

CAROL BECK,
Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 04-13

OPINION

Appellant, a tenured teacher with Montgomery County Public Schools (“MCPS”), appeals the local board’s majority decision affirming the superintendent’s recommendation to terminate Appellant for incompetence. By a vote of four to three, the local board rejected the local hearing examiner’s recommendation that Appellant be reinstated, without back pay, under the Peer Assistance and Review Program (“PAR”) for an additional school year.¹

Following a State-level hearing, the State administrative law judge (“ALJ”) issued a proposed decision recommending that the local board’s termination decision be affirmed. A copy of the ALJ’s proposed decision is attached as Exhibit 1. The parties presented oral argument to the State Board on February 24, 2004.

Based upon our review of the record in this matter and consideration of the arguments of the parties, we adopt the findings of fact and conclusions of law of the administrative law judge. In addition to the legal principles cited by the ALJ, we note that while the Court of Appeals has held the *Accardi* doctrine applicable to administrative proceedings in Maryland, such that an agency of the government generally must observe rules, regulations or procedures which it has established, a complainant must still show that prejudice to him or her resulted from the agency violation in order for the agency decision to be struck down. *Pollack v. Patuxent Institution Bd. of Rev.*, 374 Md. 463 (2003). Here, after reviewing the record in its entirety, the local board and the ALJ found more than sufficient evidence of incompetency. It is noteworthy that even the local hearing examiner concluded that evidence of some growth or improvement by the Appellant would not normally be sufficient to overcome the recommendation to terminate Appellant because in virtually any PAR evaluation there would be some improvement. (Decision

¹The PAR program is a new component of the Professional Growth System (“PGS”) that was negotiated with the teachers’ union in Montgomery County. It provides support and mentoring for new teachers and underperforming experienced teachers. The PGS utilizes an evaluation system in which there are six performance standards to assess teacher competencies. These standards are based on performance criteria employed by the National Board for Professional Teaching Standards.

of Sickles at 12, n. 6).² Therefore, we find the error, if any, in the use of the PGS evaluation criteria is harmless.

For these reasons as well as those cited by the ALJ, we affirm the termination decision of the Board of Education of Montgomery County.

Edward L. Root
President

Philip S. Benzil

Dunbar Brooks

Calvin D. Disney

Clarence A. Hawkins

Karabelle Pizzigati

Maria C. Torres-Queral

John L. Wisthoff

DISSENT

We concur with the findings of the local hearing examiner that the wrong set of standards was unfairly applied for Appellant's evaluation in the 2001-2002 school year. We therefore dissent from the majority opinion and would reinstate the Appellant, without back pay, under the PAR system for an additional school year.

²It is also noteworthy that Mr. Sickles found the evidence supports the finding that Appellant failed to meet all six of the performance standards of the PGS. (Decision of Sickles at 11.)

JoAnn T. Bell
Vice President

Walter S. Levin, Esquire

March 31, 2004

CAROL BECK	*	BEFORE KENNETH WATSON,
	*	AN ADMINISTRATIVE LAW
APPELLANT	*	JUDGE
	*	
v.	*	OF THE MARYLAND OFFICE
	*	OF ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY BOARD		
OF EDUCATION		
		OAH No.: MSDE-BE-01-03-19448
* * * * *		* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

Carol Ann Beck ("Appellant"), a tenured Teacher employed by the Montgomery County Public Schools ("MCPS"), received a June 11, 2002 notification from Jeffrey Weast, Superintendent of Schools, that he was recommending to the Montgomery County Board of Education (the "Board") that she be dismissed for incompetence, effective June 21, 2002. The Appellant appealed this determination on June 20, 2002, and requested a hearing before the Board.

The Board appointed Joseph A. Sickles, Esq., as Hearing Examiner in the case. Mr. Sickles conducted a preliminary hearing on September 18, 2002, followed by a merits hearing on November 14, 2002.³ Md. Code Ann., Educ. § 6-203 (2001). In a proposed decision dated February 7, 2003, the

³ The transcript of the November 14, 2002 hearing before Hearing Officer Sickles is referenced as "T.1" in this decision, followed by the citation of the appropriate page number(s).

Hearing Examiner recommended that the Appellant be reinstated to her position in the MCPS, without back pay, and that she be continued in the Peer Assistance and Review program for an additional year.

The parties presented oral argument to the Board on March 27, 2003, regarding the Board's rendering of a final determination in the case. After reviewing the record compiled by the Hearing Examiner and materials submitted by the parties, on April 23, 2003, a four-member majority of the Board voted to reject the Hearing Examiner's recommendations and thereby affirmed the Superintendent's original recommendation to dismiss the Appellant for incompetency. Three members of the Board dissented from this determination.

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(a)(4) (Supp. 2003).

Following a telephonic prehearing conference on September 4, 2003, a de novo hearing was conducted on November 12, 2003,⁴ before Kenneth Watson, Administrative Law Judge ("ALJ"), at the Office of Administrative Hearings in Hunt Valley, Maryland. Code of Maryland Regulations ("COMAR") 13A.01.01.03P. Appellant was present and was represented by Kristy K. Anderson, Esq. Judith Bresler, Esq., represented the Board. At the conclusion of the hearing, ALJ Watson gave the parties the option of submitting argument and/or authority as to any matters that had been raised at the hearing. Ms. Bresler did not provide such a statement, while Ms. Anderson made a submission on November 20, 2003. The record was closed at that time.

⁴ The transcript of the November 12, 2003 hearing before ALJ Watson is rarely referenced in this decision and mainly when a factual assertion is agreed to by both parties, or otherwise not clearly challenged. These limited references appear as "T.2," followed by citation of the appropriate page number(s).

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.01.01.03D; COMAR 28.02.01.

ISSUE

The issue on appeal is whether, after independent review, the dismissal for incompetency imposed upon the Appellant by the Montgomery County Board of Education under Md. Ann. Code Ann., Educ. § 6-202(a)(1)(iv) (Supp. 2003) is warranted by persuasive evidence in the record.

SUMMARY OF THE EVIDENCE

A. Exhibits

With the consent of the parties, the ALJ received the documents and records connected with the previous processing and adjudication of the instant case as the "Record of the Case ("ROC")." These records were contained under various tabs. Tab A contained the June 11, 2002 letter from MCPS Superintendent Jerry D. Weast, advising the Appellant of her dismissal for incompetency. Tab B contained a transcript of the proceedings in this case before Hearing Examiner Joseph Sickles on September 18, and November 14, 2002. Tab C included Mr. Sickles' August 27, 2002 appointment as Hearing Officer for the Montgomery County Board of Education, together with correspondence relating to the Appellant's medical condition and her retention of counsel. Tab D contained the curriculum vitae of Shelley Johnson. Tabs F and G contained memoranda submitted to Hearing Officer Sickles by counsel for the Appellant and the Montgomery County Superintendent of Schools, respectively. Tab H contained Hearing Officer Sickles' Findings and Recommendations of February 7, 2003. The following documents at Tab E were specifically admitted as Joint Exhibits:

- E-1 June 19, 2001 and June 18, 1999 Evaluations of Appellant⁵
- E-2 June 6, 2001 Memo from Stephen Whiting to Dr. Thelma Monk
- E-3 July 10, 2001 letter from Peer Assistance and Review Panel to the Appellant
- E-4 September 17 and 26, 2001 Post Observation Conference Reports by Shelley Johnson
- E-5 September 26, 2001 letter from Shelley Johnson to Peter Cahall
- E-6 October 5, 2001 letter from Co Chairs of PAR Panel to Appellant
- E-7 November 13, 2001 Post Observation Conference Report by Shelley Johnson
- E-8 December 11, 2001 Mid-Year Summary
- E-9 December 14, 2001 Observation Report by Pete Cahall
- E-9A December 14, 2001 Observation Report by Pete Cahall, together with graphic organizers, lesson plans and materials, evaluation sheets, and Art of Bookmaking handout provided to students for organization and sequencing of Appellant's art lesson
- E-10 January 14, 2002 Post Observation Conference Report by Shelley Johnson
- E-11 February 27, 2002 Observation Report by Steve Whiting
- E-12 Follow Up to February 28, 2002 Discussion prepared by Shelley Johnson
- E-13 March 12, 2002 Post Observation Conference Report by Shelley Johnson
- E-14 March 25, 2002 Final Summative Report by Shelley Johnson
- E-14A April 15, 2002 Observation Report by Steve Whiting
- E-15 Shelley Johnson's PAR Consulting Teacher Log
- E-16 Art Room Guidelines
- E-17 Units of Study and Related Artwork by Appellant and February 12, 1998, May 24, 1998, and December 21, 1998 Evaluations of Appellant

⁵ A February 12, 1998 Evaluation of the Appellant was made a part of Joint Exhibit E-1 at the November 12, 1998 hearing. This document is also part of Joint Exhibit E-17.

E-18 Activities and Responses by Appellant

E-19 November 16 and 20, 2000 Observations by Mike Wells; November 21 and March 23, 2001 Observations by Steve Whiting; May 29, 2001 Extra Observation and Conference Report by Mike Wells; May 31, 2001 Observation Report by Mike Wells

E-20 2001/2002 Professional Growth System Handbook

E-21 2002/2003 Professional Growth System Handbook

B. Testimony

No testimony was taken at the November 12, 2003 hearing. Counsel made oral arguments and relied on the record compiled below. In the hearing below, conducted on November 14, 2002, before a Hearing Examiner, Joseph Sickles, the following individuals testified: Consulting Teacher Shelly Johnson; Principal Peter Cahall; Assistant Principal Stephen Whiting; Robert Bastress; and the Appellant.

FINDINGS OF FACT

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

The MCPS Professional Growth System

1. Prior to the 2000/2001 school year, MCPS utilized a ten criteria teacher evaluation system as set forth in the July 1994 MCPS Teacher Evaluation System booklet. Under that system, administrators (principal, assistant principal, or other designated observers) primarily evaluated a teacher. If a principal recommended a teacher's dismissal, that recommendation was processed through the MCPS Personnel Office to the Superintendent, with the teacher being entitled to a hearing if the Superintendent joined in the termination recommendation. (Joint Exhibits E-1 and 17).

