in Instruction/Instructional Support because her instruction did not always reflect planned activities and only contained some modifications that addressed the instructional needs of individual students.
35. Appellant was rated satisfactory in Planning & Preparation.
36. Appellant exhibited a willingness to apply strategies and techniques as suggested in her PIP and in observations and conferences with her academic coach and administrators. However, she was not providing her students with an instructional program that consistently conveyed high expectations. Appellant's representation of content was inappropriate and unclear and some activities and assignments were inappropriate for students in terms of their Individual Development Plans ("IDP"). When Appellant's students were having difficulty learning, Appellant would either give up or blame the students or the environment for the students' lack of success. No standard of conduct were apparent or students were confused as to what the standards were. Appellant was frequently unaware of what her students were doing and allowed an atmosphere to exist that was a detriment to the learning process. During the 2003/04 school year, the student/teacher ratio for Appellant's class fluctuated between 4:1 and 6:1. Principal Williams recommended that Appellant's teaching certificate be re-classified as 2<sup>nd</sup> class for the upcoming 2004/05 school year.

37. Appellant commented in writing on her Annual Evaluation that she had a mixture of students that were very diverse on an emotional level and that, in the past, she had the daily benefit of an aide and an outside agency. She indicated that it had been a transition year for her because she moved from Resource, to Level Five, to her present position of self-contained. She added that she would work to improve and needed additional resources.
38. Appellant did not appeal her Annual Evaluation Report.
39. In April 2004, Appellant was released to observe other teachers (Ms. Johnson and Ms. Turner) who displayed good classroom management skills and instructional techniques.
40. Appellant found the observation of Ms. Johnson to be beneficial.
41. On April 13, 2004, Appellant's PIP was updated and continued. Appellant commented that she had established rules and consequences with her students that had been posted and revisited in different ways. Appellant developed a system of rewards and consequences that she planned to implement during the fourth quarter.
42. On April 13, 2004 Appellant submitted a list of Behavior Modification Techniques and strategies that she had implemented to Principal Williams.
43. On April 13, 2004, Appellant compiled a list of disruptive and inappropriate behaviors that each of her students demonstrated and gave the list to Principal Williams, Vice Principal Thomas, the school psychologist, Dr. McCullough, and the school social worker in an effort to gain their assistance in developing different strategies for classroom management. Appellant advised that she needed more support and follow-up by the Administration at Coldstream.

44. In April 2004, Principal Williams and Appellant sent a letter to the parents of the students in Appellant's class that discussed the posted Rules and Consequences and the students' daily routine. Parents received two copies of the Rules and Consequences.
45. Appellant posted the Rules and Consequences in her classroom, in the area where the students worked on math.
46. Ms. Christ continued to work daily with Appellant.
47. Ms. McClure returned from maternity leave and worked with Appellant.
48. On May 3, 2004, Bonnie S. Copeland, Ph.D., Chief Executive Officer, BCPSS, notified Appellant that her teacher's certificate was reclassified from 1<sup>st</sup> class to 2<sup>nd</sup> class and that failure to demonstrate sufficient improvement could result in termination.
49. Appellant's PIP was updated, reviewed and continued on June 10, 2004. Appellant would receive continued support in the fall to assist her with demonstrating effective classroom management skills; greater emphasis would be placed on the Appellant's knowledge of the content of her students' IEPs; and Appellant would continue to work with Ms. Christ to plan lessons that addressed the students' individual differences.
50. Appellant had four students in her classroom at the beginning of the 2004/05 school year.
51. On September 29, 2004, Appellant was screaming at students and disrupted the classes in the hallway surrounding her classroom. Vice Principal Thomas entered the classroom, witnessed Appellant screaming at a student and found that a parent was also in the classroom.

52. Vice Principal Thomas issued a memorandum to Appellant memorializing the incident. Appellant signed the memorandum and provided a handwritten note that she had bipolar disorder, that her levels were unbalanced and that she was under a doctor's care.
53. On October 6, 2004, Appellant's students were sleeping on the floor and were not dismissed until 3:05 p.m., which caused problems for siblings and parents waiting for the students as well as safety concerns because crossing guards were off-duty. After an investigation, it was determined that Appellant had fallen asleep.
54. On October 7, 2004, Appellant prepared an Individual Development Plan ("Plan") indicating that her goals were to become computer literate and integrate technology across the curriculum and to gain professional knowledge regarding effective strategies and instructional techniques for mathematics. Appellant's Plan did not address a remediation of the deficiencies noted in her unsatisfactory Annual Evaluation and PIP from the previous school year. However, Appellant's PIP was continued and updated on October 7, 2004.
55. On September 30, 2004, Annie McIntosh conducted a Formal Observation of Appellant's lesson and observed poor classroom management and instruction; a classroom environment that did not reflect order and effective learning; a vocabulary activity that was difficult and confusing; a questionable content knowledge of Open Court; and a failure to post Open Court alphabet/sound cards in the classroom. Ms. McIntosh issued a Formal Observation Report on October 21, 2004.
56. During the September 30 lesson, Appellant reinforced previously taught skills and classroom rules and procedures. She also used visualization strategy and had a formatted and detailed Lesson Plan.

