

FRANCIS MURRAY,

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-11

OPINION

Appellant, a tenured employee and guidance counselor employed by the Board of Education of Anne Arundel County, challenges his termination for misconduct based upon improper questioning of a sexual nature of a female student during a counseling session. A full evidentiary hearing before a hearing examiner for the local board was held on October 7, 2002. The hearing examiner recommended that the termination be upheld. Following oral argument on the matter on January 22, 2003, the local board voted unanimously to accept the hearing examiner's recommendations and affirmed the decision to terminate Appellant's employment based on misconduct in office.

Appellant appealed the local board's decision to the State Board and the matter was transferred to the Office of Administrative Hearings where an administrative law judge (ALJ) conducted a hearing on September 9 -10, 2003. The ALJ subsequently issued a proposed decision recommending that the termination be upheld. The ALJ's proposed decision is attached as Exhibit I.

Appellant filed exceptions to the proposed decision. Counsel for the parties presented final oral argument to the State Board on December 2, 2003.

Based upon our review of the record in this matter including the hearing transcripts, we adopt the Findings of Fact and Conclusions of Law of the administrative law judge. We note that both the Appellant and P.G. testified before the ALJ. Essentially Appellant acknowledged holding the counseling session, that it lasted about 45 minutes, and that there was a discussion of sex but that it was initiated by P.G. He denied asking the sexually related questions she described in her testimony. He further denied asking anything about sex.

As the ALJ stated, the assessment of credibility of P.G. and Appellant is the major determining factor in this matter. The ALJ discussed his assessment of P.G. as follows:

Obviously, it was very difficult for P.G. to come forward. P.G. told her friend the evening of the conversation with Appellant but did not want to tell anyone else what had happened. It was after her friend told her mother, Patricia Lawlor, who urged P.G. to tell

her parents and school officials that she decided to come forward. Even after being called to the assistant principal's office, P.G. was still not comfortable discussing the incident and was requested to write down what had happened. P.G. had nothing to gain by making such accusations about the Appellant whom she did not previously know. In fact, P.G. had a strong motive to keep the conversation secret since it would reveal to her parents that she was engaging in and being used for sex by a fellow student.

The local board clearly considered P.G.'s account to be credible and determined that Appellant made inappropriate comments to her during a one-on-one meeting with her in his capacity as guidance counselor. I had the opportunity to observe P.G.'s demeanor and assess her credibility as a witness at the hearing. I found the general consistency of the statements P.G. wrote the day after the meeting with the Appellant, her testimony at the local board hearing, and her testimony at the hearing before me to be a significant factor in her favor. P.G.'s testimony at the hearing was focused and her demeanor was serious. I perceived her testimony to be candid and truthful. I also found her testimony to be more credible than that of the Appellant. (ALJ's Report, pp. 18-19).

CONCLUSION

For the reasons stated by the administrative law judge, we affirm the termination decision made by the Board of Education of Anne Arundel County.

Edward L. Root
President

JoAnn T. Bell
Vice President

Philip S. Benzil

Dunbar Brooks

Calvin D. Disney

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Maria C. Torres-Queral

John L. Wisthoff

February 25, 2004

FRANCIS MURRAY
APPELLANT
v.
BOARD OF EDUCATION
OF ANNE ARUNDEL COUNTY

EXHIBIT 1
BEFORE THOMAS E. DEWBERRY, CHIEF
ADMINISTRATIVE LAW JUDGE,
MARYLAND OFFICE OF
ADMINISTRATIVE HEARINGS
OAH No.: MSDE-BE-01-200300003

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

Prior to October 2002, Francis Murray ("Appellant"), a guidance counselor employed by the Board of Education of Anne Arundel County received notification from the local board's superintendent recommending termination. The Appellant appealed the recommendation to the Board of Education of Anne Arundel County (the "Board"). Charles Beard, a Hearing Examiner of the Board ("Hearing Examiner") conducted a hearing on October 7, 2002. Md. Code Ann., Educ. § 6-203 (1999 & Supp. 2002). The Hearing Examiner ruled that the Appellant's appeal be denied. The Appellant appealed the Hearing Examiner's recommendation to the Board. After hearing arguments from both parties on January 22,

2003, and reviewing the record compiled by the Hearing Examiner, the Board adopted the findings of fact and concluded that the Appellant should be terminated. The Appellant appealed the Board's order to the Maryland State Board of Education and the matter was scheduled before the Office of Administrative Hearings. Md. Code Ann., Educ. § 6-202(4) (Supp. 2002).