2. Beginning with the 2000/2001 school year, MCPS adopted a Professional Growth System (“PGS”) which recognizes the “complexity and importance of teaching in a high performing school system” and which seeks to encourage “continuous improvement and shared accountability for student achievement.” The touchstone of the PGS is a “qualitative approach to teacher evaluation and professional growth.” The PGS seeks to integrate a formal evaluation process, with “qualitative feedback” about a teacher’s work, into a “multi-year process of professional growth.” (Joint Exhibit E-20, pgs. 4 and 5; Joint Exhibit E-21, pg. 3).
3. The PGS and its Peer Assistance Review Program were developed jointly in a collaborative effort between the MCPS, the Montgomery County Education Association (“MCEA”), and the Montgomery County Association for Administrative and Supervisory Personnel (“MCAASP”). (Joint Exhibit E-20, pgs. 21 and 51; Joint Exhibit E-21, pgs. 19 and 23). Six performance standards were adopted to replace the ten standards utilized under former MCPS Teacher Evaluation System. These standards were based on performance criteria employed by the National Board for Professional Teaching Standards. The PGS was to be effectuated in three stages over three academic years. Schools designated as Phase 1 schools were to implement the program in 2000/2001, Phase 2 schools in 2001/2002, and Phase 3 schools in 2002/2003. (Joint Exhibit E-20, pgs. 4 and 26-28).
4. A key component of the PGS is the Peer Assistance and Review Program (“PAR”). PAR provides instructional support to both teachers new to the profession and experienced teachers who are performing below standard. The program envisions a “shared responsibility by administration and the teachers’ union for quality control and improvement.” (Joint Exhibit E-20, pg. 5).
5. The PGS establishes a sixteen member PAR Panel, which makes recommendations to the Superintendent, as final decision-maker, on all matters, related to an individual teacher’s non-renewal,

dismissal, or continuation of contract. The Superintendent selects 8 teacher representatives for the PAR Panel who have been recommended by MCEA, and 8 school-based administrators who have been proposed by MCAASP. Joint Exhibit E-20, pg. 22).

6. As a key component of the PAR program, the PAR Panel selects “outstanding teaching professionals” to serve as Consulting Teachers. Among other duties, Consulting Teachers “observe and confer” with teachers evaluated by their principal as working “below standards.” This includes conducting an intervention/review process for teachers with below standards ratings, providing informal support, making a certain number of observations, and preparing mid year and end of year reports, culminating in a recommendation regarding future employment. (Joint Exhibit E-20, pgs. 22 and 23).
7. When a tenured teacher evaluated under the former MCPS Teacher Evaluation Program received three “needs improvements” ratings, this constituted sufficient cause to refer that individual to the PAR program. Normally, such a referral was made by the teacher’s principal for a one-year period. A Consulting Teacher (“CT”) would conduct a minimum of two observations of such a referred teacher and make recommendations to the PAR Panel. If the PAR Panel concurred with the principal’s proposed placement, based on the recommendations of the CT, the teacher would be assigned to the PAR program. (Joint Exhibit E-20, pgs. 23 and 24).
8. After the teacher’s participation in the PAR program, his or her CT was obligated to make a Summative Report to the PAR Panel by the first Monday in April. This would include recommendations for the teacher’s return to the normal professional growth evaluation cycle if standards had been met, continued PAR support for the teacher, or the teacher’s termination. The

PAR Panel then made one of those three recommendations to the Superintendent. (Joint Exhibit E-20, pgs. 17, 23-24; Joint Exhibit E-21, pgs. 21-23).

The Appellant's Early Employment History with MCPS

9. The Appellant has taught for a total of eight years in the MCPS. She initially taught in the school system for three years between 1970 and 1972, after which she had a break in service. (T.1, pgs. 150-151; T.2, pgs. 11-12).
10. The MCPS hired the Appellant as a part time art teacher at Rocky Hill Middle School ("RHMS" or "Rocky Hill") in 1997. She was employed as a full time art teacher for the 1998/1999 school year. The Appellant received evaluations in 1998 and 1999 in which she received "effective" scores in all ten categories under the teacher evaluation system that was in place at the time. She acquired tenure after the first semester of the 1999/2000 school year. (T.1, pgs. 11-12; T.2, pgs. 11-12; Joint Exhibits E-1 and E-17).
11. On November 18, 1998, Art Teacher Karen Crawford observed the Appellant teaching a 6th Grade Art class. During this session, numbers of students were inappropriately out of their seats. The times planned for activities were not adhered to. There was inconsistency in the instruction and a lack of a strong closure, causing difficulties for some students in comprehending the objectives of the class. (Joint Exhibit E-1).
12. On May 19, 1999, Art Teacher Karen Crawford observed the Appellant teaching a 7th Grade Art class. During this session, many students were not paying attention while others were off task, out of their seats, or playing with their rulers. (Joint Exhibit E-1).

The 2000/2001 School Year and the PAR referral

13. During the 2000/2001 academic year, Mike Wells was the Supervisor of the Physical Education and Art Department at Rocky Hill. He visited the Appellant's 8th Grade Art class on November 16 and 20, 2000 and observed a lack of discipline in the classroom. These sessions were marked by numerous students being off task and the Appellant's inability to get and keep the entire class's attention. Students continued to be disruptive after receiving up to 8 warnings from the Appellant and her only other recourse was referring a particular student to the central office. A lack of respect for the Appellant pervaded the class. (T.1, pg. 110; Joint Exhibit E-19).
14. Upon hearing Mr. Wells' report of his two class visits, RHMS Assistant Principal Stephen Whiting determined to conduct his own observation of the Appellant's teaching. He attended the Appellant's fifth period/8th grade art class on November 21, 2000. Mr. Whiting found that there was no clear beginning to the class and that the students were confused as to what to do. The Appellant effectively modeled the project for the day, but various students were talking and she had to speak over them. She frequently stopped her instruction to correct misbehaving students and her teaching lost momentum as a result. These classroom management problems persisted throughout the duration of the session. (T.1, pg. 111; Joint Exhibit E-19).
15. Mr. Whiting met with the Appellant after this class and advised her that she needed established routines, including an arrangement whereby students could pick up papers at the beginning of class rather than her passing them out as she talked. He noted that the Appellant needed to have a structured beginning and end to her classes. Mr. Whiting and the Appellant agreed that one of her classes would be videotaped and that they would jointly review it afterward. He encouraged her to consult with the Staff Development Teacher ("SDT") for assistance in developing mastery objectives

and classroom management strategies. Additionally, he asked the Appellant to create unit plans that had no connection to the former art teacher. (T.1, pgs. 111-112; Joint Exhibit E-19).

16. Subsequently, a videotape was made of one of the Appellant's art classes and the Appellant and Mr. Whiting viewed it together. The tape showed that the Appellant had been unaware that children at the rear of the class were off task and Mr. Whiting recommended that she should move around to a position where those children could gather around her. Mr. Whiting asked the Appellant to observe three teachers outside the area of art and she agreed to this proposal. (T.1, pgs. 113-114; Joint Exhibit E-19).

17. Working with Mr. Whiting and the SDT, the Appellant observed the classes of RHMS teachers in Technical Education, Physical Education, and English. Mr. Whiting chose these three teachers because of various similarities that their classes and subjects (technical education, physical education and English) had to the Appellant's Art classes. Arrangements were made for these observations by either having a substitute teacher cover the Appellant's class or by allowing her to use her planning periods for these purposes. Additionally, through arrangements by Art Supervisor Irene Glasser, the Appellant and another teacher observed the class of an art teacher at Neelsville Middle School. The Appellant continued to meet with Mr. Whiting on a regular basis throughout the academic year. (T.1, pgs. 114-115, 119; Joint Exhibit E-19).

18. MCPS Art Supervisor Glasser subsequently observed an art class conducted by the Appellant and reported her findings to Mr. Whiting. Mr. Whiting met with the Appellant on March 23, 2001, to convey Ms. Glasser's observations. Mr. Whiting noted that the Appellant had made progress in classroom management, but that she needed to provide follow through on disciplinary matters so that the students understood her expectations. He also commented on the elementary nature of the

Appellant's lessons and recommended that she get away from relying on the materials developed by Karen Crawford, the previous art resource teacher. The Appellant agreed to upgrade her unit plans and Mr. Whiting offered to assist her on student behavioral issues and in the development of strict lesson plans with mapped out transitions. (T.1, pgs. 116-118; Joint Exhibit 19).

19. Supervisor Wells observed two more classes taught by the Appellant on May 29, and May 31, 2001, and met with the Appellant in a conference after the earlier class. In the May 29, 2001 session, the Appellant allowed students to disrupt the class with loud comments and tried to talk over students who were ignoring or disrespecting her instructions. Many students were off task, particularly since the Appellant had not provided any activities for those who finished that day's assignment early. In the conference after the May 29, 2001 observation, the Appellant complained that throughout the year this class had been marked by disruption and students being off task, no matter what she attempted to do. Mr. Wells recommended that the Appellant try stricter disciplinary action (after school detention, taking away year-end trip) and give work that would keep students busy the entire period. The Appellant was receptive to trying these techniques. (Joint Exhibit E-19).
20. At the May 31, 2001 class observed by Mr. Wells, the Appellant initially demonstrated improvement. The Appellant posted on the board an ample amount of work for the students that day and gave clear instructions and answered questions without disruption. Most of the students were on task by 15 minutes into the class. The situation deteriorated later when various students went off task and started talking and milling about, while two of them ignored the Appellant's instructions for the class to assemble around a table. One student was allowed to leave the room without a pass. The class was marked by various students talking constantly and exhibiting disrespect for the Appellant. (Joint Exhibit E-19).

21. On June 19, 2001, Mr. Whiting presented the Appellant's formal evaluation for the 2000/2001 school year. In this instrument, the Appellant was determined to be "effective" in six of the ten rating categories or performance criteria. She was rated as "needs improvement" in four categories. As to the establishment of learning objectives consistent with student needs and the MCPS curriculum framework, it was noted that the Appellant needed to state performance objectives for each class since her students had often been unaware that they were completing an instructional task. In the category of providing for the involvement of students in the learning process, it was observed that the Appellant needed support in developing ways to carry out classroom rules and procedures. In establishing an environment that motivated students to achieve learning objectives, it was noted that the Appellant needed to enhance her behavior management strategies. As to the Appellant's participation in school management, it was noted that she needed to develop a pro-active approach to management by seeking prevention rather than reacting after the fact. The evaluation noted that the Appellant had made gains during the academic year and had been responsive in following through on suggestions from the school administration. It was further observed that the Appellant would benefit from a CT in building original instructional units and increasing her repertoire of management strategies. (Joint Exhibit E-1).

22. At the conclusion of the 2000/2001 school year, Assistant Principal Whiting recommended that the Appellant be assigned a CT and placed in the PAR program since she had received four "needs improvement scores" under the ten criteria rating system. In taking this step, Mr. Whiting sought to give the Appellant support in classroom management in order that she could concentrate on the instructional component of her teaching. (T.1, pg. 118; Joint Exhibit E-20, pg. 23).

