

DARLENE KRANZ,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-25

OPINION

Appellant, a tenured teacher with Montgomery County Public Schools (“MCPS”) for approximately 25 years, appeals the local board’s decision affirming the superintendent’s recommendation to dismiss Appellant for incompetence. That decision was based on the recommendation of the local hearing examiner. Following a State-level hearing, the State administrative law judge (ALJ) issued a proposed decision recommending that the local board’s decision be affirmed. A copy of the ALJ’s decision is attached as Exhibit 1. Appellant filed objections to the proposed decision and counsel for the parties presented oral argument to the State Board on March 30, 2004.

We have reviewed the record in this matter and considered the objections filed by the Appellant as well as the arguments made by counsel for the parties. After due deliberation and as modified below, we adopt the findings of fact and conclusions of law of the administrative law judge.

The primary issue raised in Appellant’s objections to the ALJ’s proposed decision is whether the local board violated COMAR 13A.07.04.02 which sets forth the minimum requirements for evaluation of professionally certificated personnel. Appellant maintains that a violation of COMAR 13A.07.04.02A(5)¹ occurred here because neither the principal nor any other certificated administrator conducted a formal observation of Appellant for the 2001-2002 school year, Appellant’s PAR evaluation year.² Although Ms. Johnson, the consulting teacher, conducted observations and did the final end of year evaluation for 2001-2002, Appellant argues that this was insufficient to meet the COMAR standard given that Ms. Johnson is not a certificated administrator. Ms. Johnson is, however, a certificated teacher. Appellant also asserts that it is the 2001-2002 school year that is decisive here and not the 2000-2001 school year that led to the placement of Appellant in the PAR program in the first place.

¹COMAR 13A.07.04.02A(5) provides: An unsatisfactory evaluation shall include at least one observation by an individual other than the immediate supervisor.

²PAR refers to the Peer Assistance and Review program, a relatively new component of the Professional Growth System that was negotiated between the Montgomery County Board and the Montgomery County Educators’ Association.

Neither the local hearing examiner nor the ALJ found a COMAR violation. As each noted, Appellant was observed by two certificated administrators during the 2000-2001 school year, both of whom concluded that Appellant's performance was not meeting the performance standards imposed by MCPS. Rather than moving for termination which was legally acceptable based on the unsatisfactory evaluation, MCPS provided Appellant another opportunity to improve her performance by placing her in the PAR program. During this additional year, appropriate assistance was provided through PAR, but Appellant failed to improve her performance and the recommendation was made for her termination.

As explained by Hearing Officer Sickles:

However, the evaluation that eventually led to the recommended dismissal was complete in April 2001, the 2000-2001 school year. It followed formal observations by Principal O'Brien in January 2001 and Assistant Principal Namerow in March 2001, meeting the COMAR requirements in Sections A(4) and (5) above. Under regulatory procedures alone, the Appellant could have been recommended for dismissal at that time. Under the new MCPS policy, however, the Appellant was granted an additional year under the PAR program to try to bring her performance up to standard. The assessment at the end of the 2001-2002 school year merely concluded that the Appellant's performance had not improved sufficiently. I find that the April 2001 evaluation satisfies the requirements of COMAR. MCPS did not violate the regulations because it gave the teacher the benefit of an additional year. (Proposed Decision of Hearing Office Sickles at 10-11).

It is undisputed that an unsatisfactory evaluation is sufficient in itself for dismissal. We therefore agree with the hearing examiner that Appellant could have been dismissed at the end of school year 2000-2001 based on the unsatisfactory evaluation issued by the principal. Nonetheless, the Montgomery County school officials gave Appellant another year of employment in which she would have the opportunity to demonstrate her competence as a second grade teacher. At the end of that year – school year 2001-2002 – Appellant received a Final Summative Report prepared by the consulting teacher under the PAR procedures. The summative report contained a final rating of "below standards". The principal concurred with the rating as did the PAR Review Panel who recommended to the local superintendent that Appellant be discharged for incompetency.

While we are mindful of the efforts of the Montgomery County Board and the MCEA in negotiating the PAR process, we find that the process does not fully comply with the evaluation requirements set out in COMAR 13A.07.04. Specifically, COMAR 13A.07.04.02B(2)(b) provides:

An individual holding an Advanced Professional Certificate who receives an unsatisfactory overall rating shall be evaluated at least once annually until receiving a satisfactory rating.

In this case, Appellant's performance was evaluated at the end of the 2000-2001 school year as unsatisfactory. Consistent with the COMAR provision quoted above, given that MCPS retained Appellant in a teaching position for the subsequent school year, the evaluation for that year – the 2001-02 school year – should have complied with the COMAR evaluation requirements. However, the PAR review did not technically comply with the provisions in COMAR 13A.07.04A(4) and (5) requiring that an evaluation be based on at least two observations, of which one must be by an individual other than the immediate supervisor.

We note in this regard that Appellant was observed during the 2001-2002 school year by both the Assistant Principal, Yung Mi Kim, and by the Principal, Joan O'Brien. *See* local hearing transcript, p. 295. However, the observations were not reduced to written format. The only written observations were done by the consulting teacher. *Compare with* COMAR 13A.07.04.03 requiring that an observation be conducted with full knowledge of the certificated individual; a written observation report be shared with the individual; and the observation provide for written comments and reactions by the individual being observed.