A telephonic Prehearing Conference was held on June 20, 2003 and a Motions Hearing was held on July 22, 2003.

A hearing was conducted on September 9 and 10, 2003, before Thomas E. Dewberry, Chief Administrative Law Judge ("ALJ"), at 11101 Gilroy Road, Hunt Valley, Maryland 21031. Code of Maryland Regulations ("COMAR") 13A.01.01.03P. The Appellant was represented by William M. Ferris, Esquire. P. Tyson Bennett, Esquire, 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 (1999 & Supp. 2003); COMAR 13A.01.01.03P; COMAR 28.02.01.

ISSUE

The issue on appeal is whether the termination imposed upon the Appellant pursuant to Md. Code Ann., Educ. § 6-202(a) (Supp. 2002) for committing an act of misconduct was proper.

SUMMARY OF THE EVIDENCE

A. Exhibits

The parties jointly submitted: (a) the record of the October 7, 2002 hearing before Hearing Examiner, Charles Beard, with exhibits, including 218 pages of transcript; and (b) the Hearing Examiner's December 30, 2002 Report & Recommendations; and (c) the transcript of the January 22, 2003 oral arguments of the parties. (Joint Exhibit #1)

The following additional exhibits were admitted into evidence on behalf of the Appellant:

App. Ex. 1 - Handwritten statement from student, unsigned, undated

App. Ex. 2 - Resume of Sharon M. Kolstad

App. Ex. 3 - Resume of Susan R. Helsel

The Board did not submit any additional exhibits.

B. Testimony

The following witnesses presented testimony on behalf of the Appellant:

- (1) Sharon Kolstad, expert witness in the field of school counseling, Master's Degree, Education in counseling and personnel services, Bachelor's Degree in English. Previously employed by Anne Arundel County Public Schools as chairperson of the Broadneck High School Guidance Department and supervised the Appellant for four years, 1997 – 2001.

- (2) Susan Helsel, expert witness in the field of school counseling, Master's Degree in psychology, specifically high school guidance and counseling. Bachelor's Degree in Mathematics Education. Employed by Anne Arundel County Public Schools for 30 years, 1970 – 2000. Chairperson of the Anne Arundel High School, 1988 – 2000. Supervised the Appellant during the 1996/97 school year.
- (3) Elizabeth Betsy Brino, currently a chemistry teacher at Broadneck High School. Previously worked in the guidance office at Broadneck High School.
- (4) Joseph J. Kozik, guidance counselor, Broadneck High School.
- (5) Michael Murray, the Appellant's son.
- (6) Nilene Mosher, Chair, Guidance Department, Broadneck High School.
- (7) The Appellant testified on his own behalf.

The following witnesses presented testimony on behalf of the Board:

- (1) P.G., the student.¹
- (2) William Eggert, Assistant Principal, Broadneck High School
- (3) Kenneth Peter Lawson, Deputy Superintendent, Anne Arundel County Public Schools
- (4) C. L., friend to P.G., 2002 graduate of Broadneck High School.
- (5) Patricia Lawlor, mother of C.L., social studies teacher at Southern Senior High School, Anne Arundel County Public School System.

¹ Throughout this decision, for privacy reasons, various person are referred to by their initials:

P.G. the student who alleged that Appellant asked her inappropriate sexually explicit questions.

C.L. another student, a female friend of P.G.

- (6) Diane Finch, expert witness in the field of school counseling and guidance, Master's Degree in school counseling – guidance and counseling. Coordinator of Guidance and Counseling, Anne Arundel County Public Schools.