The 2001/2002 Year and the PAR Process

23. The Appellant was assigned to Ms. Shelley Johnson as CT, along with 12 other teachers that Ms. Johnson served in that role under the PAR system. Ms. Johnson had more than 27 years experience as an art educator, teaching in 7 different schools from the kindergarten level through 12th grade. She has received awards from MCPS as teacher of the year and outstanding art educator. She had completed the Observing, Analyzing and Teaching (“OAT”) I course in the summer of 2001 and subsequently completed the OAT II course in January of 2002. (T.1, pgs. 23 through 25, 29, and 62; ROC, Tab D).
24. Ms. Johnson met with the Appellant at the end of August 2001 and described the PAR process that the latter would be going through. Ms. Johnson noted that she would first conduct an announced observation of the Appellant’s teaching, followed by a second unannounced observation. She would then formulate a recommendation as to whether the Appellant should be placed in the PAR program. (T.1, pgs. 30-31).
25. Ms. Johnson conducted an observation of the Appellant’s 8th Grade Art class on September 14, 2001. During the one hour and ten minute session, the Appellant stopped the class 37 times to speak to students who were off task or were interrupting the session. Some eight minutes before the conclusion of the class, the Appellant announced that work would stop and clean up would begin in eight minutes, with the result that many students stopped working immediately. The Appellant had expectations for conduct in place by means of a student behaviors form that was signed by each student at the beginning of the marking period. However, she did not enforce these expectations and there were no consequences for misbehavior other than calling home or sending students to the office. As a result, students had many opportunities to avoid following the rules. The Appellant did not

summarize the day's instruction or attempt to informally assess the knowledge that the students might have gained. (Joint Exhibit E-4).

26. In a post observation conference on September 17, 2001, Ms. Johnson advised the Appellant that her teaching was losing momentum during her class. This was attributable to her constantly having to stop the class to speak to misbehaving students and the general lack of discipline in the room. The situation was compounded by the loss of valuable instruction time at the end of the period through the early clean up announcement and the lack of a summary or assessment of the day's work. The Appellant recognized the negative effect of these factors on her instructional momentum. She agreed with Ms. Johnson to focus on developing consequences for student behavior and involving more students during the introduction to the class each day. The Appellant also agreed to seek assistance from the SDT in formulating new strategies for the introduction of the lesson each day. (Joint Exhibit E-4).
27. Ms. Johnson conducted another observation of the Appellant's 8th Grade Art class on September 24, 2001. During this session, the Appellant's students were able to fill out an evaluation sheet because of her clear directions, communication of expectations and effective use of the overhead. The Appellant also made a smoother introduction to the session. She relied less on desisting moves that interrupted the flow of instruction. She also shortened the time for clean up instructions, thereby reducing the students' loss of work on art at the end of the period. (Joint Exhibit E-4).
28. During the September 24, 2001 class, the Appellant exhibited a lack of questioning strategies in discussing art with the students. She did not ask comprehension questions that required each student to explain his or her reasoning and choices. She also was deficient in her summarization skills and in communicating the big picture, so as to emphasize to the students the importance of the work that

was being done in the class. The Appellant also lacked momentum strategies in providing meaningful filler activities for those students who had completed their paintings and evaluation forms. As a result, various students were doing homework for outside classes during the art session, while others were off task or even napping. (Joint Exhibit E-4).

29. In a September 26, 2001 post observation conference with the Appellant, Ms. Johnson recognized the Appellant's "desire and willingness to improve her teaching strategies," and noted that the Appellant was in communication with the SDT in an effort to enhance behavior management in her classes by linking misbehavior to consequences. Ms. Johnson observed that the Appellant lacked the strategies and skills in communications, summarization and questioning techniques that one would expect from an 8-year veteran teacher. Accordingly, Ms. Johnson recommended that the Appellant be included in the PAR program for the 2001/2002 school year. (T.1, pg. 32; Joint Exhibit E-4).
30. On September 26, 2001, Ms. Johnson prepared a recommendation that the Appellant be included in the PAR program for the 2001/2002 academic year. On the basis of her observations, Ms. Johnson noted that the Appellant had various strengths, including effective use of explanatory devices, the employment of routines for various stages of the class, the utilization of space to accommodate the students and their supplies, and the establishment of personal relationships with the students. She also noted that the Appellant had needs in various areas: developing instructional strategies such as summarizing; using questioning methodologies to test for comprehension; making connections so as to enable the students see the big picture; communicating standards, expectations and detailed feedback in order to motivate her students; and employing classroom management techniques that fostered student attentiveness, enforced discipline, and maintained the momentum of the Appellant's

teaching. RHMS Principal Peter Cahall signed and joined in this recommendation for the Appellant's PAR placement and it was submitted to the PAR panel on October 4, 2001. (Joint Exhibit E-5).

31. At its October 4, 2001 meeting, the PAR panel agreed with the recommendation to place Appellant in the program. On October 5, 2001, the Co-Chairpersons of the PAR panel wrote to the Appellant informing her of this placement and noting that the program was designed to "provide individualized support for professional growth and improvement of your teaching performance." They advised the Appellant that a CT would be assigned to her who would serve as her "support and coach" in observing her, bringing resources to bear on "skills and strategies" and taking "whatever time necessary" for these purposes. This teacher would also meet with RHMS administrators and colleagues familiar with the Appellant's work and write four formal observations and a final summary. These would be presented to the PAR panel who would make one of three possible recommendations: (a) continued employment and return to the normal Professional Growth Cycle; (b) continuation in the PAR program for another year; or (c) dismissal or non-renewal of the Appellant's teaching contract. While reiterating the program's design to provide the Appellant with "collegial support feedback and assistance," this letter also emphasized that her inclusion in PAR was "not voluntary." Ms. Johnson was assigned to continue as the Appellant's CT. (Joint Exhibit E-6).
32. Ms. Johnson observed the Appellant on November 13, 2001, in an 8th Grade Art class held in a science lab. On that day, the Appellant effectively communicated to the students that they were working on both a Mona Lisa paper and a wind chimes project, with the former to be completed first. With this simultaneous approach, all of the students were busily engaged and keeping their focus on either the paper or the wind chimes. The Appellant satisfactorily incorporated instructional strategies in her lesson that day, presenting objectives verbally. The Appellant employed a technique of

addressing students on an individual basis when she saw or anticipated problems, rather than interrupting the class with desisting instructions. One student was effectively counseled in this fashion as to his loudness. The Appellant had more difficulty with another student (“M”) who, although talented and active, insisted on sitting with several girls rather than at this own table. A third student appeared to intimidate the Appellant with his rudeness. (Joint Exhibit E-7)

33. In a post observation conference that same day, the Appellant expressed excitement to Ms. Johnson regarding the incorporation of the 3, 2, 1 technique in her instructions as to the wind chime project. The Appellant and Ms. Johnson agreed that the Appellant would continue to work on classroom management strategies, including the technique of talking privately with students. The Appellant agreed to use M as a classroom assistant in an effort order to positively channel his energy, while seeking to improve communication with the student who had exhibited rudeness. (Joint Exhibit E-7).
34. As the Appellant’s participation in the PAR program went forward during the 2000/2001 academic year, CT Johnson engaged in various supportive activities in addition to observing and evaluating the Appellant. Ms. Johnson was in the Appellants’ art and keyboard classrooms and met with the Appellant every other week during the year, making suggestions and recommendations as to the improvement of her instruction. By the end of the 2001/2002 school year, she had met with the Appellant 31 times, consuming approximately 39½ hours. Additionally, Ms. Johnson supplied the Appellant with various resource materials, including the Attention Moves Continuum and John Saphier’s Activators and Summarizers from the Skillful Teacher publication. Ms. Johnson referred the Appellant to the SDT for assistance and the Appellant consulted with this individual throughout the year. Additionally, Ms. Johnson met with the RHMS Principal and Assistant Principal and

members of the PAR Panel to apprise these individuals of the Appellant's progress. (T.1, pgs. 45-46, and 48; Joint Exhibits E-14 and E-15).

35. As another part of her obligations under the PAR program, CT Johnson prepared a November 19, 2001 Mid-Year Summary Report for presentation to the PAR panel in order to apprise this group of the Appellant's status in the program. This one page report identified curriculum planning and management of space and routines as the Appellant's areas of strength. Instructional strategies, classroom management/momentum/attention and building personal relationships were designated as the Appellant's areas of need. The interventions and supports employed as part of the Appellant's participation in the program were identified, including expectations and attention moves handouts, activator and summarizer notebooks, weekly observations or discussion meetings, weekly communication with the Principal, and coordination with the SDT. The Appellant signed the document on November 19, 2001. Ms. Johnson presented this summary to the PAR Panel in December of 2001. (T.1, 45-46; Joint Exhibit E-8).

36. At the PAR panel's request on December 6, 2001, the following statement was placed at the bottom of the report, with the expectation that the Appellant would sign it in acknowledgement of its addition to the document.

[The Appellant] must show evidence of growth in the areas identified on the Midyear Summary in order to meet standards.

(T.1, pgs. 49-50; Joint Exhibit E-8)

37. The Appellant signed this additional statement on December 11, 2001, with Ms. Johnson signing as the CT on December 10, 2001. In a discussion of the Midyear Summary and in later conversations, Ms. Johnson advised the Appellant that she needed to get going and that there had

to be more evidence of her work conforming to standards. Ms. Johnson emphasized that the Appellant's class management skills and instructional strategies had been frequently ineffective. (T.1, pgs. 49-50; Joint Exhibit E-8).

The Latter Part of the 2001/2002 Year

38. During the 2001/2002 academic year, RHMS Principal Peter Cahall followed a practice of looking into the school's classrooms for three to five minutes at a time. He sought to show his presence and support of the teachers and to learn what was occurring in these classrooms on a day- to-day basis. He made such appearances in the Appellant's classrooms at least once a week. During most of these occasions he found that numbers of students were off task and that the classroom setting was unstructured. (T1, pgs. 90-91).
39. On December 14, 2001, Principal Cahall conducted a formal written observation of the Appellant's 8th Grade Art class during the second block that day. He remained in the classroom for the entire 70-minute period. (T.1, pgs. 91-92).
40. The Appellant effectively began the class by using modeling, handouts and the overhead to demonstrate the process of bookbinding to the students. She explained that the students were to complete a writing assignment after finishing their bookbinding exercise. At this point, momentum broke down when the Appellant asked the students to gather at a station where there was one paper cutter. The Appellant remained at this paper cutter, as each student sought to cut his or her papers down to size for bookbinding. Many students had to wait up to twenty minutes to use the cutter. (T.1, pgs. 92-94; Joint Exhibit 9).
41. While the Appellant was occupied with paper cutting, the momentum of the class significantly deteriorated. Many of the students did not begin working on their written assignment after

completing the paper cutting and were off task. During this period, one student hit another with a ruler while other children played with glue at the rear of the classroom. Others talked and socialized. Mr. Cahall was surprised that a teacher with the Appellant's experience had conducted such an ineffectual class. (T.1, pgs. 92-96; Joint Exhibit E-9).