57. On October 4, 2004, Ms. McIntosh wrote to Gayle Amos, BCPSS Special Education Student Support Officer, seeking support for Principal Williams's efforts to improve Appellant's performance. She advised Ms. Brown that Appellant had four students in a self-contained setting that had been placed in dangerous situations and that student safety in Appellant's class was a grave concern. Ms. McIntosh stated that Appellant shared openly of her bi-polar disorder and exhibited episodes of crying and other inappropriate behaviors in front of students.
58. On October 7, 2004, Appellant's PIP was updated and continued for Learning Environment and Instruction/Instructional Support. To improve, Appellant was to define and articulate classroom behavioral standards; post rules so that they could be easily reviewed; develop a system of rewards and penalties; provide instructional goals and activities that align with student IEPs; utilize hands-on instruction, technology, learning centers, and individualization as teaching methods to enhance instruction; and check for comprehension during the lesson and adjust teaching and plan for remedial action when necessary.
59. To assist Appellant, Administrators were to provide references and release time to attend demonstration lessons on good management skills and effective instructional techniques; assist with devising an effective system for consistency in enforcing classroom rules and standards; review lesson plans and make recommendations for alternative strategies; monitor lessons to ensure that instructional materials and resources were suitable to the instructional goals; and productively engage students in meaningful learning at all times.
60. Appellant submitted a list of Behavior Modification Techniques that she used in the 2003/04 school year and advised that she would continue with these strategies.



61. Appellant employed various behavior management techniques. A Behavior Management Plan was implemented so that students received rewards from parents and Vice Principal Thomas for a week of good behavior and students were given feedback at 30 minute intervals regarding their behavior or received happy or sad faces for daily feedback.
62. On November 4, 2004, at the request of Principal Williams, Linda C. Brown, BCPSS Curriculum & Instruction (C & I) Office/Special Education Instructional Support, visited Coldstream to informally observe Appellant. The Appellant was assisted by a support teacher and was unable to engage her students because of the disruptive behavior of one student. Ms. Brown removed the disruptive student, returned to Appellant's classroom and witnessed continued chaos and students who were not engaged in the learning process.
63. Based upon Ms. Brown's observation, a review of Appellant's students' IEPs and discussions with Principal Williams and other support staff at Coldstream, Ms. Brown concluded that the students in Appellant's class would not fully benefit from their present instructional setting unless Appellant provided them with an orderly environment. Ms. Brown noted that Appellant's students appeared to respond to other staff members in a positive manner.
64. Prior to November 11, 2004, one of the four students in Appellant's classroom transferred to another BCPSS school. The Appellant was unable to provide adequate documentation of that student's functioning level and an educational assessment had to be ordered to determine the student's current academic levels.
65. On November 11, 2004, Damon T. West, C & I Office, Special Education Instructional

Support, and Edward Snowden, Program Support Teacher at BCPSS #228, attempted to informally observe a lesson conducted by Appellant but were unable to do so due to complications with hallway transitions to lunch, which took approximately 25 minutes, and from lunch, which took an additional 20 minutes. They did, however, note problems with the classroom set-up with regard to Open Court, lack of learning stations, and no designated "time-out" areas.

66. Principal Williams conducted a Formal Observation of Appellant's lesson, identified areas of improvement needed in all four domains and met with Appellant to discuss the Formal Observation Report on November 24, 2004. The Appellant's lesson plan included a clear strategy to focus student attention, a logically sequenced set of learning activities and effective assessment and closure activities, however, the language, concepts and materials used were not adequate in addressing IEP skills or helping the students understand the lesson. Appellant's students were not productively engaged in learning. Appellant's lesson plan reflected activities that supported student IEPs but she failed to address them adequately. The Appellant did not know if the lesson was effective, achieved its goals or she misjudged the success of the lesson.

67. On November 24, 2004, Appellant's PIP was updated and continued. Appellant had applied suggested strategies, read articles, posted rules and consequences and compiled the IEPs of her three students so that she could review them at a glance. Appellant's lessons, however, did not always address the students' IEPs nor did the Appellant establish an environment that was orderly and productive.

68. As of January 14, 2005, there were two students in Appellant's classroom.

69. Appellant showed improvement in the areas of planning and classroom management.

70. On January 14, 2005, Principal Williams issued Appellant's Performance Review Report, rated Appellant unsatisfactory in Instruction/Instructional Support and satisfactory in the remaining three domains. Appellant's PIP was not continued at that time.
71. Principal Williams conducted a Formal Observation of Appellant's lesson, found areas of improvement needed in all four domains and met with Appellant to discuss the Formal Observation Report on March 24, 2005. Appellant's lesson plan included a clear strategy to focus student attention, a logically sequenced set of learning activities and effective assessment and closure activities; however, the language concepts and materials were not adequate in addressing IEP skills or helping students understand the lesson. Explanations and demonstrations also needed to be improved upon. Appellant's classroom environment conveyed inconsistent expectations for student behaviors and achievement. Appellant called on and assisted one student more than the other and both of her students engaged in off-task and disruptive behavior and failed to complete the assignment. Appellant's lesson plan reflected activities to support the two students' IEP goals but Appellant failed to address them adequately in the delivery of her lesson. Appellant continued to not know if a lesson was effective or achieved its goals. Appellant's PIP was continued at that time.
72. On March 24, 2005, Appellant received an overall rating of unsatisfactory on her Annual Evaluation Report. Appellant was rated proficient in Planning and Preparation, satisfactory in Professional Responsibilities and unsatisfactory in Learning Environment and Instruction/Instructional Support.
73. Appellant did not appeal her Annual Evaluation Report.