FINDINGS OF FACT

After careful consideration of the record and the testimony presented, I find, by a preponderance of the evidence, the following facts:

1. The Appellant had been employed for 27 years by Anne Arundel County Public Schools.
2. Beginning in 1989, the Appellant was a guidance counselor at Glen Burnie High School and later at Broadneck High School.
3. The Appellant was assigned to the student, P. G., as a guidance counselor throughout the time that P.G. attended Broadneck High School, 1999/00 to 2001/02 school years.
4. On February 7, 2002, when P.G. was beginning the second semester of her junior year, she met with the Appellant to discuss a missing credit in biology.
5. The meeting started sometime after 12:30 p.m. and ended no later than 1:55 p.m., but probably did not last as long as 1 ½ hours to two hours.
6. During the course of the meeting, P.G. discussed problems she had in the ninth grade and the fact that her ex-boyfriend treated her like "crap" and, upon questioning by the Appellant, stated that her ex-boyfriend used her for sex.
7. The Appellant began asking P.G. inappropriate questions regarding her relationship with her ex-boyfriend. He asked her: how many times she had sex with her

boyfriend; what sex positions does she like to do; does it hurt to be fingered; has she ever had anal sex; whether teenagers had oral sex first or intercourse first and; whether there were gay or lesbian people in the school.

8. When the conversation turned to sex, the Appellant motioned to P.G. to keep her voice quiet and he shut the door to his office.
9. The Appellant told P.G. several times not to tell anyone about their conversation on sex.
10. On the evening of February 7, 2002, P.G. was visiting her friend, C. L., and told her about her meeting with the Appellant and the sexual questions that the Appellant had asked her.
11. C.L. convinced P.G. to speak with her mother, Patricia Lawlor, a social studies teacher at Southern Senior High School, Anne Arundel County Public School System.
12. After P.G. spoke to Patricia Lawlor, she urged P.G. to tell her parents about the incident and told her that she would be calling the school to inform them about the matter.
13. On February 8, Patricia Lawlor contacted William Eggert, Assistant Principal, Broadneck High School, who called P.G. to his office.
14. Mr. Eggert advised P.G. that he had received a phone call and gave her an opportunity to speak to him. P.G. was hesitant and Mr. Eggert offered her a chance to write down what was on her mind.

15. P.G. went to a vacant office and wrote a two-page statement about her February 7, 2002 meeting with the Appellant and detailed the inappropriate comments that he made to her.
16. Mr. Eggert took the two-page statement to the Broadneck High School principal and was told to contact the Office of Investigations at the Board of Education.
17. Kenneth Peter Lawson, Interim Superintendent of Schools, for the period between January 2 and June 30, 2002 was responsible for reviewing the facts and making a recommendation to the Board of Education. Mr. Lawson recommended that the Appellant be terminated.

DISCUSSION

Preliminary Matter

Preliminarily, the Appellant noted that his June 10, 2003 Motion in Limine, to exclude any evidence of prior charges of alleged misconduct had been granted. However, the record below before the Hearing Examiner in this matter contains allegations of past acts.

Although I will not alter the record below, I conclude that I should not, indeed, have not, considered any allegations of past acts in rendering my decision in this matter.

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) (1999 & Supp. 2002) reads, in pertinent part, as follows:

(a)(1) Grounds and procedure for suspension or dismissal. – (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 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.
- (1) The individual may appeal from the decision of the county board to the State Board.

The standard of review in an appeal of a teacher dismissal case to the State Board is prescribed by COMAR 13A.01.01.03E. In pertinent part, COMAR 13A.01.01.01E provides:

- (3) Teacher Dismissal and Suspension.
- (a) The standard of review in teacher dismissal or suspension actions shall be de novo as defined in §E(3)(b).
 - (b) The State Board shall exercise its independent judgment on the record before it in determining whether to sustain a disciplinary infraction.
 - (c) The county board shall have the burden of proof.
 - (d) 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 the matter from all levels. As a result

of my review and careful consideration, I must conclude that the preponderance of the evidence established the reasonableness of the Board's decision to dismiss the Appellant.

Review of the Testimony

The Board seeks to dismiss the Appellant from his employment from Anne Arundel County Public Schools on the grounds of misconduct in office, based on his inappropriate comments to a student during a one-on-one meeting.

At the time, the student, P.G., was a 16 year old student at Broadneck High School who was attending the eleventh grade and the Appellant was her assigned guidance counselor. P.G. testified that on February 7, 2002, she arrived at the Appellant's office at approximately 12:30 p.m. for a scheduled appointment to discuss a missing credit in biology. During the course of discussions with the Appellant at that meeting, P.G. advised the Appellant of problems that she had in the ninth and tenth grades, as well as an expulsion while in the seventh grade. She advised the Appellant that she was in a bad relationship at the time and that her boyfriend treated her "like crap". The Appellant asked her about that relationship whereupon she told him that her boyfriend had used her for sex. It was at this point, P.G. asserts, that the Appellant began asking her sexually explicit questions that she believed were inappropriate and made her uncomfortable. The questions included how many times she had sex with her boyfriend, what positions she likes to do, whether it hurts to have sex or be fingered, whether she ever had anal sex, whether teenagers had oral sex first or intercourse first and whether there were gay or lesbian people in the school.