42. Mr. Cahall held a conference with the Appellant on December 17, 2003, to discuss his observations of her class. He subsequently prepared a written report of these observations. (T.1, pgs. 91 and 102).

43. During the 2001/2002 academic year, the Appellant worked hard to prepare plans for her lessons and developed a variety of written materials, including lessons plans, evaluation sheets, graphic organizers and a handout entitled "The Art of Bookbinding." (Joint Exhibits E-9 and 17). Mr. Cahall acknowledged this in his December 14, 2001 observation report. However, he also noted that there was a disconnection in the effective utilization of these materials because of improper or disorganized distribution and sequencing. Mr. Cahall emphasized the Appellant's deficiencies in managing and subdividing the class, with the disproportionate amount of time that she had spent on the paper cutting activities, while other students remained off task or engaged in disruptive behavior. Since the paper cutting exercise was, by the Appellant's own admission, not an objective of her lesson, Mr. Cahall noted that she should have either provided the students with pre-cut pages or arranged for the availability of scissors or more paper cutters. He concluded that at least two more formal observations of the Appellant were necessary to further assess the quality of the Appellant's instruction during that school year. Mr. Cahall signed his observation report on February 1, 2002 and presented a copy to the Appellant. (T.1, pgs. 92-95; Joint Exhibits E-9 and 9A).

44. CT Johnson conducted an observation of the Appellant's 8th Grade Art class on January 14, 2002.

In this class, the Appellant sought to activate instruction by initiating the students' comparison of the works of four artists (Durer, Rousseau, Allen and Haring) and their differing uses of lines. The class broke down in confusion because of the Appellant's failure to adequately provide an explanation as to the purposes of the activator and her inappropriate management of the activity. The Appellant placed a work by each artist at a different location around the classroom. She then walked around the room asking each student to draw the name of one of the four artists out of a hat. The students moved to each of the four locations, finding that comparisons were difficult because there was only a work by one of the artists at each location. Because of unclear instructions and the way in which the activity was set up, the students were unable to effectively compare and contrast the work of the artists, with resultant confusion and disorganization. Further, the momentum of the instruction was frequently disrupted by the Appellant's attention moves in response to student misbehavior. She had to interrupt her instruction over 25 times in efforts to get the students' attention. The Appellant was able to salvage the last 20 minutes of the class by employing the momentum move of gathering the students in a semi circle at the back of the room and detailing the expectations for that day's lessons. This refocused the students' attention, but 40 minutes of work time had been consumed by going through the original directions and the activator activity. (Joint Exhibit E-10).

45. In her post observation conference with the Appellant, Ms. Johnson noted that the Appellant was not providing a classroom conducive to learning because of the interruptions caused by her attention moves. The Appellant expressed her disappointment with her employment of the four corners strategy during the class. Ms. Johnson encouraged her to try again after consulting with the SDT or herself as CT. Ms. Johnson acknowledged that the Appellant had all the materials ready for the class,

but noted that time was wasted in the Appellant's placing the pictures at the four locations and drawing the artists' names from the hat. Given the fact that the Appellant had to travel to each class with her cart, Ms. Johnson recommended that she utilize student assistants in making such provisions for her classroom. (Joint Exhibit E-10).

46. In her post conference observation report, Ms. Johnson noted that the Appellant was continuing to "expand her teaching skill repertoire." It was acknowledged that the Appellant was losing momentum in class by using attention moves that were for desisting only. Ms. Johnson observed that the Appellant was developing lessons that contained appropriate art activities, but also related that the Appellant needed to develop activators and summarizers that were appropriate to the lesson in question and its instructional purpose. The Appellant agreed to work with the SRT and CT in developing art activities that were consistent with the general curriculum, while continuing to analyze her own teaching with the CT. (Joint Exhibit E-10).

47. On February 13, 2002, Ms. Johnson observed the Appellant's keyboarding class. After this class, Ms. Johnson met with the Appellant. She advised the Appellant that she was still exhibiting a lack of classroom management skills and that her instructional delivery and strategies were ineffective to engage her students in learning activity throughout the class. Ms. Johnson emphasized that the Appellant was not meeting standards. (T.1, pgs. 50-51; Joint Exhibit E-15).

48. During the first part of the 2001/2002 academic year and in the period after the Appellant's formal placement in the PAR program, Assistant Principal Whiting continued to meet with the Appellant in effort to provide further support and help in her instruction. The Appellant consulted him on a number of occasions when she was having problems with a particular student or when she sought to employ a new technique in the classroom. Otherwise, Mr. Whiting stepped back and allowed the

PAR process to go forward, with the Appellant dealing primarily with the CT. Mr. Whiting did not formally observe the Appellant's instruction during this period. He did receive information from Ms. Johnson as to the Appellant's progress. In a December 14, 2003 meeting, Ms. Johnson had advised Mr. Whiting that she had serious concerns about the Appellant being retained as a teacher because of the quality of the latter's teaching. (T.1, pgs. 118-119; Joint Exhibit E-15).

49. In February of 2002, Mr. Whiting determined to conduct a formal observation of the Appellant, since he had worked with her in the past and had been somewhat out of the loop during the first part of the academic year. He was interested in seeing for himself what progress the Appellant had made. (T.1, pgs. 119-120).

50. Mr. Whiting conducted a formal observation of the Appellant's 8th Grade Art class on February 26, 2002. This turned out to be a good class, with the Appellant exhibiting some progress in classroom management. She effectively managed time, space and routines, posted objectives, and successfully employed modeling to demonstrate techniques for a ceramic cottage project. Mr. Whiting did have a discussion with the Appellant as to the need to push the students to do more and attain higher objectives with their individual projects. On February 27, 2002, Mr. Whiting made a formal report of his observations in this class. (T.1, pg. 120; Joint Exhibit E-11).

51. As a follow up to their earlier meeting on February 13, 2003, Ms. Johnson again met with the Appellant on February 28, 2002. Ms. Johnson advised the Appellant that she was not meeting standards and that there was only one more unannounced observation by the CT. Ms. Johnson noted that a final summative report would be due in March and that March 15, 2002 was the last day for teachers to turn in letters of resignation so as to be eligible for full benefits. She further advised that she would be presenting her final report and recommendation to the PAR panel on or about April 12,

2002, with the Appellant having the right to present her case to the panel as an appeal on April 25, 2001. Ms. Johnson warned that a teacher who lost an appeal to the PAR panel and was subsequently fired would have this noted on his or her record. The Appellant contended that she had made progress and had provided successful and challenging teaching to her students after revamping her instruction in coordination with Ms. Johnson as CT. The Appellant stated that she was considering an appeal. Ms. Johnson subsequently prepared a written memorandum of this discussion and she and the Appellant signed it. (Joint Exhibit E-12).

52. On March 11, 2001, CT Johnson conducted a final formal observation of the Appellant for the 2001/2002 school year, sitting in on the Appellant's 8th Grade Art class. The Appellant employed modeling techniques to demonstrate a stained glass window project, suggesting how the students could apply color schemes to their windows. The Appellant did not involve the students in the demonstration and she also made only limited efforts to relate past instruction to the present project. Despite the fact that the students had previously had a number of lessons on color during the year and were capable of discussing monochromatic, complementary, and analogous color schemes because of this background, the Appellant did not solicit answers or comments from the students while speaking of colors. While the students were moving to the demonstration area, six students remained in their seats. The Appellant made no effort to involve them in the demonstration and these students suffered no consequences for deciding to opt out of this part of the instruction. There were also instances of the students showing disrespect for the Appellant by ignoring her instructions. These students also suffered no consequences for this misbehavior. (T. 1, pgs. 51-52; Joint Exhibit E-13).
53. During this class, the Appellant provided some positive feedback and compliments to various students, so that these individuals felt good about their work. She demonstrated a nice rapport with

several students, expressing interest and concern in their well being. The Appellant provided sufficient time for the students to concentrate on their work, limiting the demonstration and explanation of the classwork to 10 minutes and the clean up period to the last five minutes of the class. She adequately provisioned the class and established safety procedures, utilizing a sign out sheet to hold the students accountable for Exacto knives and tools that were distributed. The supplies were situated in various locations about the room that were accessible to students without crowding. Some time was lost when the Appellant failed to exactly explain where various supplies were actually situated, resulting in 10 students asking her where these items could be found. (Joint Exhibit E-13).

54. Also during this session, the Appellant gave two students permission to start their projects over, without holding them accountable for the work done or otherwise encouraging them to persevere. Although one of these two students, on his own initiative, subsequently elected to continue, the Appellant made no effort to engage either student in a discussion of his or her work or to investigate the necessity of starting the projects over. At the conclusion of the class, the Appellant advised the class that those students completing the window project would be working on color schemes for their next project, painting the clay cottages that they had previously made in earlier sessions. This oriented the class as to the itinerary for instruction in the next class. (Joint Exhibit E-13).

55. In the post observation conference held the next day, the Appellant acknowledged to Ms. Johnson that by failing to ask the students about color schemes, she had missed an opportunity to show the students the overall picture and to relate the class to prior instruction. The Appellant and Ms. Johnson discussed the proposed instruction for the next class. The Appellant expressed uncertainty as to whether to distribute paints to the students for their cottage projects during the next session, since many students had not yet finished their stained glass windows and painting the cottages would not

require the full period. Ms. Johnson suggested that the Appellant move those students finishing their houses forward in order that they could serve as a resource for the other students in the house painting. The Appellant advised Ms. Johnson that she intended to make portraits and the work of Chuck Close the focus of her next stage of instruction, a concept they had previously discussed. She was unable to explain how she would time the portrait lesson, since students were finishing their window and cottage painting projects at different rates. The Appellant indicated that she might use some warm up activities relating to portraits while the other students were completing their projects, but expressed her indecision when pressed by Ms. Johnson as to exactly what she planned to do. Ms. Johnson warned the Appellant not to get bogged down in filler activities while waiting for the majority of students to complete their windows and cottages. (Joint Exhibit E-13).

56. In her post conference observation report, Ms. Johnson noted that the Appellant had missed opportunities to challenge students and demonstrate a commitment to their learning. She observed that no student behavior issues had arisen during the class, but referenced the Appellant's statement that a particularly difficult student had been absent that day. Ms. Johnson related that the Appellant needed guidance in planning her lessons, as illustrated by her indecision in completing present projects and moving on to the next bloc of instruction. She further commented that the Appellant had missed opportunities to connect with her students, resulting in a lesson that was teacher-directed with minimal student interaction. (Joint Exhibit E-13).

The Final Summative Report

57. On or about March 25, 2002, Ms. Johnson prepared a Final Summative Report regarding her CT work with the Appellant in the PAR program during the 2001/2002 academic year. (T.1, pg. 54). In regard to Performance Standard I, the Appellant's commitment to students and their learning, Ms.