Appellant argues that because these COMAR regulations confer important procedural and substantive benefits upon the individual teacher, all local school systems must comply with them pursuant to the *Accardi* doctrine requiring that “an agency of the government must scrupulously observe rules, regulations, or procedures which it has established.” *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Appellant therefore asserts that the local board's failure to conduct a second observation of Appellant as well as its failure to have an administrator actively participate in the observation and evaluation of Appellant for the 2001-2002 school year mandates reversal of the local board's termination decision. *See* Appellant's Objections to ALJ's proposed decision.

We find, however, that Appellant neither fully states nor correctly applies the *Accardi* doctrine principles as recently articulated by the Maryland Court of Appeals in *Pollock v. Patuxent Institution Review Board*, ___ Md. ___, 823 A.2d 626 (2003):

Where the *Accardi* doctrine is applicable, we are in accord with the line of cases arising from the Supreme Court and other jurisdictions which have held that prejudice to the complainant is necessary before the courts vacate agency action. In the instances where an agency violates a rule or regulation subject to the *Accardi* doctrine, *i.e.*, even a rule or regulation that ‘affects individual rights and obligations’ or affords ‘important procedural benefits upon individuals,’ the complainant nevertheless must still show that prejudice to him or her resulted from the violation in order for the agency decision to be struck down.

Based upon our review of the record in this matter, we find that Appellant was not prejudiced by the lack of strict compliance with the COMAR evaluation requirements for the 2001-2002 school year. As previously noted, both the assistant principal and the principal did conduct observations of Appellant during the PAR year. Moreover, the principal testified that during the PAR year she and the consulting teacher were checking back and forth with each other about Appellant's performance and both were seeing the same problems with Appellant's teaching: "[L]ack of the Big Picture, lack of clear objectivity, the lack of organization in the teaching and classroom itself, lack of differentiation, matching the goals for the students to their needs based on data." Local hearing transcript, p. 296 - 298. And, when asked whether Appellant met the standards expected of a professional in the Montgomery County Public School System, the principal testified: "It's my opinion that she does not meet the standards after the attempts that we had specially to help her with that, which is unfortunate...." *Id.*, p. 301-302.

The record further discloses that the Appellant rejected constructive criticism of her performance and only focused on the positive comments. For example, Appellant dismissed suggestions made by the consulting teacher as "silly" and concluded that the use of learning centers was "busy work". See local hearing transcript, at 462, 465, 473, 493-494. She testified that she still was not clear what the "Big Picture" is, *Id.*, at 485; or why assessments were given in the fall semester and again in the spring semester of the same academic year. *Id.*, at 490. And, when Appellant was asked why she wanted another year in the PAR program, she responded: "And I would have known some things to do to protect myself. I would have videotaped every lesson and made sure that the statements made about me aren't necessarily coming from a person who's had as much experience as I've had in teaching." *Id.*, at 497.

Under these circumstances where Appellant was observed albeit informally by her assistant principal and by her principal as well as formally by the consulting teacher, and where there is concurrence by these individuals as well as several other educators that Appellant was not a competent teacher, we find that the failure of the PAR evaluation process for the 2001-2002 school year to comply fully with the COMAR evaluation requirements is harmless error. For all of these reasons we affirm the decision of the Montgomery County Board of Education terminating Appellant for incompetence.*

JoAnn T. Bell
Vice President

Dunbar Brooks

Calvin D. Disney

Clarence A. Hawkins

Karabelle Pizzigati

Maria C. Torres-Queral

DISSENT

While the creativity and potential of the Montgomery County PAR Program is to be commended, its implementation cannot transcend basic tenets of State Board rules and regulations. A *sine qua non* of an incompetency discharge is a concurrent unsatisfactory evaluation, based upon at least one observation by an individual other than the immediate supervisor (COMAR 13A.01.04.02). This procedure was not followed in this case.

The local board's reliance upon 2000-2001 as the determinative year is misplaced; the PAR year, 2001-2002, must be considered to be the determinative year for this Appellant. Furthermore, we feel that Appellant was not afforded the assistance clearly contemplated by the PAR Program; and she was adjudged incompetent after only a 4 ½ month period in which to allow her to show improvement.

Accordingly, we would reverse and award Appellant another year under a properly implemented PAR.

Walter S. Levin, Esquire

John L. Wisthoff

*Edward L. Root, President, and Philip S. Benzil were absent during oral argument and did not participate in the deliberations of this appeal.