P.G. stated that when the conversation turned to sex, the Appellant motioned her to keep her voice quiet and he shut the door to his office. According to P.G., he told her several times not to say anything to anyone in reference to their conversation on sex. P.G. noted that while the Appellant was asking her the sexually explicit questions his face was turning bright red, "he moved around a lot" and was "playing with his hands" which also made her feel "really uncomfortable." Finally, P.G. testified that the 1:55 p.m. bell rang, the Appellant offered her a ride home, she declined, and left the Appellant's office at approximately 1:58 p.m. She stated that she missed the school bus but found another ride home.

Next, P.G. stated that on the evening of the incident with the Appellant she told her best friend, C.L., what had occurred. Reluctantly, after C.L. begged and urged her to do so, she told C.L.'s mother, who is a teacher at Southern High School, about the incident with the Appellant. C.L.'s mother, Patricia Lawlor, told P.G. she would have to call someone at Broadneck High School.

Next to testify was William Eggert, Assistant Principal at Broadneck High School. The witness stated that on February 8, 2002 he received a telephone call from Patricia Lawlor, whom he had previously worked with at Southern High School. Essentially, Ms. Lawlor told him that her daughter had had a conversation with her best friend and that she told her daughter that she had a conference with her guidance counselor at Broadneck High School that upset her very much due to inappropriate comments made by the guidance counselor. As a result, Mr. Eggert asked P.G. to come to his office.

Mr. Eggert explained to P.G. that he had received a phone call telling him something was wrong and asked her if she would tell him what was going on. Mr. Eggert stated that P.G. told him that she had a conference with her counselor that upset her because he had made some inappropriate comments to her. Because she was hesitant and having difficulty telling him the story, Mr. Eggert said he asked P.G. to write down her story on an "incident report", which she did. Afterwards, Mr. Eggert testified he faxed the incident report to the Office of Investigations at the Board of Education.

Next to testify was Kenneth Peter Lawson, Deputy Superintendent of Schools for Anne Arundel County Public Schools. At the time of the incident, the witness was serving as interim superintendent for Anne Arundel County Schools because the Board of Education was searching for a permanent replacement for his predecessor who had recently retired. The witness stated that upon his review of the written report of the incident regarding P.G. and the Appellant, he recommended the ultimate sanction of termination of employment for the Appellant. He noted this was due to the seriousness of the whole circumstance given that parents entrust their children to schools to be educated and not to have their highly personal, sexual related matters delved into. Upon cross-examination, the witness stated that he did not personally interview P.G. but that he did afford the Appellant the opportunity to come before him and to state his views. However, the Appellant had not seen the written report on the incident.

Next to testify was C.L., best friend of P.G. C. L. is currently 19 years old and is a second year student at Anne Arundel County Community College. C.L. stated that

P.G. told her that she had gone to the Appellant's office to talk about her science grade. P.G. then stated that they got into the topic of her boyfriend and the Appellant started asking her inappropriate questions such as, "...if she had sexual relations with her boyfriend, and if he pleased her." He also asked her about specific positions that she had been in with her boyfriend. C.L. noted that P.G. was nervous and uncomfortable when she conveyed this information to C.L. After learning of this conversation, C.L. convinced P.G. to tell her (C.L.'s) mother about this inappropriate conversation. Upon cross-examination, C.L. testified that she recalled P.G. stating that the Appellant told her that "you can't come in here today looking all cute like that and think I'm going to change your grade."

Next to testify was Patricia Lawlor, social studies teacher at Southern High School, Anne Arundel County and mother of C.L. The witness stated that on the night of the incident in this matter, her daughter, C.L., came to her and told her that she and her friend, P.G., needed to tell her something. C.L. and P.G. then proceeded to tell the witness about the conversation that occurred earlier in the day between P.G. and the Appellant. The witness noted that during this conversation, she observed that P.G. was hesitant about talking, teary, and did not make good eye contact. C.L. told the witness about inappropriate comments of a sexual nature that the Appellant made to P.G. The witness testified that C.L. said that P.G. stated that the Appellant told her she had some nerve coming into his office looking so good. He then asked P.G. about sexual positions she used with her boyfriend. He also asked if they did it from behind and whether she

made him ejaculate. The witness also testified that P.G. told her specifically that the Appellant asked her about stimulating her boyfriend to ejaculation by way of a "hand-job."