Johnson observed that the Appellant had shown a willingness to plan lessons with mastery objectives, and that she followed through on many of the suggestions made as to improving her teaching. However, citing her observation of the Appellant's class on November 13, 2001, she noted that the Appellant had improperly used fillers so that the Mona Lisa project had become the main activity. Ms. Johnson pointed out that she herself had been the motivating force in making suggestions to improve the Appellant's teaching, while the Appellant had showed no initiative to analyze her lessons on her own. She further noted that the Appellant missed many opportunities to demonstrate the importance of the course, to encourage her students to persevere and to hold them accountable for their work. Ms. Johnson cited her observation of the Appellant's March 11, 2002 class in support of this proposition, while referencing an informal observation of a February 13, 2003 computer lab to indicate that the Appellant allowed students to socialize without consequences. (Joint Exhibit E-14).

58. In regard to Performance Standard II, the Appellant's knowledge of her subject and how to teach it to her students, Ms. Johnson observed that the Appellant adequately conveyed her knowledge of art and its content, using clarity strategies and modeling art techniques. She also noted that the Appellant had improved in providing student and/or teacher exemplars as models for the students. Ms. Johnson advised that the Appellant had sought to use various instructional strategies during the year, including such activators and summarizers as 3, 2, 1, KWL, Four Corners and Finger Timing. However, she referenced the class of January 14, 2001 as demonstrating the Appellant's improper usage of the Four Corners technique, with the class breaking down in confusion because of her not supplying adequate materials at the various stations. Ms. Johnson further noted the September 24, 2001 session and the fact that Appellant had asked students questions seeking one word answers, thereby missing

opportunities to engage the students and have them explain their thinking. Her limited or non-existent summarizing at the end of classes on September 14, and 24, 2001, and March 11, 2002, had impaired the ability of her students to share what they had learned. Ms. Johnson cited the March 11, 2003 class as illustrative of the Appellant's inability to convey the big picture and make connections for the students. She noted that the Appellant failed to draw on the student's prior background in colors as a trigger for discussion and had allowed six students to opt out of part of her instruction. (Joint Exhibit E-14).

59. As to Performance Standard III, the establishment and management of student learning in a positive learning environment, Ms. Johnson observed that the Appellant had exhibited modest growth in expanding her classroom management strategies. Throughout the year, she had consistently provided specific feedback regarding assignments and areas needing attention, supplementing or reinforcing this with a moderate amount of positive feedback for some students. However, she also maintained minimum expectations for classroom behavior. As illustrated by classes on September 14, 2001, and January 24, and February 13, 2002, the Appellant had allowed students to be out of their seats and socializing without consequences. Ms. Johnson also noted that the Appellant placed inordinate reliance on ineffectual attention moves to counter this misbehavior. Referencing classes on September 14, 2001, January 14, 2002, and March 11, 2002, Ms. Johnson emphasized the Appellant's inordinate reliance on ineffectual desisting moves to address student misbehavior. Accordingly, her teaching had lost all momentum. She noted that the Appellant was often uneven in implementing discipline, focusing primarily on certain boys, while ignoring and tolerating misconduct by other students. Ms. Johnson also cited the Appellant's difficulty in pacing her instruction and utilizing class time effectively. She referenced the September 14, 2001 class, where

the introduction and clean up period consumed 40 minutes, leaving only 30 minutes to work on their art. She also referenced keyboarding classes that she had visited on November 13, and 26 2001, when the Appellant had failed to move beyond the activator to the next stage of instruction. This resulted in students socializing and being off task, with a corresponding loss of student work time. Ms. Johnson recognized that in the last class that she had observed on March 11, 2002, the Appellant demonstrated correct timing and pacing in her instruction so that the students' work time was maximally utilized. (Joint Exhibit E-14).

60. With reference to Performance Standard IV, assessment and analysis of student progress and adaptation of instruction to improve student performance, Ms. Johnson acknowledged that the Appellant had incorporated rubrics in her lessons as a form of summative assessment. These were used to initiate interest in the class and served as a reference point for students while they worked. Ms. Johnson noted that the Appellant assessed and observed her students' progress in an informal manner to determine her next instructional steps. However, as late as the art class of March 11, 2002, the Appellant expressed uncertainty as to how to allocate class time and determine instruction in light of students completing their various projects at differing points in the period. She had not formulated a main lesson or mastery objectives regarding the next phase of instruction, a portraiture project, for those students completing their stained windows and clay houses. Additionally, Ms. Johnson cited a January 31, 2002 visit to a keyboarding class, where she and the Appellant reviewed the latter's records and determined that 40% of the class had not completed a particular assignment. The Appellant had no plausible plan for how she was to have these students complete the assignment without holding back the other 60% who had finished the work. Finally, Ms. Johnson noted that the

Appellant considered completion of a project as mastery of an objective, without further analysis to determine actual student achievement. (Joint Exhibit E-14).

61. As to Performance Standard V and the Appellant's commitment to professional improvement and development, Ms. Johnson observed that the Appellant had participated in seven workshop or training programs during the 2001/2002 academic year. Regarding Performance Standard VI and the Appellant's exhibition of a high degree of professionalism, Ms. Johnson noted that the Appellant had worked cooperatively with the CT and SDT during her participation in the PAR program. (Joint Exhibit 14).

62. In her Summary, Ms. Johnson highlighted the various forms of assistance that had been provided to the Appellant by herself as CT and other individuals. (Fact-Finding 34). Ms. Johnson acknowledged that the Appellant had listened attentively, taken notes and had sought to apply various suggestions to some of her lessons. Yet, she also noted that the Appellant had not been consistent in this regard and had taken little independent initiative in attempting to improve her teaching. The Appellant had not developed challenging, structured lessons for her students, often repeating instruction from one grade to the next and converting fillers into main lessons. Additionally, the Appellant had made sustained efforts regarding classroom management in both her art and keyboarding courses, but these had been largely ineffective. Ms. Johnson acknowledged that the Appellant's classroom had been much more effective in the last class observed on March 11, 2002, but noted that the Appellant attributed this to the absence of a particular unruly student.

63. Ms. Johnson gave a final rating of Below Standards to the Appellant, with a recommendation that she be dismissed. (T.1, pgs. 55-56; Joint Exhibit E-14).

64. In the Principal's Response to the Final Summative Report, RHMS Principal Cahall concurred in this recommendation. He felt compelled to take this action, because the observations of himself, Mr. Whiting, and the CT all indicated that the students were not learning and not being well served in the Appellant's classes. (T.1, pgs. 97-98; Joint Exhibit E-14).
65. Assistant Principal Whiting conducted a second formal observation of the Appellant's teaching on or about April 15, 2002. He again observed an 8th Grade Art class. Overall, this was a poor session. The students lacked direction since the Appellant had given them objective sheets only several days before the conclusion of the particular block of instruction, rather than at the beginning. The Appellant successfully employed the technique of rotating about the room and keeping individual students on task. In the meantime, other students were getting a minimal amount of work done and were engaged in conversations amongst themselves. In giving instructions and announcements to the whole class, the Appellant would attempt to speak over these conversations and would repeat these directions while the students were still talking. These students exhibited little respect for the class or its teacher. Mr. Whiting made a formal report of his observations on April 15, 2002. (T.1, pgs. 121-122; Joint Exhibit E-14A).

The Recommendation for Dismissal

66. Early in April of 2002, Ms. Johnson appeared before the PAR Panel and presented a summary of her conclusions and recommendations as to the dismissal of the Appellant. At that time, the PAR panel took a voice vote that unanimously concurred with Ms. Johnson's recommendation. (T.1, pgs. 56-58).
67. Having preliminarily determined to support Ms. Johnson's recommendation, the PAR Panel invited the Appellant to present her opposition to the recommendation. The PAR Panel subsequently heard

a presentation from the Appellant. After further deliberation, the Panel forwarded its recommendation that the Appellant be dismissed to the Superintendent. The Panel based its recommendation on its determination that the Appellant did not meet Standard II (instructional strategies) and Standard III (classroom management). (T.1, pgs. 56-58, 142-144).

68. MCPS Deputy Superintendent James Williams received the recommendation of the PAR Panel on behalf of MCPS Superintendent Jerry Weast. Deputy Superintendent Williams met with the Appellant and her representative on June 4, 2002. After hearing the presentation of the Appellant and reviewing documentation relating to the case, Mr. Williams advised Superintendent Weast of his view that the record clearly demonstrated the substandard nature of the Appellant's teaching. After reviewing the documentary record, Mr. Weast accepted the Assistant Superintendent's position. On June 11, 200, Superintendent Weast notified the Appellant that he was recommending her for dismissal because of incompetency and advised her of her right to appeal to the Board. (ROC, Tab B).

DISCUSSION

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) (Supp. 2003) reads, in pertinent part, as follows:

(a)(1)(i) 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 § 50704 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 county board to the State Board.

(Emphasis added.)

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.01.01.03E provides:

- (3) Teacher Dismissal and Suspension.

- (a) The standard of review in teacher dismissal or suspension 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.

In the Appellant's appeal of his dismissal by the Board, the ALJ, on behalf of the State Board, exercises independent judgment on the record. COMAR 13A.01.01.03E(3).

II. *The Appellant's Placement in the PGS/PAR System for the 2001/2002 School Year was Appropriate and Consistent with the Provisions of the 2001/2002 DGS Handbook, Notwithstanding Her Being Assigned to a Phase 1 School*

A continuous quandary has emerged throughout the instant proceeding as the case has worked its way through the various levels of appeal. This is the question of whether the Appellant was unfairly subjected the Professional Growth System and its PAR program at a time when RHMS was a Phase 3 School. The Appellant has challenged the propriety of her referral to PAR at most stages of the instant proceeding.

The preamble to the PGS Handbook for the 2001/2002 academic year clearly recognized that the PGS was being phased in at MCPS during a three-stage process, beginning with the 2000/2001 school year:

During the second year of implementation (school year 2001-2002), the new teacher evaluation instrument and system will be used for all classroom teachers in Phase I and

Phase 2 schools. Only teachers in Phase 3 schools will continue to be evaluated using the existing ten-criterion teacher evaluation system and the provisions of the July 1994 MCPS Teacher Evaluation System Handbook.

(Joint Exhibit E-20, pg. 3).

It is uncontested that RHMS was a Phase 3 School, where the PGS system for teachers was to be implemented during the 2002/2003 school year. (Joint Exhibit E-20, pg. 26). Thus, according to the Appellant, she should not have been subjected to the six standard PGS system at all during the 2001/2002 year. Nor should she have been assigned a CT or otherwise processed under DGS and the PAR system, which were not due for implementation at RHMS until the following academic year. Rather, according to the Appellant, her case should have been handled under the old ten criteria system. As noted, these arguments have been made throughout this proceeding and with some degree of success. Indeed, one of the touchstones of Hearing Officer Sickles' decision below was his view that the PGS/PAR system had been unfairly applied to the Appellant during the 2001/2002 academic year, resulting in her being held to "inappropriate standards." (ROC, Tab H, pages 11 and 13).