May 26, 2004

EXHIBIT - 1

DARLENE KRANZ	*	BEFORE MICHAEL J. WALLACE,
	*	ADMINISTRATIVE LAW JUDGE,
APPELLANT	*	MARYLAND OFFICE OF
v.	*	ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY BOARD	*	
OF EDUCATION	*	
		OAH No.: MSDE-BE-01-03-16856
* * * * *	*	* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

By letter dated June 28, 2002, the Superintendent of the Montgomery County Public Schools (“MCPS”) recommended the dismissal of Darlene W. Kranz ("Appellant"), a tenured teacher, for incompetence. The Appellant appealed the recommendation to the Montgomery Board of Education (“the Board”). On October 23, 28 and November 12, 2002, Joseph A Sickles, a Hearing Officer of the Board (“Hearing Officer”) conducted a hearing pursuant to Md. Code Ann., Educ. § 6-203 (1999). On January 21, 2003, the Hearing Officer recommended that the Superintendent’s decision to dismiss the Appellant be affirmed. After reviewing the record compiled by the Hearing Officer, the Board voted to uphold the Hearing Officer’s recommendations and affirmed the Superintendent’s recommendation to dismiss the Appellant for incompetence. The Appellant appealed the Board's order to the Maryland State Board of Education and the matter was scheduled before an

administrative law judge of the Office of Administrative Hearings. Md. Code Ann., Educ. § 6-202(4) (1999).

Following a telephonic prehearing conference on September 4, 2003, a hearing was conducted on October 8, 2003, before Michael J. Wallace, Administrative Law Judge ("ALJ"), at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland. Code of Maryland Regulations ("COMAR") 13A.01.01.03P. Appellant was present and was represented by Khristy K Anderson, Esq. Maryland State Teacher's Association. Judith C. Bresler, Esq. represented the Board.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board of Education, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1999 & Supp. 2003); COMAR 13A.01.01.03D; COMAR 28.02.01.

ISSUE

The issue on appeal is whether the Board's dismissal of the Appellant for incompetence under Md. Ann. Code Ann., Educ. § 6-202(a)(iv) (1999) is supported by a preponderance of the evidence.

SUMMARY OF THE EVIDENCE

A. Exhibits

The parties agreed to submit the case upon the documents already submitted in the record below. Therefore, no additional documents were submitted for review, and the exhibits from the record below are incorporated and adopted by reference into this record.

B. Testimony

No testimony was taken at the hearing. The parties made oral arguments and relied on the record below.

In the hearing below before a hearing officer, the Superintendent presented the testimony of Dr. Elizabeth Arons, Associate Superintendent for Human Resources for MCPS, Cecilia Johnson, Consulting Teacher with MCPS, Joan O'Brien, Principal, Olney Elementary School, and Bonnie Cullison, Teacher Coordinator for the Professional Growth System ("PGS"), MCPS.

At the hearing below, the Appellant testified on her own behalf and presented the expert testimony of Gregory Bryant, Ph.D., Chair of Elementary Education at Towson State University. Dr. Bryant testified as an expert in the area of teacher training and evaluation. The Appellant also presented the testimony of Doris Matchett, Classroom Volunteer, Sharon Fisher, Classroom Volunteer and Parent of Student and Sarah Johnson, Teacher Advocate, Maryland State Teacher's Association.

FINDINGS OF FACT

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

1. The Appellant has been employed by MCPS as an elementary school teacher. Most recently, she taught 2nd grade. She has been employed by MCPS since 1966 with breaks in service. She had been working under Principal Joan O'Brien for the last nine years.
2. In the past, the Appellant was evaluated on a three year cycle and historically received satisfactory evaluations.
3. Under Principal O'Brien, the Appellant had evaluations in 1994, 1997 and 2000. The Appellant was rated "effective" in each category and continued employment was recommended. Dr. O'Brien noted that improvement was needed in several areas.
4. On January 10 and 12, 2001, Dr. O'Brien conducted classroom observations of the Appellant. Several deficiencies were noted during the January 12, 2001 observation including the facts that

no lesson plan was presented, activities were presented without clear expectations of the mastery objectives and an adequately challenging program was not presented due to a lack of focus and organization. The Appellant was instructed to work with staff development teacher, Stacy Ganz, to improve her (Appellant's) lesson plans and to submit her daily written lesson plans for the Reading Initiative 90 minute block to Dr. O'Brien at the beginning of each week.

5. On January 15, 2001, Dr. O'Brien requested permission to conduct a "special" evaluation of the Appellant citing little to no evidence that the Appellant plans for clear mastery objectives, uses student achievement data to plan differentiated activities for students, properly utilizes instruction time and provides a proper learning environment.
6. This request was approved on January 16, 2001.
7. On March 14, 2001, Assistant Principal Lori Namerow conducted a formal observation of the Appellant's 90-minute Reading Initiative block. Ms. Namerow noted that the Appellant failed to articulate lesson objectives, failed to assess students to ascertain their level of mastery and application of reading strategies and skills and failed to develop learning activities.
8. On April 17, 2001, Dr. O'Brien issued a Final Evaluation Summary of the special evaluation period. The summary concluded that the Appellant's overall performance was not meeting the students' needs and that the Appellant was not meeting MCPS teaching standards. Dr. O'Brien recommended that the Appellant be included in the Peer Assistance and Review ("PAR") program and receive intensive assistance for school year 2001-2002.
9. The PAR program is a component of the Professional Growth System ("PGS") which includes newer and more stringent performance standards adopted by MCPS to raise the level of teaching in the county.