74. On June 16, 2005, Bonnie Copeland issued a Statement of Charges for the Appellant's timely and immediate dismissal for two consecutive years of unsatisfactory evaluations.
75. Appellant attended a mandatory system-wide Open Court training in June 2005.
76. Appellant attended crisis intervention training in 2006.

## DISCUSSION<sup>9</sup>

### *I. Applicable Law*

The applicable law provides that a teacher may be suspended or dismissed, for cause, by a local board on the recommendation of the local superintendent, and that the teacher has a right to a hearing on such a dismissal or suspension. Md. Code Ann., Educ. § 6-202(a) (2006) reads, in pertinent part, as follows:

(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:

- (i) Immorality;
- (ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of § 5-704 of the Family Law Article;
- (iii) Insubordination;
- (iv) Incompetency; or
- (v) Willful neglect of duty.

(2) Before removing an individual, the county board shall send the individual a copy of the charges against him and give him an opportunity within 10 days to request a hearing.

(3) If the individual requests a hearing within the 10-day period:

- (i) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; and
- (ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing.

(4) The individual may appeal from the decision of the county board to the State Board.

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<sup>9</sup> The Discussion ("Conclusions of Law and Recommendation") from the Hearing Examiner's decision was adopted and incorporated into this decision.

The standard of review in an appeal of a teacher dismissal case to the State Board is prescribed by COMAR 13A.01.05.05. In pertinent part, COMAR 13A.01.05.05F provides:

F. Certified Employee Suspension or Dismissal pursuant to Education Article, §6-202, Annotated Code of Maryland.

- (1) The standard of review for certificated employee suspension and dismissal actions shall be de novo as defined in §F(2) of this regulation.
- (2) The State Board shall exercise its independent judgment on the record before it in determining whether to sustain the suspension or dismissal of a certificated employee.
- (3) The local board has the burden of proof by a preponderance of evidence.
- (4) The State Board, in its discretion, may modify a penalty.

Pursuant to the COMAR section cited above, I have undertaken an extensive review of the evidence presented and the decisions rendered in this matter from all levels. Also, from the standpoint of the credibility of the witnesses who testified before the Hearing Examiner, I must give considerable deference to his findings. See, *Anderson v. Dep't of Public Safety & Corr. Servs.*, 330 Md. 187, 623 A.2d 198 (1993). I have also allowed additional testimony and documentary evidence to be introduced in addition to repetitious testimony in accordance with COMAR 13A.01.05.07C(1)&(2):

C. Additional Testimony.

- (1) Additional testimony or documentary evidence may be introduced by either party but evidence that is unduly repetitious of that already contained in the record may be excluded by an administrative law judge.
- (2) Notwithstanding C(1) of this regulation, the administrative law judge may permit repetitious testimony if credibility is an issue.

## II. *Appellant's Background*

Appellant was employed with BCPSS as a teacher for 34 years. She holds Bachelor and Master Degrees from Coppin State College. She is also certified in reading. Prior to her assignment to Coldstream, Appellant had not taught in a special education setting since 1998 when she taught Direct Instruction at Gilmor Elementary School

("Gilmor"). Appellant received regular Direct Instruction training at that time. The Appellant had not been employed as a primary special education self-contained teacher since 1974.

At the beginning of the 2003/04 school year Appellant was instructed to report to Thomas Jefferson Elementary School ("Thomas Jefferson"). Upon her arrival, the principal, Ms. Lang, instructed her to report to North Avenue, BCPSS Headquarters; a specialist at North Avenue sent Appellant back to Thomas Jefferson and Ms. Lang again had her return to North Avenue. The specialist at North Avenue contacted Ms. Lang and advised her that Appellant was to stay at Thomas Jefferson, which she did for approximately one week. Ms. Lang then advised Appellant that she had received an e-mail and that Appellant was to report to Lillie May Jackson, a level five school. The Principal at Lillie May Jackson interviewed Appellant and advised her that he was not certain why she was there and that he had not sent or received an e-mail. Appellant told the principal at Lillie May Jackson that she was being bounced around and he agreed that he would try to assist her in obtaining a position. After several weeks and through the assistance of the principal at Lillie May, Appellant contacted Ms. Williams, the Principal at Coldstream and was assigned the position of primary special education teacher of a self-contained class for grades one through three which consisted of approximately six students.

### *III. BCPSS Performance Based Evaluation System*

In the instant case, the State Board seeks to dismiss the Appellant from her employment with the BCPSS on the grounds of incompetency. The Board argued that the dismissal of the Appellant should be upheld. The Board referred to the PBES that was

adopted by BCPSS in October 2003 as “a vital part of the commitment to improving education for all BCPSS students.” The PBES provides the following:

The requirements of the “No Child Left Behind” legislation support the system’s demand for highly qualified teachers and effective teaching to increase student achievement. This performance-based evaluation system holds all teacher level staff members accountable for increased student achievement. The performance-based evaluation system is based upon the proposition that consideration of student outcomes must be a meaningful part of the evaluation process. It is also based upon the proposition that continued teacher development is important and that all teachers must be provided effective means to help improve their performance.