After learning of this conversation with the Appellant, the witness told P.G. that she (P.G.) must tell her mother about the incident. The witness also told P.G. that she (the witness) must inform the authorities at Broadneck High School about the incident. The following morning, the witness called William Eggert, Assistant Principal at Broadneck High School, and informed him of her conversation with C.L. and P.G. regarding the incident with the Appellant.

The final witness to testify on behalf of the Board of Education was Diane Finch, Coordinator of Guidance and Counseling for Anne Arundel County Public Schools. Ms. Finch is an expert witness in the field of school counseling and guidance, and, therefore, the governing standards pertinent thereto. The witness essentially testified that if issues of a personal nature arise in a counseling session with a student the guidance counselor should listen, assess the situation, and refer the student to the appropriate resources to address the problem. The witness testified that, in her professional judgment, it would not be professionally appropriate for a guidance counselor to question a female student about whether she engaged in oral or anal sex, what sexual positions she and her boyfriend engaged in, whether the student knew of gay or lesbian students in her school and whether teenagers generally prefer to have oral sex before intercourse or intercourse first. In conclusion, the witness stated that a

counselor who asked such questions was "crossing boundaries" and was engaging in unprofessional conduct that would not be acceptable in terms of community standards.

Several witnesses testified on behalf of the Appellant. The first witness to testify was Sharon M. Kolstad, an expert in high school counseling who, prior to her retirement in 2001, was the Chair of the Guidance Department at Broadneck High School and supervisor of the Appellant from 1997 to 2001. The witness described what usually occurs in the guidance office at a high school in the first five to seven days of a semester. February 7, 2002 would have been one of those days. The witness testified that counselors set-up appointments for students about fifteen minutes apart. She noted that it would have been extraordinary circumstances for a 1½ to 2 hour appointment because there would be a very noticeable back-up of students in the guidance office. The witness further testified that if a student reports to a counselor that she has been used by a boyfriend or that a crime may have been committed, the counselor needs to listen and then question the student in order to plan for the next step for the student. With a few well-recognized exceptions (commitment of a crime, threat of suicide, etc.) these discussions are confidential, the witness noted.

Upon cross-examination, the witness stated that none of the questions that P.G. testified the Appellant asked her were ever appropriate to inquire about.

The next expert witness for the Appellant was Susan Helsel who, prior to her retirement in 2000, was the Chair of the Guidance Department at Arundel High School and supervisor of the Appellant during the 1996 to 1997 school year. The witness confirmed the testimony of

the previous witness, Ms. Kolstad. She too stated that it would be unusual or "unlikely" to spend 1½ to 2 hours with a student for counseling during the first week of a semester.

Also upon cross-examination, the witness agreed that the sexual related questions P.G. testified the Appellant posed to her were irrelevant and/or inappropriate.

The Appellant's next witness was Elizabeth Brino, a secretary in the Guidance Office of Broadneck High School. The witness stated that she believed she was working in the office on February 7, 2002 and that she had no recollection of any student being with any counselor for as long as 1½ to 2 hours on that day. She testified that she thinks that had a student been with a counselor for 1½ to 2 hours she would have known about it because other students would be lined up to see the counselor and would have talked about the length of time.

The next witness to testify was Joseph J. Kozik, a guidance counselor at Broadneck High School. The witness' office was immediately next to the Appellant's. The witness stated that he has been a guidance counselor at Broadneck High School for six years. Based upon his experience, he testified that it would not have been possible for a student to have been with a guidance counselor for as long as 1½ to 2 hours during the first week of a semester. If such did occur, he and other counselors would have noticed. On February 7, 2002, the witness did not observe the Appellant with a student for as long as 1½ to 2 hours.

Next to testify for the Appellant was his son, Michael Murray, who was a student at Broadneck High School on February 7, 2002. The witness testified that his last period of the school day on February 7, 2002 was lunch, located in the cafeteria directly across from the school Guidance Office. He stated that when lunch ended at 1:55 p.m. that day he walked to

his father's office to pick up his coat. He exchanged a few words with his father and remembers no one else in his father's office at that time and specifically did not see P.G.