10. The PAR program provides support and mentoring for new teachers and underperforming veteran teachers. Under this program a consulting teacher works with a teacher to help the teacher raise his/her performance to an adequate level whereby the teacher meets the new, more stringent performance standards. The consulting teacher meets with the teacher twice then makes a recommendation as to whether the teacher is appropriate for the PAR program.
11. Under the program, the consulting teacher conducts four formal observations during the school year and provides feedback to the teacher. The consulting teacher then presents an end of the year report to the PAR panel which consists of eight teachers and eight principals employed by MCPS. The consulting teacher then provides a recommendation as to whether he/she believes the teacher successfully achieved standards and can be released from the PAR program, continue with the PAR program for another year or be terminated from employment with MCPS. The teacher and teacher's principal may also address the panel as well.
12. A consulting teacher during the PAR year also consults with a "PAR pair" which is made up of a teacher and principal from the PAR panel.
13. The PAR panel then makes a final recommendation to the Superintendent of MCPS.
14. Cecilia Johnson was the consulting teacher assigned to the Appellant.
15. Ms. Johnson observed the Appellant on May 25, 2001 (announced) and May 31, 2001 (unannounced) and on June 5, 2001 she submitted her recommendation to Dr. O'Brien identifying the Appellant's strengths and weaknesses. The Appellant's strengths were that she had a love of teaching and her students, was eager to share experiences with students, utilized volunteers effectively and was interested in utilizing new technology in the classroom. Her weaknesses were that she needed to clean out her classroom , had not planned for literacy and math centers, was not clear in her instruction, was not organized, did not communicate lesson

objectives to students consistently and failed to incorporate various recognized teaching strategies into her lessons.

16. Ms. Johnson recommended the Appellant's inclusion into the PAR program for school year 2001-2002. Dr. O'Brien concurred with this recommendation.
17. Ms. Johnson met with the Appellant in the summer of 2001 to plan for the upcoming school year and to help organize the classroom and eliminate clutter.
18. On October 3, 2001, Ms. Johnson began formally meeting with the Appellant. She conducted observations on October 18, 2001 and November 28, 2001.
19. On November 5, 2001, Ms. Johnson created a Growth Plan for the Appellant targeting Standard #2 (Teachers know the subjects they teach and how to teach them to students.).
20. On December 5, 2001 Ms. Johnson issued a Mid-Year Report identifying areas of strength and weakness. The Appellant made some progress in cleaning and organizing her room and in improving her teaching strategies. She needed to continue cleaning and organizing the classroom and establishing learning centers, she needed to display lesson plans in understandable terms for the students, tie lessons to the second grade curriculum and complete and make plan books accessible for review. The Appellant needed to show evidence of growth in the above areas in order to meet MCPS teaching standards.
21. Ms. Johnson formally observed the Appellant on January 24, 2002. The Appellant's lesson was still disorganized and the students confused over what was being presented. The Appellant also utilized her volunteer excessively resulting in the students not obtaining the hand-on experience they should have gotten during the lesson. The classroom continued to be disorganized and cluttered and many of the centers discussed after the earlier observations had not been established.

22. At this point little progress had been made by the Appellant with regard to her instruction techniques, use of assessment data to plan lessons and organization.
23. Ms. Johnson attempted to have weekly meetings with the Appellant. She met informally with the Appellant several times in January, four times in February and three times in March.
24. Ms. Johnson and other staff offered the Appellant assistance consisting of modeling other instructors, consultation and workshops but the Appellant was resistant to incorporate many of the additional strategies offered.
25. Monthly, Ms. Johnson met with her PAR pair. In January, she met with her PAR pair to discuss the Appellant's case and to express her concerns over the Appellant's lack of progress. The PAR pair advised Ms. Johnson to tell the Appellant that she (Ms. Johnson) would be recommending the Appellant's dismissal to the PAR panel.
26. On February 13, 2002, Ms. Johnson advised the Appellant that she would be recommending her dismissal to the PAR panel.
27. On March 6, 2002, Ms. Johnson conducted her 4th formal observation of the Appellant (unannounced). The Appellant exhibited many of the same problems including the failure to state objectives for the lesson and inconsistent management and instruction techniques.
28. During the course of the year, Ms. Johnson came to the school to meet with the Appellant many times. These visits, however, were not solely for meetings with the Appellant but also included times where she visited the school to meet with the principal or to drop off documents.
29. On March 22, 2002, Ms. Johnson submitted a Final Summative Report regarding the Appellant with a final rating of Below Standards. Dr. O'Brien concurred with this assessment on March 26, 2002.

30. On April 12, 2002, the PAR panel advised the Appellant that after reviewing the consulting teacher's documentation and recommendation, it was considering terminating the Appellant's teaching contract for school year 2002-2003. This notice advised the Appellant of the opportunity to appear before the PAR panel before it made its final recommendation to present any documentation or argument that she felt appropriate.

31. On April 24, 2002, the PAR panel recommended that the Appellant's teaching contract for school year 2002-2003 be terminated.

DISCUSSION

The applicable law provides that a teacher may be suspended or dismissed, for cause, by a local board on the recommendation of the local superintendent, and that the teacher has a right to a hearing on such a dismissal or suspension. Md. Code Ann., Educ. § 6-202(a) (1999) reads, in pertinent part, as follows:

- (a)(1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:
 - (i) Immorality;
 - (ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of § 5-704 of the Family Law Article;
 - (iii) Insubordination;
 - (iv) Incompetency; or
 - (v) Willful neglect of duty.
- (2) Before removing an individual, the county board shall send the individual a copy of the charges against him and give him an opportunity within 10 days to request a hearing.
- (3) If the individual requests a hearing within the 10-day period:
 - (i) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; and
 - (ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing.
- (4) The individual may appeal from the decision of county board to the State Board.