The Guidelines for PBES provide, in pertinent part:

3. All teachers, regardless of status, must be evaluated annually.
5. Each teacher shall be evaluated on the following domains:
  - Domain One:** Planning and Preparation
  - Domain Two:** The Learning Environment
  - Domain Three:** Instruction/Instructional Support
  - Domain Four:** Professional Responsibilities
6. Each domain shall be assessed using the holistic scoring rubrics included in the PBES Handbook.<sup>10</sup>
7. Each evaluation shall include at least two formal observations during the school year.
8. Each teacher shall be evaluated on Domains One through Four using the following levels of performance: proficient, satisfactory and unsatisfactory.<sup>11</sup>
9. Each teacher rated unsatisfactory shall include at least one observation by an individual other than the immediate supervisor.
10. Each teacher rated unsatisfactory in any domain is required to initiate a Performance Improvement Plan (PIP) which must be collaboratively developed with a qualified observer.
11. Each teacher, regardless of seniority, tenure, or position, is required to develop and implement a state mandated Individual Development (IDP) which describes the teacher’s plan for continued professional growth and/or a remediation plan for areas of improvement.

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<sup>10</sup> Each domain is 25% of the evaluation and each rating level has a set point value with no deviation in the assignment of points for a domain.

<sup>11</sup> Proficient – 25 points; Satisfactory – 18 points; Unsatisfactory – 6 points.

As previously stated, Appellant was assigned to Coldstream on September 24, 2003 as the primary self-contained special education teacher for students in grades one through three. Appellant advised Principal Williams that she had not taught in a special education setting since June 1999, that she was not familiar with the Open Court curriculum and that she would need assistance. Principal Williams assigned Ms. McClure and Ms. Christ to assist Appellant.

In accordance with PBES, Vice Principal Thomas, a Qualified Observer, conducted a Formal Observation of Appellant's lesson and issued a Formal Observation Report on December 1, 2003, which detailed areas of improvement for Appellant in all four PBES domains. Vice Principal Thomas met with Appellant to discuss her Report. Under Planning and Preparation, Appellant's planned lessons had little structure and her implementation was disorganized. There were too many different skills in one lesson, especially for students with learning disabilities. The time allocations were unrealistic for the students in Appellant's class, particularly the blending/phonics portion, which lasted 55 minutes. It was not evident that each student's IEP was being addressed and all of the students, regardless of functional levels, received the instruction /information in the same manner. Some of the students participated while others were off-task and disruptive. Appellant also had difficulty using the overhead projector and her students would begin talking when she attempted to use the projector. The Appellant displayed a weakness in content knowledge for Open Court. Under Learning Environment, Appellant did not respond to student misbehaviors with even results. The classroom climate did not reflect an atmosphere of respect among the students in that they were cursing, yelling, kicking and throwing objects at one another.



Under Instruction, Appellant's problems with planning negatively affected the implementation of the lesson. Under Professional Responsibilities, the students' work folders contained only vague documentation regarding the students' progress toward achievement goals.

On January 15, 2004, Principal Williams rated Appellant unsatisfactory in Planning and Preparation and Instruction/Instructional Support and identified the following areas for improvement:

- Teacher Planning and Preparation – Learning activities are not always suitable to students' IEPs or instructional goals.
- Instruction/Instructional Support – Improvement is needed with instructional techniques and modifications to meet IEP needs of students.
- The Learning Environment – Appellant was rated satisfactory; however, Principal Williams commented that Appellant's discipline techniques were inconsistent and that she needed to work harder to maintain an atmosphere that was suitable for learning.

Principal Williams and Appellant developed a PIP on January 22, 2004 that targeted the areas of improvement, included an action plan and activities to be completed. Principal Williams met with Appellant and discussed "*Teaching Styles and Strategies*" and Ms. Christ continued to work with Appellant on developing lesson plans, ensuring that her plans aligned with the students' IEPs, Open Court instruction and student behavior. The Appellant was not given release time to observe other teachers following the development of the January 22 PIP.

Annie McIntosh conducted a Formal Observation of Appellant's lesson and issued her Report on March 10, 2004. Ms. McIntosh noted the following areas of improvement:

- A concrete, concise, and consistent classroom management plan should be implemented immediately
- Continuous instruction should take place allowing for little "down time" for students

- Teacher modeling should occur to ensure students are sounding letters and blends correctly
- Teacher observation of students' activity should be closely monitored to ensure accuracy of responses and directions
- Lesson plans/activities should be reviewed to determine if adequate time is available for successful completion of tasks

Ms. McIntosh commented that "Classroom management and instruction are of grave concern" (emphasis in original) and that Appellant interrupted instruction eleven times in a matter of 15 minutes to address inappropriate student behavior.

Principal Williams conducted a Formal Observation and issued her Report on March 18, 2004 and identified areas for improvement in Planning and Preparation, Learning Environment and Instruction. Ms. Christ continued to work with Appellant and focused on planning. Appellant improved in that area, however, she was unable to convey the content of the lesson plan to the students and could not control her students. Consequently, Appellant's PIP was updated and continued on March 26, 2004.

Appellant received her Annual Evaluation Report on April 1, 2004 and was rated overall unsatisfactory. I note that she improved in the domain of Planning and was rated satisfactory. However, she was rated unsatisfactory in Learning Environment and Instruction/Instructional Support. Principal Williams advised her that she would be recommending that her teaching certificate be reclassified to 2<sup>nd</sup> class for the 2004/05 school year. Appellant received notification on May 3, 2004 from the BCPSS' Chief Executive Officer that her certificate was being reclassified and that failure to demonstrate sufficient improvement could result in termination. Appellant did not appeal her Annual Evaluation Report.