The last witness to testify on behalf of the Appellant was Nilene Mosher, the current Chair of the Guidance Department at Broadneck High School. The witness testified that she had requested that the Appellant attend a new teacher meeting on February 7, 2002 at 2:05 p.m. The witness did not know for sure if the Appellant attended the meeting, but she assumed he did because no one told her that he did not attend.

The Appellant, Francis Murray, was the last witness to testify. The Appellant worked as an Industrial Arts teacher from 1976 to 1989. Having received a Masters Degree in Guidance and Counseling in 1984, he became a guidance counselor in 1989 until he was dismissed in February of 2003.

The witness testified with great specificity regarding the meeting with P.G. on February 7, 2002. He said the meeting began at approximately 12:40 p.m. and ended, 45 minutes later, at about 1:25 p.m. He remembered leaving his office during the course of the meeting on four occasions to retrieve records elsewhere. He testified that the conversation with P.G. began with regard to two math courses she was scheduled to take in the current semester. After reviewing some of P.G.'s records, he noted that she had an "incomplete" in biology in the 9th grade. When the Appellant asked P.G. what happened he stated that she blurted out "I had a horrible year in ninth grade. I had a God-damn boyfriend who used me for sex." The witness stated that he then told her "time out", got up, shut his office door and asked her what happened. He testified that P.G. proceeded to tell him that:

Well, I'd sneak out of my house about three times a week. A bunch of people would go down to the park and the beach. We'd all be drinking and smoking marijuana and then people would kind of pair off and hook-up whatever they call it and we'd have sex; we messed around."

The Appellant then said he asked P.G. if she had told her parents and she replied, no. He next said he told her that she must tell her parents. He then asked P.G. if anybody forced her to do anything she didn't want to do and she replied, no. He then acquired the names of three boys from P.G. who were involved. Upon asking her if there was anything else, he stated she replied that she had had sex with a boy in Canada in the summer because she had too much to drink. She stated that she told her mother of this incident but not her stepfather. Next, the Appellant testified he told P.G. she needs to discuss these issues with her parents and if she needed any other help she can come back to the school, the school nurse and/or the school psychologist to get assistance.

After this advice to P.G., the Appellant testified that he returned to solving the missing biology grade. It was during this effort that the Appellant discovered that P.G. had been expelled in seventh grade. The Appellant stated that the meeting ended approximately at 1:25 p.m. In concluding, the Appellant denied asking P.G. any of the sexually related questions she described in her testimony. He further denied asking anything about sex. He also denied offering to give P.G. a ride home. He also confirmed his son's testimony that he came to his office shortly after 1:55 p.m. to pick-up his coat. Finally, he testified that he attended a new teacher meeting at 2:05 p.m. on February 7, 2002, the day of the incident.

On cross-examination, the Appellant could only recall meeting P.G. one other time in her school career, in the summer of 1999 with her mother, when she was applying for entrance to Broadneck High School.

This matter is a classic case of, as counsel for the Appellant described it, a “he said, she said” swearing contest. The only witnesses in this matter who know what was said between them on February 7, 2002, is the Appellant and P.G. Accordingly, the credibility of these two witnesses is the major determining factor in deciding who to believe. In determining whether a witness should be believed I have carefully considered all the testimony, evidence and circumstances under which the witnesses testified.

Obviously, it was very difficult for P.G. to come forward. P.G. told her friend the evening of the conversation with the Appellant but did not want to tell anyone else what had happened. It was after her friend told her mother, Patricia Lawlor, who urged P.G. to tell her parents and school officials, did she decide to come forward. Even after being called to the Assistant Principal’s office, P.G. was still not comfortable discussing the incident and was requested to write down what had happened. P.G. had nothing to gain by making such accusations about the Appellant whom she did not previously know. In fact, P.G. had a strong motive to keep the conversation secret since it would reveal to her parents that she was engaging in and being used for sex by a fellow student.