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

(3) Teacher Dismissal and Suspension.

- (a) The standard of review in teacher dismissal or suspension shall be de novo as defined in §E(3)(b).
- (b) The State Board shall exercise its independent judgment on the record before it in determining whether to sustain a disciplinary infraction.
- (c) The county board shall have the burden of proof.
- (d) The State Board, in its discretion, may modify a penalty.

Pursuant to COMAR section cited above, I have undertaken a thorough review of the evidence presented and the decisions rendered in this matter from all levels. As to the credibility of the witnesses who testified before the Hearing Officer, I give considerable deference to his findings. *Anderson v. Dep't of Public Safety*, 330 Md. 187 (1993). As a result of my review, I conclude that the evidence clearly established the reasonableness of the Board's decision to terminate the Appellant.

In the instant case, the critical facts presented established that the Appellant is a veteran second grade teacher who in the past received satisfactory evaluations and was "minimally effective." Critical comments and problems were noted in each evaluation. Sometime in 2001, MCPS implemented its Professional Growth System and in doing so, revamped its teacher evaluation system to focus on "whether or not quality teaching is taking place and on improving instruction." As a tenured teacher, she was evaluated on a three-year cycle and each time was recommended for continued employment. In January 2001, Dr. O'Brien conducted two observations and noted deficiencies in the Appellant's performance. Dr. O'Brien then requested that the Appellant be scheduled for a special off cycle evaluation, which is the routine procedure when a teacher is not performing up to standards. This request was granted and Assistant Principal Namerow conducted a formal observation on March 14, 2001. Ms. Namerow also noted serious deficiencies in the Appellant's performance. On her April 17, 2001 Final Evaluation Summary, Dr. O'Brien concluded that the Appellant's overall performance was not meeting the needs of all of her students. She noted that the Appellant had been given direction

and assistance in an attempt to improve her performance but that the Appellant's response to this assistance was unsatisfactory. Dr. O'Brien recommended that the Appellant be included in the PAR program for School Year 2001-2002. Cecilia Johnson was assigned to the Appellant as the consulting teacher and conducted an announced observation on May 25, 2001 and an unannounced observation on May 31, 2001. On June 5, 2001 Ms. Johnson submitted her recommendation to Dr. O'Brien identifying the Appellant's strengths and weaknesses. Ms. Johnson identified the Appellant's strengths as a love of teaching and her students, her eagerness to share experiences with students, effective utilization of volunteers and an interest in utilizing new technology in the classroom. Ms. Johnson identified the Appellant's weaknesses as well. Her weaknesses were that she needed to clean out her classroom , had not planned for literacy and math centers, was not clear in her instruction, was not organized, did not communicate lesson objectives to students consistently and failed to incorporate various recognized teaching strategies into her lessons.

Ms. Johnson also recommended the Appellant's inclusion into the PAR program for school year 2001-2002. The Appellant was included in the Program and Ms. Johnson met with her in the summer of 2001 to plan for the upcoming school year and to help organize the classroom/eliminate clutter. On October 3, 2001, Ms. Johnson began formally meeting with the Appellant and conducted observations on October 18, 2001 and November 28, 2001. On November 5, 2001, Ms. Johnson created a Growth Plan for the Appellant targeting Standard #2 and on December 5, 2001 she issued a Mid-Year Report identifying areas of strength and weakness.

The Appellant made some progress in cleaning and organizing her room and in improving her teaching strategies but needed to continue cleaning and organizing the classroom and establishing learning centers. The Appellant needed to display lesson plans in understandable terms for the students, tie lessons to the second grade curriculum and complete and make plan books accessible for

review. The Appellant also needed to show evidence of growth in the above areas in order to meet MCPS teaching standards.

Ms. Johnson again observed the Appellant on January 24, 2002. The Appellant's lesson was still disorganized and the students were confused over what was being presented. The Appellant also utilized her volunteers excessively resulting in the students not obtaining the hands-on experience they should have gotten during the lesson. The classroom continued to be disorganized and cluttered and many of the centers discussed after the earlier observations had not been established. At this point, little progress had been made by the Appellant with regard to her instruction techniques, her use of assessment data to plan lessons and her organization.

Ms. Johnson also attempted to have weekly meetings with the Appellant. She met informally with the Appellant several times in January, four times in February and three times in March. Ms. Johnson also met with her PAR pair on a monthly basis. In January, she met with her PAR pair to discuss the Appellant's case and to express her concerns over the Appellant's lack of progress. Ms. Johnson stated to the PAR pair that she was considering recommending that the Appellant's teaching contract be terminated because of the Appellant's lack of improvement and resistance to changing. The PAR pair advised Ms. Johnson that she should tell the Appellant of her intentions so she did so on February 13, 2002.