Appellant willingly worked to develop different strategies and techniques to improve and observed two teachers in April 2004. She and Principal Williams developed a letter

that was sent to her students' parents discussing student behavior and including a list of the classroom Rules and Consequences. Appellant developed Behavior Modification Techniques and compiled a list of behaviors that her students demonstrated so that the principal, vice principal and school psychologist could assist her in developing different strategies and techniques. On April 13 and June 10, 2004 Appellant's PIP was updated and continued.

On October 7, 2004 Appellant prepared an Individual Development Plan in accordance with PBES and listed computer literacy and techniques for mathematics instruction as her goals for the upcoming school year. Her Individual Development Plan did not contain a remediation plan for the areas of improvement listed on her April 1, 2004 Annual Evaluation or her latest, June 10, 2004 PIP. I note, however, that Appellant and Principal Williams met on that same day and updated and continued Appellant's PIP.

A Formal Observation of Appellant's lesson was conducted by Ms. McIntosh on September 30, 2004 in which she observed poor classroom management and instruction; a classroom environment that did not reflect maintenance, order and effective learning; a questionable content of Open Court and a failure to post the Open Court alphabet/sounds cards in the classroom. Ms. McIntosh issued her report on October 21, 2004 and met with Appellant.

On November 4, 2004, Linda Brown, BCPSS C&I Instruction, informally observed Appellant's lesson. The Appellant was assisted by a support teacher and was unable to engage her four students because of the disruptive behavior of one student. Ms. Brown removed the disruptive student and returned to the classroom only to find that the classroom

remained chaotic and the remaining three students were still not engaged in the learning process.

On January 14, 2005 Appellant received her Performance Review Report, was rated satisfactory in Planning, Learning Environment and Professional Responsibility and received an unsatisfactory in Instruction/Instructional Support. Her PIP was not continued at that time.

On March 24, 2005 Principal Williams met with Appellant and reviewed her Formal Observation Report. Appellant's lesson plan included all of the necessary elements and reflected activities to support her two students' IEP goals; however, she failed to address them adequately in the delivery of her lesson. In addition, both of the students engaged in disruptive behavior and failed to complete the assignment. Appellant received an overall unsatisfactory rating on her March 24, 2005 Annual Evaluation Report; she had improved in Planning to the point that she was rated proficient; and she was rated satisfactory in Professional Responsibilities and unsatisfactory in Learning Environment and Instruction/Instructional Support.

Based upon the above review, it is clear the BCPSS conducted all of Appellant's formal observations and evaluations in accordance with PBES. The evidence clearly demonstrates that BCPSS provided Appellant with Formal Observation Reports, Mid-year and Annual Evaluations and PIPs that were detailed regarding the areas that she needed to improve upon and Action Plans for her expected improvement.

#### *IV. Assistance Provided to Appellant by Coldstream*

At the hearing below, Principal Williams testified that, upon her employment at Coldstream, Appellant advised her that she had not had a class for some time and was not

sure about Open Court. Principal Williams testified that she said to Appellant, "Tell me that again because Open Court has been around since 1997 or 1998 so we have been using that series in our district for quite some time." Principal Williams testified that BCPSS paid stipends to teachers and that it was mandatory that all teachers received the training; therefore, she considered that if someone taught in the district, they must have had Open Court training by 2003. She recalled that the training ran all summer and in August principals were required to send a list of teachers who had not received the training and it was again given within the school time. Principal Williams stated that she assigned Ms. McClure to demonstrate the Open Court reading block for Appellant since she was the special educator who had worked with Appellant's students the previous year. Ms. McClure was working at Coldstream on a part-time basis. Principal Williams thought this would be the most advantageous for Appellant because she could observe Ms. McClure teaching her own students. (Tr. P 143-44- 3/3/06) Principal Williams testified that she also assigned Ms. Christ from the beginning to assist Appellant.

At the November 8, 2006 hearing, in response to Appellant's questioning, Principal Williams testified:

I said I provided the support for you with Open Court through Mrs. McClure in her going through the components of the lesson, you watching her demonstrate using your children. And with Ms. Christ on an on-going basis, talking about lesson planning, demonstrating for you modeling, helping you with blending, showing you the components of the Open Court. Yes, that's what I'm saying.

(Tr. Pg. 169 – 11/8/06)

In response to Principal Williams' testimony, Appellant asked if it was the old Open Court noting that there was now a "new and improved Open Court." Principal

Williams responded that the Appellant received training on the Open Court that was in place when she was teaching at Coldstream.

At the hearing below, Principal Williams testified that at the beginning of every school year there is Open Court training for teachers, scheduled training dates for teachers' that is grade level specific and there is also a day for special educators where they cross the different grades. She testified, "Any time a training opportunity became available, where teachers had to sign and fax in, that was put in every teacher's mailbox, and every teacher could fill it out, send it back to the office. It was faxed in. They got a confirmation." (Tr. pg. 333/34 - 3/15/06) Principal Williams testified that according to the Baltimore Teachers Union and the New Board of School Commissioners of Baltimore City Contract she could not direct Appellant to take certain workshops. (Tr. Pg. 335 – 3/15/06)

At the November 8, 2006 hearing Appellant offered the testimony of Brenda Claiborne Williams, employed as a teacher with BCPSS for 34 years (1972 – 1990). Ms. Williams testified that she is a trainer of trainers and has worked with staff developers and given demonstrations on how to ensure that a teacher's PIP is executed properly and how to work effectively with teachers. She testified that in 1991 she assisted the principal of her school in bringing the school to Blue Ribbon status.