The local Board clearly considered P.G.’s account to be credible and determined that the Appellant made inappropriate comments to her during a one-on-one meeting with her in his capacity as guidance counselor. I had the opportunity to observe P.G.’s demeanor and assess

her credibility as a witness at the hearing. I found the general consistency of the statements P.G. wrote the day after the meeting with the Appellant, her testimony at the local Board hearing and her testimony at the hearing before me at the hearing to be a significant factor in her favor. P.G.'s testimony at the hearing was focused and her demeanor was serious. I perceived her testimony to be candid and truthful. I also found her testimony to be more credible than that of the Appellant.

The Appellant attempts to diminish P.G.'s credibility by noting differing statements from her to others regarding the inappropriate conversation and by demonstrating that her testimony about the length of their meeting can not be true.

First, as previously noted, I found that P.G.'s testimony and written statement describing the conversation with the Appellant to be generally consistent. P.G. never stated that her oral or written descriptions were all-inclusive or verbatim of the entire conversation. It would be unreasonable to expect or require a witness to have such perfect recall. The important factor to note is that while P.G.'s various descriptions of the conversation with the Appellant were not precisely the same, they were never contradictory.

Regarding the length of the conversation, I do not find that P.G.'s recollection that it occurred from 1½ to 2 hours, although possibly incorrect, demonstrates her to be an untruthful witness. First, the length of time discrepancy only comes down to a ¾ hour time difference. The Appellant testified that the meeting lasted 45 minutes. Given the trauma that a 16 year old female would likely experience in a closed-door meeting discussing very private and personal sexually explicit matters with a 48 year old male guidance counselor, it is quite

understandable and believable that her memory may not be perfectly accurate on all details. More importantly, with regard to the length of time of the meeting, I find it significant that 45 minutes was more than enough time for the Appellant to pose the numerous inappropriate questions to P.G. that she testified about.

The Appellant believes that P.G.'s motive for making the accusations against him is simple. He contends that P.G. initially boasted to her best friend that a school guidance counselor tried to "hit on her." When her best friend insisted on telling her mother, who then insisted on informing school authorities, the Appellant believes P.G. was "trapped" and created a "lie" to escape. While this scenario is one possibility among many that could have occurred, I find no supportive evidence in the record to persuade me to accept such a hypothetical. In the final analysis, I find no motive on the part of P.G. to lie about this matter. She had little or no previous contact with the Appellant. She has nothing to gain by the outcome of this case. The Appellant's flat denial that a conversation of a sexual nature occurred between he and P.G. does not convince me that P.G.'s testimony should not be believed. For all of the reasons noted above, I believe and accept the testimony of P.G. as true.

With regard to whether dismissal from employment is the appropriate sanction in this matter, I note Deputy Superintendent Lawson's testimony in this case. He stated that the citizens of Anne Arundel County entrust their children to the county's school officials to be educated. He noted that the Appellant's conduct as a guidance counselor to P.G. went beyond the bounds of what the school system assures parents it will provide for their children. Thus, dismissal in this case was necessary. I agree with the Deputy Superintendent. I find that the

Appellant's actions in this matter constituted misconduct in office which merits termination of employment.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Appellant, Francis Murray, a teacher employed by Anne Arundel County Public Schools, was properly terminated because of misconduct in office. Md. Educ. Code Ann. §6-202(a).

PROPOSED ORDER

It is proposed that the decision of the Board of Education of Anne Arundel County terminating the Appellant for misconduct in office be **UPHELD**.

October 27, 2003

Thomas E. Dewberry
Chief Administrative Law Judge

NOTICE OF RIGHT TO FILE OBJECTIONS

Any party adversely affected by this Proposed Decision has the right to file written objections within ten (10) days of receipt of the decision; parties may file written responses to the objections within ten (10) days of receipt of the objections. Both the objections 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.01.01.03P(4). The Office of Administrative Hearings is not a party to any review process.

FILE EXHIBIT LIST

The parties jointly submitted: (a) the record of the October 7, 2002 hearing before Hearing Examiner, Charles Beard, with exhibits, including 218 pages of transcript; and (b)

the Hearing Examiner's December 30, 2002 Report & Recommendations; and (c) the transcript of the January 22, 2003 oral arguments of the parties. (Joint Exhibit #1)

The following additional exhibits were admitted into evidence on behalf of the Appellant:

App. Ex. 1 - Handwritten statement from student, unsigned, undated

App. Ex. 2 - Resume of Sharon M. Kolstad

App. Ex. 3 - Resume of Susan R. Helsel

The Board did not submit any additional exhibits.