On March 6, 2002, Ms. Johnson conducted an unannounced observation (her 4th formal observation) of the Appellant. The Appellant continued to exhibit many of the same problems including the failure to state objectives for the lesson and inconsistent management and instruction techniques. On March 22, 2002, Ms. Johnson submitted a Final Summative Report regarding the Appellant with a final rating of Below Standards. Dr. O'Brien concurred with this assessment on March 26, 2002. On April 12, 2002, the PAR panel advised the Appellant that after reviewing the

consulting teacher's documentation and recommendation, it was considering terminating the Appellant's teaching contract for school year 2002-2003. This notice advised the Appellant of the opportunity to appear before the PAR panel before it made its final recommendation to present any documentation or argument that she felt appropriate. The Appellant met with the PAR panel and on April 24, 2002, after considering the Appellant's position as well as the information provided to the PAR panel by the Appellant's supervisors and Ms. Johnson, The Panel recommended that the Appellant's teaching contract for school year 2002-2003 be terminated.

The Appellant contends that it is burden of MCPS to show that its decision to terminate her was the result of a fair and impartial evaluation process, that there were serious teaching deficiencies on her part and that she was given adequate assistance to allow her to improve her performance.

The Appellant argued that COMAR 13A.07.04.02 requires that a second person perform a formal observation if a first observation results in an unsatisfactory rating. The Appellant contends that in her case, only Ms. Johnson, who is not a certified administrator, conducted observations of the Appellant during school year 2001-2002. She further contends that she was "railroaded" into the PAR for the sole purpose of facilitating her termination.

The evidence presented here established that there were concerns over the Appellant's performance prior to and during during school year 2000-2001. In January 2001, Dr. O'Brien conducted observations of the Appellant and concluded that her performance was substandard. Dr. O'Brien then sought a second opinion pursuant to COMAR and Ms. Namerow conducted a formal observation in March 2001. Ms. Namerow also concluded that the Appellant's performance was substandard as well. At this point, MCPS could have moved for the removal of the Appellant but instead, it exercised an option under its new PGS, which established more

stringent performance standards for its teachers. Under the PGS, the PAR program was created to assist teachers who were not meeting performance standards. As such, this program is designed to provide a teacher with a mentor who in turn “trouble shoots” and provides constructive criticism and assistance to a teacher who is facing performance problems. This is done to provide a problem teacher with a second chance for improving his/her performance before termination is pursued. The evidence presented by MCPS established that the Appellant was in fact evaluated by 2 certified administrators who both concluded that the Appellant’s performance was not meeting the strict standards of MCPS. Instead of moving for the Appellant’s termination at that point, MCPS opted to provide a second and final opportunity to the Appellant before moving for her termination. The Appellant was placed into the PAR program for this purpose but she failed to show any significant improvement during the course of the year. Ms. Johnson testified at the hearing below that the Appellant was offered assistance consisting of modeling other instructors, consultation and workshops but that the Appellant was resistant to incorporate many of the additional strategies offered. By February of school year 2001-2002, the Appellant was not making any appreciable progress or improvement and Ms. Johnson felt compelled to recommend that the Appellant be terminated.

There was no evidence produced to establish that the Appellant was “railroaded”. The Appellant argued that she was a solid, average teacher and presented the testimony of Dr. Bryant. Dr. Bryant testified that he viewed the video tapes of the Appellant’s lessons taken during 2000-2001 and concluded that in his opinion, she was an average teacher with the potential to be excellent. The other evidence, however, showed that there were many layers to the PAR process and that many separate professionals were required to concur that the Appellant did not meet the stringent performance standards of MCPS. Each of the evaluators and observers were trained in

Observing and Analyzing Teaching (OAT I and II) and based on the evidence presented, I do not find it plausible that the Principal, Vice Principal, the consulting teacher and the 16 member panel acted unprofessionally or otherwise conspired to remove the Appellant when it was unwarranted.

I cannot conclude as the Appellant suggests that MCPS failed to follow its own procedures in violation of the Accardi Doctrine by not performing two separate evaluations of the Appellant during school year 2001-2002. The Accardi Doctrine provides generally that administrative agencies must follow their own rules, and if they do not, the resulting agency action is invalid. *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268, 74 S.Ct. 499, 503, 98 L.Ed. 681 (1954). See also *Morton v. Ruiz*, 415 U.S. 199, 235, 94 S.Ct. 1055, 1074, 39 L.Ed.2d 270 (1974); *Vitarelli v. Seaton*, 359 U.S. 535, 539-40, 79 S.Ct. 968, 972-73, 3 L.Ed.2d 1012 (1959); and *Service v. Dulles*, 354 U.S. 363, 388, 77 S.Ct. 1152, 1165, 1 L.Ed.2d 1403 (1957). The evidence shows that MCPS performed two separate evaluations in 2000-2001 during the Appellant's evaluation year and both independently determined that the Appellant's performance was substandard. MCPS with this information then referred the Appellant to the PAR program where the Appellant failed to improve under the observation of Ms. Johnson. The PAR program referral was the result of the evaluations of 2000-2001 required by COMAR. Dr. Bryant testified that the four observations done by Ms. Johnson alone were not sufficient to provide enough information to enable the Panel to conclude that the Appellant should be terminated. Dr. Bryant, however, did not consider the fact that the Appellant was evaluated by Dr. O'Brien and Ms. Namerow in 2000-2001 and that these evaluations were the reason that the Appellant was placed into the PAR program in 2001-2002. He also failed to consider the fact that the Appellant had been evaluated every 3 years and supervised constantly since the early 1980s and that this

information, some of which evidenced problems, was also considered as background when assessing the Appellant's teaching history.