Ms. Williams testified that Appellant contacted her in December 2004 regarding Open Court training and her PIP. Ms. Williams testified that she offered to speak to Appellant's principal to see if Ms. Williams and her Instructional Support Teacher ("IST") could come to Coldstream and meet with Appellant and Appellant's IST. Ms.

Williams testified that her principal approved her request to assist Appellant; however, Appellant advised her that Principal Williams had denied her request.

At the November 8, 2006 hearing Appellant offered the testimony of Doris Graham, Principal at Gilmor in 1998. Ms. Graham testified that her school used direct instruction, the SRA McGraw-Hill program, in 1998 and that Appellant received regular training in direct instruction. On cross-examination, Ms. Graham testified that McGraw and Open Court are similar programs but are not the same program.

Appellant also offered the testimony of Ms. McClure who testified that she previously taught the self-contained special education classroom and that she went out on maternity leave and returned to Coldstream part-time as the Intervention Teacher. Upon questioning by Appellant regarding Ms. McClure's modeling of Open Court for her during the year that she went out on maternity leave, Ms. McClure testified, "I was never pregnant when you were in the building." Ms. McClure rather emphatically stated that she did not have a child and return to Coldstream while Appellant was in the building. However, upon further questioning, it was determined that Ms. McClure was pregnant in October 2003, when Appellant started at Coldstream, and went out on maternity leave for a twelve-week period beginning on January 6, 2004.

It was obvious from Appellant's questioning of Ms. McClure that Appellant was attempting to reveal that Ms. McClure was out sick on a day that she was scheduled to model Open Court for Appellant. However, it was not clear through Appellant's questioning of Ms. McClure, or through Appellant's testimony, whether the demonstration was scheduled prior to January 6, 2004, during the time Ms. McClure was

on maternity leave for twelve weeks following Appellant's January 2004 evaluation or after Ms. McClure returned from maternity leave in April 2004.

However, Ms. McClure provided the following testimony:

See, I'm getting confused over my pregnancies and when I'm training you, so I don't see the relevance there. But anyway, when I was assigned to you by Ms. Williams, I remember the day that I was told by Ms. Williams in her office that I needed to train you in Open Court. I said, 'No problem.' I brought my materials. I can tell you the room that we were in. You and I were in Mrs. Francis's old room. And we were sitting at a long table, and you said to me at the very beginning, 'I had Open Court at my other school. You don't need to train me in this.' And that is – and that was the beginning of our relationship. I remember that distinctly, us having that conversation.

But whenever that was and then from then on, you were having problems with the Open Court, so then, yes, I was put into the room. If you remember, you did not have your sound spelling cards up. I put them up. I put them up and told you when to turn them. I told you a lot of things about the Open Court.

(Tr. Pgs. 182-83 – 11/8/06)

Upon Appellant's further questioning, Ms. McClure reiterated that, to the best of her recollection, she would have been asked to teach the Appellant Open Court when she first entered the building. Ms. McClure testified that when she came to Appellant's classroom with the Open Court materials, Appellant stated: "You don't need to do this. You don't need to do this. I know this. I did this in my previous school." She testified that she had brought everything into Appellant's classroom to show her exactly how Open Court should be done, the "teaching tool box," "everything" but that she did not go through the entire thing at that time. Appellant's response to Ms. McClure testimony was, "It was – okay. I'll leave that alone right now. You went out on maternity and you returned in April, right, correct? March. April." (Tr. Pg. 187- 11/8/06) Appellant then referred to her April 2004 PIP and stated to Ms. McClure, "And you don't recall giving



me the Open Court training because you were ill..." (Tr. Pg. 189 – 11/8/06) Ms. McClure later testified, "Ms. Brock I showed you Open Court back in 2003 and 2004. If you asked me to come in, more than likely I did come in 2005. I cannot recollect a day or a time that I did that. I helped you with your children when you asked me. I intervened when you asked –or when you didn't ask me to." (Tr. Pg. 191 – 11/8/06)

I note that Ms. McClure's early testimony with regard to her not being pregnant and taking maternity leave while Appellant was in the building was incorrect. However, Ms. McClure did correct her testimony as she reviewed the dates of her two pregnancies and realized that she was in fact pregnant when Appellant began employment at Coldstream in October 2003 and started maternity leave on January 6, 2004. I found Ms. McClure's testimony regarding her early conversations with Appellant and her modeling of Open Court to be credible.