I do not concur with this reasoning. In addition to setting forth the scheme for implementing the PGS over a three stage time schedule, the preamble to the 2001/2002 Handbook also envisioned the PGS being extended to a certain number of experienced teachers, regardless of what phase a particular teacher's school was in:

Teachers new to teaching in the Phase I and Phase 2 schools will receive the support of consulting teachers through the PAR program in school year 2001-2002. A limited number of veteran teachers in Phase I, Phase 2, and Phase 3 schools also receive the intensive support of consulting teachers in the PAR program beginning in the 2000-2001 school year.

(Joint Exhibit E-20, pg. 4).

The 2001/2002 Handbook also went on to specify the circumstances under which a veteran teacher could be placed in the PAR/PGS system:

The PAR program is normally a one-year program for the teacher. Referrals are made as a result of the formal evaluation done by the principal. Under the former teacher evaluation system, a rating of one “not effective” and one “needs improvement,” or three needs improvements is sufficient for referral to the PAR program.

(Joint Exhibit E-20, pg. 23).

Thus, the 2001/2002 Handbook clearly contemplated the situation whereby a tenured or “veteran teacher” could be placed in the PAR system. This was the case even if he or she was presently situated at a Phase 3 school where the program was not due for formal and universal implementation until the 2002/2003 school year. The Handbook went on to specify that three “needs improvement” ratings were sufficient to trigger referral to and placement in the PAR/PGS system, even though those scores were obviously attained under the former ten standard teacher evaluation system.

Accordingly, the fact that the Appellant was at a Phase 3 school and had only been evaluated under the former system did not exempt her from placement in the PGS system for the 2001/2002 year. Indeed, under the literal language of the 2001/2002 Handbook, the Appellant was susceptible to and eligible for such a referral and placement since she had received four “needs improvement” ratings in her evaluation for the 2000/2001 school year. (Fact-Finding 21).

III. *Ms. Johnson’s Service as the Appellant’s Consulting Teacher was Consistent with the 2001/2002 DGS Handbook and Not Invalidated by Ms. Johnson’s Lack of Certification as an Administrator Supervisor or the Status of her OAT Training*

The Appellant has challenged the means by which she was evaluated under PGS/PAR system. Specifically, she complains that the bulk of her evaluations were done by Ms. Johnson, the CT, culminating in the March 25, 2002 Summative Report that triggered the process of her dismissal.

The Appellant notes that in 2001/2002, Ms. Johnson was not professionally certified under COMAR 13A.12.04.01 as an administrator or supervisor responsible for the supervision of instruction in a school. (T.1, pg. 24). The Appellant cites COMAR 13A.07.04.01 and .02 for the proposition that only such professionally certified supervisory personnel may serve as an evaluator or observer of a teacher for the purpose of rendering assessments that may ultimately result in the discharge of a tenured teacher.

Assuming arguendo that these directives do require these certifications for the evaluation and observation of teachers, such assessments did occur during both the 2000/2001 and 2001/2002 school years. During the earlier year, RHMS Assistant Principal Whiting observed the Appellant's class on November 21, 2000, and subsequently he and the Appellant, reviewed a videotape of her instruction in another class. (Fact-Findings 14 and 16). Mr. Whiting also reviewed the reports and assessments of other teachers who had observed the Appellant's instruction during the 2000/2001 year before recommending her for placement in the PAR program. Finally, he served as the Appellant's evaluator during the 2001/2002 academic year. (Fact-Findings 14, 18, and 21).

During the critical 2001/2002 academic year while the Appellant was being evaluated under the PGS/PAR system, RMHS Principal Cahall observed her class on December 14, 2001. (Fact-Findings 41-44). Assistant Principal Whiting observed the Appellant's classes on February 26, 2002, and April 15, 2002. (Fact-Findings 48-50, and 65). Principal Cahall reviewed Ms. Johnson's March 25, 2002 Final Summative Report and concurred in the recommendation that the Appellant be dismissed. (Fact-Finding 64). There is no evidence in the record challenging the professional certification of Mr. Whiting or Mr. Cahall as administrator/supervisors. Similarly, there was nothing

in the 2001/2002 or 2002/2003 PGS manuals that required an individual to be certified as a supervisor or administrator before he or she could serve as a CT in the PAR program.

Unquestionably, Ms. Johnson, as CT, provided the main internal dynamics of the process under the PAR system whereby the Appellant was observed, evaluated and ultimately recommended for dismissal. Among other challenges to Ms. Johnson's capacity and activities in this role, the Appellant notes that Ms. Johnson did not complete her training to serve as a CT until January of 2002, midway through the year in which she was observing and evaluating the Appellant. That is, although she completed Observing Analyzing and Teaching I in the summer of 2001, she did not finish OAT II until January of 2002. (Fact-Finding 23). The Appellant cites the 2002/2003 PGS Handbook and its requirement that CTs involved in the observation and analysis of teaching are required to complete these two six day courses. (Joint Exhibit E-21, pg. 6).

I must point out that the PGS/PAR system, together with its three-phased implementation, was the jointly developed project of MCPS, MCEA, and MCAASP (Fact-Findings 3 and 4). The 2001/2002 PGS Handbook was a "transitional" document developed to govern the program's implementation during that year. This included provisions whereby a teacher at a Phase III school could be placed in PAR. There was nothing in this handbook requiring that those serving as CTs at that time must have completed the OAT I and II instruction. Although this requirement was reflected in the handbook for the subsequent 2002/2003 year, I view the 2001/2002 document as being the governing instrument for that particular year. It is certainly reasonable to assume that those who devised the system were prepared to accept some gaps in the OAT training of CTs during the initial stages of DGS/PAR's phase in throughout the school system. Ms. Johnson's extensive educational credentials, particularly as an exceptionally talented and experienced art teacher, were not otherwise

challenged. (Fact-Finding 23). It was not otherwise shown, in any way, that her lack of some part of the OAT training actually diminished her capabilities as an evaluator/observer. As a practical matter she did complete the OAT II training by January of the year in which she was evaluating the Appellant. In my view this was more than substantial compliance with the requirements of the PAR program as it was then evolving.

IV. *The Appellant Received Appropriate Notice that her Teaching was not Meeting Standards and Could Result in her Dismissal/Termination under the PAR Process*

The Appellant has claimed that she did not receive adequate notice that her referral to and evaluation under the PAR system could result in her dismissal as a teacher in the MCPS. She maintains that she only became aware of this possible eventuality when Ms. Johnson advised her on February 13, 2002 that she was not meeting standards.

In my view, the acceptance of this contention would require a strained and unrealistic view of the facts. The evidence clearly indicates that the Appellant was well aware that her teaching was not meeting standards. Despite the tendency of some in the academic/teaching professions to cushion their colleagues from hard truths (See Fact-Finding 31), the Appellant knew, at a minimum, that she had received four “needs improvement” scores on her 2000/2001 evaluation. This resulted in Assistant Principal Whiting referring her to the PAR program. (Fact-Findings 21 and 22). Subsequently Ms. Johnson observed the Appellant at the start of the 2001/2002 year. She found problems with the Appellant's instruction and recommended her referral to PAR. (Fact-Findings 24-30). On October 5, 2002, the Co-Chairpersons of the PAR Panel advised the Appellant of her placement in PAR. Although this communication contained language as to the CT being the

Appellant's "support and coach," it also notified her that her placement in PAR was not "voluntary" and that the process could result in her dismissal, among three possible alternatives. (Fact-Finding 31). Subsequently, the Appellant was presented with Ms. Johnson's mid-year report. This document contained language inserted at the specific request of the PAR Panel to the effect that the Appellant had to show growth in areas identified on the report in order to meet standards. (Fact-Findings 35-37). In meetings with the Appellant on February 13 and 28, 2002, Ms. Johnson advised the Appellant that she was not meeting standards and strongly indicated that she would be recommending the Appellant's dismissal in conjunction with the Final Summative Report that was due in March. (Fact-Findings 47 and 51). All of these communications took place in the context of the Appellant receiving observation reports that identified numerous deficiencies in her teaching. In light of all of this, it is my view that the Appellant must have been deliberately placing herself in a state of denial if she was unaware that her future employment was at issue and risk as an increasingly possible outcome of the PAR process.

V. *The Appellant was Provided with Adequate Support and Assistance in Seeking to Correct Her Teaching Deficiencies, Both During the 2000/2001 Academic Year, and During 2001/2002 when She was in the PAR Program*

The Appellant has noted that a school system has the obligation to provide a tenured teacher with adequate assistance in correcting his or her teaching deficiencies before it can seek to terminate such an individual. *Shiflett v. Carrol County Board of Education*, 6 Ops. of MSBE 617, 624 (1993). She maintains that MCPS did not fulfill this responsibility in her case. As a corollary to her

challenges to Ms. Johnson's qualifications as CT, she maintains that RHMS staff and particularly Ms. Johnson, were remiss in helping her to address the problems with her teaching.

In focusing primarily upon the assistance that purportedly was not provided to her in 2001/2002, the Appellant skims over what transpired during the previous academic year before she was ever placed in PAR. Significant support for the Appellant was brought to bear during the 2000/2001 school year, primarily under the aegis of RHMS Assistant Principal Whiting. She was observed by the head of her department and MCPS Art Supervisor Glasser and their assessments of her teaching were provided to her. (Fact-Findings 13, 18 and 19). Mr. Whiting himself also observed the Appellant and he often met with her. A videotape was made of one of the Appellant's classes, and Mr. Whiting and the Appellant reviewed the tape together. Mr. Whiting referred the Appellant to the SDT for assistance in addressing her problems in classroom management. The Appellant was also given the opportunity to observe the classes of four other teachers. (Fact-Findings 14-18).

As noted, the main emphasis of the Appellant's complaint as to lack of assistance centers on the 2001/2002 year and role played by the her CT, Ms. Johnson. She maintains that Ms. Johnson was deficient in providing her, as a teacher performing below standards, with the "support" called for by law and the PGS Handbook in order to improve her performance. (Joint Exhibit E-20, pg. 22; Joint Exhibit E-21, pgs. 20). The PGS Handbook in effect during the 2001/2002 year did not afford a great deal of guidance as to the nature of this assistance, other than to state that a CT has the duty to provide "frequent visits with support." Indeed, Ms. Johnson was in a dual capacity. The Handbook also charged the CT with conducting a review process for teachers performing below standards. This included an "intensive program of intervention" with multiple observations and ongoing

communication. Obviously, the end result of this process would be a recommendation as to the continued employment of the teacher in question.