I am not persuaded that the COMAR regulation cited nor the PGS require that MCPS again needed to perform two additional separate evaluations in 2001-2002 before proceeding with the Appellant's termination.

The Appellant argued that she did not have serious teaching deficiencies and that she in fact met some of the standards and was proficient in 5 of 6 criteria according the March 2002 Final Summative Report. A review of this report indicates that it was based on four observations, 2 announced and 2 unannounced. The report stated that the Appellant did exhibit some positive qualities in her teaching. The report, however, also noted many shortcomings as well particularly in the areas of organization, her failure to establish learning centers, failure to meet the academic needs of each of her students, failure to match the abilities of each student to the objectives of the lesson and at times, a failure to provide objectives at all. Ms. Johnson gave the Appellant an overall rating of below standards. While the Appellant asserts that an overall rating of below standards is not warranted, the fact remains that the Appellant, despite some improvement, still did not meet the stringent minimum standards utilized by MCPS. Ms. Johnson's testimony established that if the Appellant would make some improvement in a specific area during one observation, she did not exhibit the same improvement during the next observation. As such, the Appellant's progress was seen as spotty, inconsistent and short lived. Dr. Bryant testified that the Appellant was an "average" teacher and suggested that she had room for improvement. When this is considered in light of the stringent MCPS standards, I can conclude that the Appellant is not meeting these standards.

The Appellant argued that she did not receive adequate assistance and did not have

sufficient time to remedy her deficiencies given her many years of service. She argued that she was not on notice of any problems until January 16, 2001 and that from that date forward, she received minimal services until the PAR process started in October 2001. From that point, there were 3 formal and 4 informal observations and 2 planning meetings. She contends that her termination was then recommended in March 2002 and no further services were provided despite her request that they continue. The evidence provided by MCPS however, sheds a different light on the situation. The Appellant was supervised by Dr. O'Brien for approximately 9 years. Dr. O'Brien testified that over the years, she found the Appellant to be minimally effective even under the old, less stringent standards. Dr. O'Brien testified that the old system was very minimal in criteria but the new system is more specific regarding what is expected from a child's viewpoint. She stated that the new system has six very specific criteria as opposed to the ten general criteria under the old system. Dr. O'Brien detailed the Appellant's past evaluations and noted that although the Appellant "minimally" met the requirements for being effective, she still needed improvement particularly in classroom management. She noted that she did not rate the Appellant as needing improvement but instead provided comments to her, both in writing and orally in an attempt to work with and assist the Appellant. By 1999, the Appellant was still rated effective but minimally effective again. This was the first year of the Reading Initiative Program for which the Appellant received training. The program suggested the use of reading centers and other classes were utilizing these reading centers except for the Appellant. Dr. O'Brien stated that she was surprised that a teacher with the experience of the Appellant was exhibiting the problems that she noted. She had other reading teachers work with the Appellant and one in particular supplied the Appellant with a list of questions and a notebook of lessons to use but the Appellant did not use any of it. Dr. O'Brien also had the staff development teacher work with

the Appellant as well. During the 2000-2001 school year approximately four months after the last regular observation, Dr. O'Brien requested the special evaluation for the Appellant because she felt that the Appellant would not be able to meet the new standards based on her past performance and resistance to making changes. Dr. O'Brien testified that she observed and conferenced with the Appellant both formally and informally during 2001-2002 regarding the Appellant's performance and provided feedback. I cannot find any evidence to suggest that the Appellant was not on notice that she was only minimally meeting standards under the old program and needed to improve in order to meet standards under the new program. There is evidence that the Appellant dismissed criticism or would only focus on the positive comments. The Appellant dismissed suggestions made by Ms. Johnson as "silly" and concluded that the use of centers was "busy work". I cannot conclude, as the Appellant asserts, that she was unaware of any problems until the special evaluation on January 2001 was requested.

Ms. Johnson indicated in the report that she met with the Appellant 31 times averaging about 80 minutes per session. During her testimony, however, Ms. Johnson recanted somewhat and stated that not all of this time was spent solely with the Appellant but also included time spent with other school personnel. In spite of these inaccuracies, the record still established that Ms. Johnson spent ample time with the Appellant and that the Appellant consistently exhibited shortcomings to Ms. Johnson and inconsistent improvement before reverting back to her old patterns. The evidence also established that Ms. Johnson provided the Appellant with assistance, advice and every opportunity to improve her performance but that the Appellant either failed to avail herself of these opportunities or did not believe that her performance was lacking. The evidence showed that Ms. Johnson met with the Appellant prior to the end of the 2000-2001 school year, met with her over the summer to provide assistance in organizing the classroom and

to plan for the school year and then during the year, established a growth plan and either met with or observed the Appellant on several occasions. The evidence also showed that the Appellant was given the opportunity to work with the reading specialist and the staff development teacher and was given release time to observe other teachers and to attend workshops. By mid-year, however, although some progress had been made by the Appellant with organization and the creation of some learning centers, the strategies were failing and the Appellant still had problems with displaying lesson plans in understandable terms for the students, coordinating lessons with the second grade curriculum and completing and making plan books accessible for review. By then, Ms. Johnson explained to the Appellant that she needed to make more improvement in order to meet MCPS standards.