In addition, Appellant did not refute Ms. McClure's testimony regarding her assertion that Appellant told her in 2003 that she already knew Open Court and that she had done it at her previous school. Also, with regard to Open Court training in April 2004 Appellant offered no testimony concerning a specific month, date, or time that Ms. McClure was scheduled to model Open Court but failed to do so because she was out sick. Appellant testified that she "began to learn the Open Court curriculum" at Coldstream; she stated, "Ms. Christ began to teach me about Open Court, right, the format for open court was a bit different. So I listened. I am a - you know - I listened and she visually showed me about open court." (Tr. Page 332 – 11/9/06)

Ms. Christ testified at the hearing below that, as the Instructional Support Teacher at Coldstream, she ensured that teachers "were provided with the necessary materials, the

teacher's edition, the books, the work book, anything that they needed in order to implement the program." She testified that she "also provided lesson plan formats that made it easy for them to follow in order to make sure that all of the components of open court were addressed in their instruction. (Tr. Page 77 – 3/3/06)

At the November 9, 2006 hearing, Ms. Christ testified that the Appellant "stated that she wasn't aware of the Open Court program and materials were given to her and then they were misplaced or had to get more like textbooks and teachers edition, so I would sit right there with her during planning and we planned for the week together to ensure that planning was done." (Tr. Pg. 296-11/9/06)

Ms. Christ further testified on November 9, 2006 that she was quite disturbed when she heard that Appellant had told Ms. Williams that she had asked her to ask Principal Williams about an outside visitation and that Principal Williams had said no. Ms. Christ testified that she did not "recall that conversation at all because, you know, whatever you asked me to do, I would do, but that I do not recall at all and I was very upset that I heard that." (Tr. Pg 300 – 11/9/06)

In addition to the assistance that Coldstream provided Appellant in Open Court, there was considerable testimony throughout the various levels of hearings concerning the daily, often times hourly, support that Appellant received from Ms. Christ in the development of appropriate lesson plans, behavior management, classroom intervention and from Principal Williams and Vice Principal Thomas in the development of strategies for behavior management as well as their classroom intervention.

Appellant testified that for 20 years she taught students one-on-one and that prior to Coldstream she taught resource and was also assigned to one student with emotional

problems at a time. She argued that that she attended Open Court training in June 2005, after she was terminated, and that she never really understood all of the components of Open Court until she attended the formal training. I note that the training that Appellant attended was for a state-wide new BCPSS Open Court Program. She further testified that she did not have all of the appropriate Open Court materials and that she had been teaching one of her students using material that was too high of a grade level.

Appellant testified that modeling should have been done in a consistent manner, not something on Monday and something on Friday, that she needed to observe consistently over a three-day period with a debriefing and a consecutive next day follow-up or another lesson. Appellant believes that she should have been able to sit in the back of the classroom, take notes and then have someone observe her informally with feedback, not formally. Appellant acknowledge that she received support from Principal Williams, Vice Principal Thomas and Ms. Christ but that it did not work because it was not consecutive and focused on one skill at a time.

Appellant also offered the testimony of Herbert Cornish, who testified that he taught three students at Coldstream in the 2004/05 school year and that, on occasion, one of his difficult students would enter Appellant's classroom.

Based upon a review of the testimony of the record below and the November 8 and 9, 2006 hearing, I find that Appellant conducted and received direct instruction training while teaching at Gilmor in 1998, which is a similar program to Open Court. While she may not have known anything about Open Court prior to her employment at Coldstream, the staff at Coldstream made every conceivable effort to ensure that Appellant was provided with all of the assistance, training and materials necessary for her

to successfully teach her students using this BCPSS mandated language/art curriculum. Indeed, in October 2003, Appellant considered that she did not need Open Court instruction when Ms. McClure came to her with all of the materials and attempted to model the program. However, it would seem that Appellant realized she needed Open Court instruction when she received feedback after her first Formal Observation Report which indicated that it was not clear that she followed the Open Court curriculum and that she displayed a weakness in content knowledge.

I further note that Appellant provided the following as her goals for the 2004/05 school year in her October 7, 2004 Individual Development Plan:

To become computer literate; to integrate technology across the curriculum.

To gain professional knowledge regarding effective strategies and techniques for mathematics' instruction.

Appellant provided no goals at the beginning of the 2004/05 school year with regard to enhancing her knowledge of Open Court, improving her behavior management techniques, addressing student IEP goals or implementing lesson content from written plans. In addition, Appellant offered no testimony, other than that she attempted to contact Principal Williams over the summer months, with regard to any effort she may have made to research and obtain information regarding Open Court and/or Open Court trainings that she might avail herself of before starting the 2004/05 school year.

It is worth noting that Appellant returned to Coldstream in the 2004/05 school year, with a PIP in place from the previous year, and was observed on September 29 screaming at a student in her classroom. This incident was then followed by an October 6 incident in which Appellant fell asleep, thus allowing her students to fall asleep and miss dismissal.

It was clear that Appellant improved in her ability to write a lesson plan, through Ms. Christ's assistance. However, Appellant consistently failed to convey lesson content from her written lesson plan when instructing her students. It is also clear that Appellant was willing and worked with school administrators in an effort to employ behavior management techniques and strategies that would establish an orderly and productive learning environment. However, Appellant could not manage her class, whether it was six students at the beginning of the 2003/04 school year or two students at the end of the 2004/05 school year. Principal Williams and Vice Principal Thomas consistently entered Appellant's classroom and removed disruptive students or sat in Appellant's classroom and worked with Appellant's students. The teacher across the hall consistently removed disruptive students from Appellant's classroom. Ms. Christ worked "countless hours" to provide Appellant with assistance on every aspect of her job.