In my view, the evidence establishes that Ms. Johnson suitably performed both the evaluative and supportive components of her CT position. Certainly, Ms. Johnson conducted multiple formal observations of the Appellant during the 2001/2002 year, five to be exact. Each of these observations was followed by post observation conference. However, coupled with these evaluative activities were efforts to aid the Appellant in improving her teaching in areas of identified deficiency. At these conferences Ms. Johnson made recommendations as to the means by which the Appellant could improve her teaching (developing consequences for behavior, meeting with SDT, recommendations as to use of students as assistants). She supplied the Appellant with resource materials. Ms. Johnson was in the Appellant's classroom and met with her every other week during the 2001/2002 year, in addition to meeting with the RHMS Principal and Assistant Principal and members of the PAR Panel to keep these individuals apprised of the Appellant's progress. (Fact-Findings 26, 29, 32, 34, 45-46 and 55). The evidence indicates that Ms. Johnson performed her CT duties as set forth in the 2001/2002 DGS Handbook. There was no evidence from professional educators knowledgeable as to the PGS/PAR system, which supports a finding that Ms. Johnson failed to in her responsibilities to provide the support and the intensive program of intervention contemplated by the 2001/2002 DGS Handbook. It must also be noted that Assistant Principal Whiting continued to observe and counsel the Appellant during the 2001/2002 school year. (Fact-Findings 48, 50, and 65).

In short, the MCPS afforded the Appellant notable assistance in efforts to address her teaching insufficiencies during both the 2000/2001 and 2001/2002 academic years.

VI. *Various Arguments by the Appellant, Including Complaints as to PGS's Six Standard Evaluation Format, PAR's One Year Review Period, and the Specified Training for a Consulting Teacher. Constitute a Challenge to the Some of the Basic Features of the PGS/PAR System. This System was Adopted by Representatives of the Professional Constituencies in the MCPS and Such Systemic Challenges Are Not Realistically Cognizable in a Proceeding Before an Administrative Adjudicator*

The Appellant's arguments as to notice and lack of assistance tie directly to a number of other objections that essentially strike at the heart of the DGS/PAR system as it was then devised. She challenges a procedure whereby the evaluation and termination of an instructor could be telescoped into the course of part of an academic year. In her case, she points out that she was only formally placed in the program during early October of 2001. The Appellant further notes that she was recommended for dismissal with the Summative Report of March 25, 2002, at which time any services to her effectively stopped for all intents and purposes. Accordingly, she was only being reviewed and evaluated between October of 2001 and March of 2002. The Appellant asserts that she could not have been expected to demonstrate quality teaching or necessary improvement during such a short period. In the Appellant's view, such a truncated time frame (and the alleged lack of help actually provided during this short period, see above) made something of a mockery of the PAR's commitment to provide support and assistance to teachers not performing up to standard. (Joint Exhibit E-20, pg. 4; Joint Exhibit E-21, pg. 3).

I do have some degree of sympathy with certain aspects of this proposition, although I do not agree with how starkly it is couched by the Appellant. In point of fact, the Appellant's teaching had

been negatively evaluated during the previous academic year, with the Appellant receiving unfavorable reports from various observers, together with counseling, assistance and support under the aegis of Assistant Principal Whiting. (Fact-Findings 13-19). Her placement in the PAR system itself was also fraught with unfavorable assessments of various facets of her teaching. (Fact-Findings 25-29).

Nonetheless, one can arguably maintain that it is unrealistic or extremely difficult to expect a teacher to remedy serious teaching deficiencies in the course of an academic year, a truncated one at that, if one focuses on the Appellant's formal placement in PAR during October of 2002. Whatever the virtues of this argument, I believe this is a systemic challenge to the entire DGS/PAR system as it is applied to tenured MCPS teachers who are performing below standards. Similarly, such arguments as those suggesting the alleged unfairness of transitioning the Appellant to a six standard evaluation format, rather than the old ten standard modality still being employed at her Phase III school, are also indicative of an objection to the entire DGS/PAR system.⁶ It must be remembered that the PGS/PAR format was developed jointly by the school system, and MCEA, the recognized representative of MCPS teachers. In devising the system, the representatives of these entities determined that tenured teachers could be placed in the PAR system for a one-year review if they were performing below standards, a process that could ultimately result in termination or dismissal as one of three possible outcomes. As applied under the 2001/2002 DGS Handbook, a tenured teacher could be placed in this system, even if he or she was assigned to a Phase 3 school

⁶ It should be noted that at the November 13, 2002 hearing, Ms. Bresler pointed out that the six standard format under PAR was not a radical departure from prior practice. Rather, the 10 standard format under the former system had been "collapsed" or consolidated into the six criteria set forth in DGS/PAR. (T.2, pgs. 24-24). She was not convincingly challenged in this representation and there was no evidence submitted to undercut her proposition. Accordingly, since the six standard format was basically a refinement of the ten criteria under the former system, I am not persuaded by the Appellant's arguments that she, the CT and the SRT at RHMS were impaired in their roles by not being formally trained in or adequately familiar with the new standards.

where the PAR evaluation system would not be fully implemented and applied until the 2002/2003 school year. Such a teacher would be evaluated under a new six standard format, as opposed to the ten standard scheme utilized under the 1994 MCPS Teacher Evaluation System. In establishing the DGS/PAR system, the representatives of MCPS and its teachers and administrators also adopted a peer review format whereby a CT would have an instrumental role, without any necessity that he or she be certified as an administrator or supervisor. This format also placed a strict deadline by which CTs had to submit their Final Summative Reports. (Fact-Finding 8).

As an administrative adjudicator, I believe I am constrained from making any determination or recommendation that would challenge or negate these basic features of the PAR system, as devised by the representatives of the various MCPS constituencies. Appropriate representatives of teachers and other MCPS constituencies developed the PGS/PAR system and no cogent attack has been mobilized as to its legality. I have no authority to make or revise MCPS policy, as reflected in the features of that system. Accordingly, the DGS/PAR system and its directives stand and serve as the factual/legal context for the instant case.

VII. *Although the Appellant made some progress under the PAR program during the 2000/2001 academic year, this does not offset the views of all observers and evaluators as to her serious deficiencies in instructional strategies and classroom management. Her dismissal for these reasons is fully supported by the assessments of professional educators and should not be disturbed by an administrative adjudicator in the absence of similarly well-founded evidence.*

The main points of the Appellant's appeal in the instant case revolve around contentions that she made sufficient progress to be retained for another year in the PAR program.

The evidence is mixed on these points. Certainly, the Appellant did exhibit some growth and progress during her time in the PAR program. For example, she consistently exhibited a desire to

improve her teaching strategies, followed through on suggestions made to her, and worked hard to develop lesson plans and materials that sought to incorporate mastery objectives and other techniques. (Fact-Findings 17, 19, 26, 29, 32, 43, 57, 60-61, and 62). To her credit, the Appellant was effective at various times in working with students on an individual basis, developing a rapport and providing positive support and feedback. (Fact-Findings 30, 32, 53, and 59).

Notwithstanding this progress, there was a negative side to the ledger, particularly in the areas of instructional strategies and classroom management. As to the former category, the Appellant had attempted to use various activators and summarizers during the year, but on January 14, 2002, her improper usage of the 4 Corners technique and otherwise inadequate instructions caused her class to break down in confusion. This totally defeated her efforts to have the class compare the work of various artists. (Fact-Findings 44-45). In other classes the Appellant missed numerous opportunities to involve and draw her students out and have them utilize their prior knowledge. This was attributable in large part to her unsuccessful use of summarizers and her failure to employ appropriate questioning strategies. (Fact-Findings 28-30, 52, and 55-58). Her deficiencies in these areas thwarted the students' capacities to make connections, see the big picture and divine the importance of the subject being taught. (Fact-Findings 28-30, 55-56, and 58). The Appellant exhibited an inability to plan and manage some of her lessons, running the gamut from the mishandling of the 4 Corners Technique to being unable to address the situation where students in a class finished projects at different times. (Fact-Findings 25, 40-41, 43-44, and 55-56).

The Appellant's most serious failings were in the area of classroom management. Throughout the PAR year there were repeated instances of disciplinary problems and class disruption. Early in 2001/2002, she had to stop a class some 37 times in efforts to deal with

misbehaving of off task students. (Fact-Findings 25-26). Because of the Appellant's absorption in paper cutting on December 14, 2001, her class disintegrated into talking and socializing, with students being off task, playing with glue and hitting and engaging in striking activity with a ruler. (Fact-Findings 40-43). After a short period of improvement, on January 14, 2002, the Appellant was once again interrupting her class to address misbehavior with attention moves. (Fact-Findings 44-46). In the CT's final observation, Ms. Johnson intimated that the Appellant had again shown some improvement in classroom management during a March 11, 2003 class, since no student behavior issues had arisen. (Fact-Finding 56). However, during a subsequent April 15, 2003 observation by Assistant Principal Whiting, the same problems of poor management and student misbehavior strongly re-emerged.⁷ (Fact-Finding 65). These problems were a reprise of disciplinary and misbehavior problems in the classroom that the Appellant had been unable to adequately address or control during the 2000/2001 academic year. (Fact-Findings 13, 14, and 18-20). Indeed, these problems has surfaced early in her tenure at RHMS and persisted during her career there. (Fact-Findings 11 and 12). The inescapable conclusion is that the Appellant has never been able to consistently sustain successful disciplinary and management techniques in the classroom, with any evidence of progress subsequently proving to be evanescent.

As discussed above, the State Board's standard of review in a teacher dismissal case is set forth in COMAR 13A.01.01.03E(3)(a) and (b). That is, the State Board, and an Administrative Law Judge acting in its behalf, must conduct a "de novo review," constituting an "independent judgement on the

⁷ The Appellant has argued that Mr. Whiting's April 15, 2002 observation should be disregarded since the "dye had already been cast" as to her dismissal with Ms. Johnson's March 25, 2002 Summative Report. I disagree. In point of fact, Mr. Whiting's observation took place in the midst of her case being reviewed by the PAR Panel, where a positive report by the Assistant Principal might have conceivably been significant. (Fact-Findings 63-68). In my view, she had every incentive to provide an excellent class for Mr. Whiting's review, and her absolute failure to do so was telling.

record before it.” Although somewhat different from a substantial evidence review, the analysis is still governed by the content and quality of the existing record.