The Appellant argued that the PAR panel was not provided with all pertinent information because the principal did not provide any information that she gathered during 2001-2002, that Ms. Johnson did not provide any monthly growth plans and that the determination to terminate the Appellant was merely a “rubber stamp” decision by the panel. The evidence however does not support the assertion that the panel did not consider pertinent information regarding the Appellant and that it merely rubber-stamped the recommendations given to it. The evidence established that the panel is comprised of 16 members, 8 principals and 8 teachers from the MCPS system. The Appellant’s supervisor, Dr. O’Brien, as well as the vice principal, Ms. Namerow, formally observed the Appellant and determined that she was not meeting standards. Dr. O’Brien determined that the Appellant should be included in the PAR program and Ms. Johnson was assigned. Ms. Johnson met with the Appellant on numerous occasions and provided assistance but determined that the Appellant was not meeting standards despite her assistance. Ms. Johnson consulted her PAR pair and presented her concerns to them and they

concluded that Ms. Johnson needed to advise the Appellant that she was not meeting standards. Another observation took place in March 2002 and Ms. Johnson still felt that the Appellant was performing below standards. At that point she forwarded her recommendation to the panel. The panel ultimately heard from Ms. Johnson, Dr. O'Brien and the Appellant and determined that there was, in fact, serious deficiencies with the Appellant's performance and recommended the Appellant's termination. I am not persuaded that the panel did not have adequate information to consider or that additional information was kept from the panel such as year-end assessment data for the Appellant's students. Testimony and evidence produced at the hearing before the hearing officer below established that this data was considered by Dr. O'Brien before she approved Ms. Johnson's recommendation to the panel. Furthermore, the evidence does not conclusively establish that this data bolsters the Appellant's assertion that she was an effective teacher and that she tailored her lessons to the strengths and weaknesses of her students. While Dr. Bryant suggested that the data showed that the Appellant was an effective teacher, the data on its face only suggested that many of the Appellant's students tested above average. The data also suggested that the entire county tested above the national average as well.

The State Board of Education leaves the responsibility of establishing standards for teaching and performance to the local boards of education per COMAR 13A.07.04.02A(1). As such, MCPS adopted new performance standards beginning in 2001-2002, which are contained in the Professional Growth System Handbook. MCPS also established the PAR system along with the new criteria as a tool in assisting teachers who are not meeting these standards. The Appellant argued that these standards are designed to identify excellent teachers but not teachers who are incompetent. While the standards are indeed high, I am persuaded that these are standards that MCPS had a right to adopt and implement and may be used to identify teachers who are not and

cannot meet these standards. As such, by virtue of being unable to meet the established county standards, it is not improper for MCPS to consider the Appellant incompetent as far as its standards are concerned. The evidence also established that a lesser measure short of termination was not feasible. The panel had the authority to order the Appellant back into the PAR program for another year but every indication was that the Appellant was not making enough progress to warrant another year. The evidence suggested that the Appellant only wanted to consider another year in the program in order to document any contact with MCPS personnel in order to make a better case for herself. There was no indication that the Appellant was progressing at a steady rate or that she was willing to accept assistance for the purpose of working toward improving her performance.

I conclude that these facts establish the reasonableness of the Board's action in dismissing the Appellant. There is ample evidence to show that the Appellant was marginally meeting standards under the old system and that she was aware of this. The evidence also established that MCPS established and implemented new, more stringent performance standards and that the Appellant was not able to meet them. She was put on notice of this fact, was observed and evaluated by several different professionals and assistance was provided in an attempt to allow the Appellant to raise her performance level. By March 2002, it became apparent that the Appellant was not successfully doing so and her termination was recommended. As such, I conclude that MCPS dismissal of the Appellant for the foregoing reasons was not arbitrary or capricious and was supported by a preponderance of the evidence.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that Montgomery County Board of Education's dismissal of the Appellant for incompetency is supported

by a preponderance of the evidence. Md. Code Ann., Educ. § 6-202(a)(iv) (1999); COMAR 13A01.01.01E.

PROPOSED ORDER

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

November 20, 2003

Michael J. Wallace
Administrative Law Judge

MJW
#56875

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.

DARLENE KRANZ	*	BEFORE MICHAEL J. WALLACE,
APPELLANT	*	ADMINISTRATIVE LAW JUDGE,
v.	*	MARYLAND OFFICE OF
MONTGOMERY COUNTY BOARD OF EDUCATION	*	ADMINISTRATIVE HEARINGS
	*	
		OAH No.: MSDE-BE-01-03-16856
* * * * *	*	* * * * *

FILE EXHIBIT LIST

The parties agreed to submit the case upon the documents already submitted in the record below. Therefore, no additional documents were submitted for review, and the exhibits from the record below were incorporated and adopted by reference into this record.