Appellant was not an inexperienced teacher entering a new school approximately five weeks into the school year but rather an experienced certified special education instructor with BCPSS for 34 years who held Bachelor and Master degrees with a concentration in mental retardation and emotionally disturbed.

The evidence demonstrates that BCPSS implemented a new Performance Based Evaluation System in October 2003 and that the Administrators at Coldstream observed Appellant and rated her overall unsatisfactory for the 2003/04 and 2004/05 school years. Appellant was given notice of formal observations, was evaluated by different professionals and was provided assistance to raise her performance level. By March 2005, it became clear that Appellant's performance had not improved. Accordingly, BCPSS

dismissal of Appellant for incompetency was not arbitrary, unreasonable or illegal, and, was supported by a preponderance of the evidence.

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Baltimore City Board of School Commissioners' dismissal of Appellant, a tenured teacher, for incompetency is supported by a preponderance of the evidence. Md. Code Ann., Educ. § 6-202(a)(iv) (2006); COMAR 13A.01.05.05.

### **PROPOSED ORDER**

It is proposed that the decision of the Baltimore City Board of School Commissioners terminating the Appellant for incompetency as a tenured teacher be **UPHELD.**

February 7, 2007

Date

\_\_\_\_\_  
Thomas E. Dewberry  
Chief Administrative Law Judge

TED/bv  
Doc #86409

### **NOTICE OF RIGHT TO FILE EXCEPTIONS**

Any party adversely affected by this Proposed Decision has the right to file written exceptions within fifteen (15) days of receipt of the decision; parties may file written responses to the exceptions within fifteen (15) days of receipt of the exceptions. Both the exceptions 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.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

cc: Barbara Brock  
Brian Williams, Esquire  
Ronald Grove, Esquire  
Towanda P. Santiago, Administrative Officer

BARBARA BROCK,  
APPELLANT

v.

BALTIMORE CITY BOARD OF  
SCHOOL COMMISSIONERS

\* BEFORE THOMAS E. DEWBERRY,  
\* CHIEF ADMINISTRATIVE LAW JUDGE,  
\* MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH No.: MSDE-BE-01-06-33492

\* \* \* \* \*

**EXHIBIT LIST**

A. Exhibits

The parties agreed to the admission into this record of the exhibits entered before the Hearing Examiner (“hearing or record below”). Those include: Joint Exhibits 1 – 4; Board Exhibits 1 –30 and Respondent’s Exhibits 1 – 11.

The following exhibits were submitted by the School Board and admitted at the November 8 and 9, 2006 hearing:

- BCS A - Hearing Officer’s Report dated April 5, 2006
- BCS B - Performance – Based Evaluation Handbook
- BCS C - Transcripts of March 3 and 15, 2006 hearing before Hearing Examiner Gutman
- BCS D - Agreement between the Baltimore Teachers Union American Federation of Teachers, Local 340 AFL-CIO Baltimore City and the new Board of School Commissioners of Baltimore City (2003 – 2005)
- BCS #1- Formal Observation Report dated December 1, 2003
- BCS #2- Memorandum to Appellant from Tracey Thomas, Assistant Principal, dated September 24, 2004

- BCS #3- Memorandum to Elizabeth Williams, Principal, from Tracey Thomas dated October 6, 2004
- BCS #4- Performance Review Report dated January 14, 2004
- BCS #5- Cover memorandum to Appellant from Elizabeth Williams dated January 23, 2004
- BCS #6- Performance Improvement Plan dated January 15, 2004
- BCS #7- Performance Based Evaluation dated March 18, 2004
- BCS #8- Formal Observation Report dated March 10, 2004
- BCS #9- Annual Evaluation Report dated April 1, 2004
- BCS #10- Letter to Gayle Amos, Special Education Student Support Officer from Annie McIntosh, Educational Specialist, dated October 4, 2004
- BCS #11- Letter to Appellant from Elizabeth Williams dated April 13, 2004
- BCS #12- Performance Improvement Plan dated April 13, 2004
- BCS #13- Memorandum to Elizabeth Williams from Appellant dated April 13, 2004
- BCS #14- Letter from Bonnie Copeland, BCPSS Chief Executive Officer, to Appellant dated May 3, 2004
- BCS #15- Initial Planning Conference Form dated October 7, 2004
- BCS #16- Individual Development Plan dated October 7, 2004
- BCS #17- Performance Improvement Plan dated October 7, 2004
- BCS #18- Formal Observation Report dated October 21, 2004
- BCS #19- Pre-Observation Conference Form dated October 7, 2004
- BCS #20- Division of Curriculum and Instruction, School/Area Consultation/Technical Assistance Forms dated November 4 and November 11, 2004
- BCS #21- Formal Observation Report dated November 24, 2004



- BCS #22- Performance Improvement Plan dated November 24, 2004
- BCS #23- Performance Review Report dated January 14, 2005
- BCS #24- Formal Observation Report dated March 24, 2005
- BCS #25- Annual Evaluation Report dated March 24, 2005
- BCS #26- Memorandum to Board of School Commissioners from Bonnie Copeland dated June 16, 2005 (w/attachments)

The following exhibits were submitted by the Appellant and admitted at the November 8 and 9, 2006 hearing:

- Brock Exhibit A - Daily Behavior Report
- Brock Exhibit B - April 13, 2005 report on student's behavior at 30 minute intervals.
- Brock Exhibit C - Behavior Description