The evidence in the record persuasively supports the decision of the Montgomery County Board of Education to reject the February 23, 2003 decision of Hearing Officer Joseph Sickles and adopt the Superintendent’s recommendation to terminate the Appellant. As noted, there is ample evidence that the Appellant did not meet standards, particularly in the areas of instructional strategies and classroom management. This assessment was made by all of those who observed and evaluated the Appellant during both the 2000/2001 and 2001/2002 years, including her supervisor and fellow teacher at RHMS, MCPS Art Supervisor Glasser, her Principal and Assistant Principal at RHMS, and CT Johnson. The PAR Panel, consisting of 8 teachers and 8 administrators unanimously accepted this determination. Assistant Principal Whiting was the individual who perhaps most consistently sought to counsel and assist the Appellant during both the 2000/2001 and 2001/2002 academic years. In testimony before Hearing Officer Sickles, Mr. Whiting again emphasized that his last observation of the Appellant on April 15, 2002, revealed the same problems with the Appellant’s teaching that he had seen in the previous academic year before he referred her to PAR. Specifically, students had little comprehension of what they were attempting to do or accomplish in the class, and the Appellant was again attempting to talk over the conversations of the students. Thus, the Appellant had regressed and had not sustained the progress she had exhibited in an earlier class that he had observed on February 26, 2002. That is, episodes of limited earlier progress had once again been negated by regression into ineffectual or non-existent class management modalities, with the attendant negative impact on instruction in the Appellant’s classroom. Understandably and significantly, Mr. Whiting expressed

the conviction that the Appellant would not reach a satisfactory level of performance in these areas, even with receipt of additional assistance. (T1, pgs. 119-122, 127; Fact-Findings 50 and 65).

Is there evidence in the record that would support an opposite conclusion and warrant extending the Appellant's participation in the PAR program for an additional year? Arguably yes, and both Hearing Officer Sickles and I have sought to set forth some of the sincere efforts that she put forth and the progress she ostensibly made during the 2001/2002 year. In this vein, I believe that Mr. Sickles' decision is helpful as a reference point and basis for analysis. After acknowledging this growth by the Appellant, Hearing Officer Sickles was of the view that she should be given an additional year in the PAR program. However, in his decision, Mr. Sickles also noted that evidence of some "growth" or "improvement" by the Appellant would not normally be sufficient to overcome the Superintendent's dismissal recommendation. This was largely because any teacher would be expected to show some improvement after participating in PAR for a year. (ROC, TAB H, page 12, footnote 6). I accept this proposition. Thus, the other determinative factor or "second prong" of Hearing Officer Sickles' determination was critical. This was his conclusion that the Appellant had also been unfairly referred to the PAR system, and thereby subjected to improper standards, since she had assigned to a Phase 3 school in 2000/2001. (ROC, Tab H, pages 10 and 11).

As discussed at length above, I have concluded that the Appellant was properly placed in PAR under specific authorizing language in the 2001/2002 PGS Handbook, notwithstanding her assignment to a Phase 3 school. Correlating this determination with Hearing Officer Sickles' reasoning and in the absence of the "second prong," the Appellant would not be able to defeat her dismissal on the basis of the evidence in the record. That is, the Appellant's exhibition of some growth and progress during the 2001/2002 year, standing alone, would not be sufficient to overcome

the recommendation of the Superintendent. This is particularly true when that recommendation was supported by the reports of numerous professional educators as observers and a unanimous PAR Panel.

In this case, the unanimous consensus of the professional educators as to the Appellant's teaching deficiencies confronts an administrative adjudicator, and derivatively the State Department of Education, with a fundamental reality. Notwithstanding the obligation to make an "independent judgement" upon the record in this case, that record is composed extensively of the evaluations and assessments of professional educators. Questions as to the proper standards to adopt for the evaluation of teachers, the nature and implementation of those criteria, and the assessment of a particular teacher under those standards fall uniquely within the expertise of professionally trained educators. This would also include difficult questions as to the sufficiency of remedial support and when the provision of such support to an inadequately performing teacher becomes an unwarranted diversion of scarce resources and a disservice to students. Conversely, these issues are daunting challenges for laypersons. For these reasons, courts and administrative adjudicators have historically placed heavy reliance on educational experts in resolving difficult and sensitive questions as to the proper education of students. *Board of Education v. Rowley*, 458 U.S. 176, 73 L.Ed.2d 690, 102 S.Ct. 3034, 3051 (1982); *Oberti v. Board of Education*, 995 F.2d 1204, 1216 (3d Cir. 1993); *Roland v. Concord School Committee*, 910 F.2d 983, 992 (1st Cir. 1990); *Barnett v. Fairfax County School Bd.*, 927 F.2d 146, 152 (4th Cir. 1991). In my view, this approach is also appropriate in the instant case. The record, including multiple observations, evaluations and assessments of the quality of the Appellant's teaching and instruction by professional educators, fully supports her dismissal as a teacher. In the absence of any significant and comparable evidence contravening these assessments, I

believe it would be extremely arbitrary for an administrative adjudicator to recommend the reversal of that result.

VIII. Summing Up

In conclusion, the State Board of Education has recognized the criteria that must be met for the dismissal of a teacher on the grounds of incompetency. First, the action of the local board of education must be the product of a “fair and impartial evaluation process.” Secondly, the record must demonstrate that a teacher has “serious teaching deficiencies.” Finally, there must be evidence of adequate assistance to the teacher in order to remedy her deficiencies. *Shiflett v. Carrol County Board of Education*, 6 Ops. of MSBE 617, 624 (1993).⁸ In the instant case, the Appellant was evaluated under a system devised by various MCPS constituencies, including the MCEA as representative of the teachers in that school system. The professionally trained educators who assessed her instruction consistently recognized serious teaching defects, particularly in the areas of classroom management and instructional strategies. She received the assistance envisioned under the PAR system during the 2001/2002 academic year, together with significant aid during the 2000/2001 school year before she was placed in PAR. Accordingly, the criteria for the Appellant’s dismissal have been met in this case.

All proposed findings, conclusions and supporting arguments of the parties have been considered. To the extent that these contentions are in accordance with the findings and conclusions

⁸ In attempting to glean authority by which to challenge her evaluation and dismissal, the Appellant and her able counsel have cited such authority as *Avery v. Baltimore County Board of Education*, 4 Ops. of MSBE 10 (1985) and *Lum v. Washington County Board of Education*, 3 Ops. of MSBE 403 (1984). I agree with the Board’s counsel that seeking to “extrapolate” governing principles from such cases is problematical. (T.2, pg. 93). These cases arose from traditional teacher evaluation systems that were primarily driven and administered by principals and supervisors. It must be repeatedly emphasized that the PGS/PAR process was collaboratively developed with the active participation of MCPS teachers. This system encompasses peer review and evaluation, whereby teachers have “shared responsibility” for the assessment of their professional colleagues. (Fact-Findings 2-8). Accordingly, authority based on cases arising from traditional systems is inapposite.

stated herein, they have been accepted. To the extent that they are inconsistent they have been rejected, or deemed irrelevant, or not necessary to the proper determination of the issues presented. To the extent that the reported testimony of any witness is not in accord with the final decision herein, it is deemed not credible and/or analytically sound.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that Montgomery County Board of Education’s dismissal of the Appellant, a tenured Teacher, for incompetency is persuasively supported by credible evidence in the record. Md. Code Ann., Educ. § 6-202(a)(1)(iv); COMAR 13A01.01.03E.

PROPOSED ORDER

It is proposed that the decision of the Board of Education for Montgomery County terminating the Appellant for incompetency as a tenured Teacher be **UPHELD**.

January 6, 2004

Date

Kenneth Watson

Administrative Law Judge

KSW
#58884

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.

CAROL BECK

APPELLANT

v.

MONTGOMERY COUNTY BOARD OF EDUCATION *

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BEFORE KENNETH WATSON,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-BE-01-03-19448

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FILE EXHIBIT LIST

With the consent of the parties, the ALJ received the documents and records connected with the previous processing and adjudication of the instant case as the “Record of the Case (“ROC”).” These records were contained under various tabs. Tab A contained the June 11, 2002 letter from MCPS Superintendent Jerry D. Weast, advising the Appellant of her dismissal for incompetency. Tab B contained a transcript of the proceedings in this case before Hearing Examiner Joseph Sickles on September 18, and November 14, 2002. Tab C included Mr. Sickles’ August 27, 2002 appointment as Hearing Officer for the Montgomery County Board of Education, together with correspondence relating to the Appellant’s medical condition and her retention of counsel. Tab D contained the curriculum vitae of Shelley Johnson. Tabs F and G contained memoranda submitted to Hearing Officer Sickles by counsel for the Appellant and the Montgomery County Superintendent of Schools, respectively. Tab H contained Hearing Officer Sickles’ Findings and Recommendations of February 7, 2003. The following documents at Tab E were specifically admitted as Joint Exhibits:

- E-1 June 19, 2001 and June 18, 1999 Evaluations of Appellant⁹
- E-2 June 6, 2001 Memo from Stephen Whiting to Dr. Thelma Monk
- E-3 July 10, 2001 letter from Peer Assistance and Review Panel to the Appellant
- E-4 September 17 and 26, 2001 Post Observation Conference Reports by Shelley Johnson
- E-5 September 26, 2001 letter from Shelley Johnson to Peter Cahall
- E-6 October 5, 2001 letter from Co Chairs of PAR Panel to Appellant
- E-7 November 13, 2001 Post Observation Conference Report by Shelley Johnson

⁹ A February 12, 1998 Evaluation of the Appellant was made a part of Joint Exhibit E-1 at the November 12, 1998 hearing. This document is also part of Joint Exhibit E-17.

- E-8 December 11, 2001 Mid-Year Summary
- E-9 December 14, 2001 Observation Report by Pete Cahall
- E-9A December 14, 2001 Observation Report by Pete Cahall, together with graphic organizers, lesson plans and materials, evaluation sheets, and Art of Bookmaking handout provided to students for organization and sequencing of Appellant's art lesson
- E-10 January 14, 2002 Post Observation Conference Report by Shelley Johnson
- E-11 February 27, 2002 Observation Report by Steve Whiting
- E-12 Follow Up to February 28, 2002 Discussion prepared by Shelley Johnson
- E-13 March 12, 2002 Post Observation Conference Report by Shelley Johnson
- E-14 March 25, 2002 Final Summative Report by Shelley Johnson
- E-14A April 15, 2002 Observation Report by Steve Whiting
- E-15 Shelley Johnson's PAR Consulting Teacher Log
- E-16 Art Room Guidelines
- E-17 Units of Study and Related Artwork by Appellant and February 12, 1998, May 24, 1998, and December 21, 1998 Evaluations of Appellant
- E-18 Activities and Responses by Appellant
- E-19 November 16 and 20, 2000 Observations by Mike Wells; November 21 and March 23, 2001 Observations by Steve Whiting; May 29, 2001 Extra Observation and Conference Report by Mike Wells; May 31, 2001 Observation Report by Mike Wells
- E-20 2001/2002 Professional Growth System Handbook
- E-21 2002/2003 Professional Growth System Handbook