

DALLAS CROSBY,

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-33

OPINION

This is the appeal of the decision of the local board upholding the superintendent's demotion of Appellant from her position as an instructional technology support technician to a kindergarten teacher's assistant. Based on the recommendation of the local hearing examiner, the local board found that the demotion was supported by substantial evidence and that any procedural errors that occurred during the evaluation process were subsequently cured.

On appeal to the State Board and at the request of the parties, the matter was transferred to the State Office of Administrative Hearings for the scheduling of a hearing before an administrative law judge (ALJ). Following a hearing on January 20, 2004, the ALJ issued a proposed decision on February 24, 2004, a copy of which is attached to this opinion as Exhibit 1. Appellant through counsel filed objections and the local board through counsel filed a response to the objections. Counsel for the parties presented final argument to the State Board on July 21, 2004.

The Appellant contends that the procedural errors made during the process of the 1999-2000 and 2000-2001 evaluations require the invalidation of those evaluations, and as a result, the invalidation of her demotion. Appellant raises two main issues in this regard.

(1) Employee Plan of Action: Appellant asserts that after her 1999-2000 evaluation she was given a plan of action; however, the proper procedures were not followed in developing that plan of action, nor was there any follow up on the plan by the instructional technology division or the principals. The ALJ found that although the 2000 plan of action was not developed in discussion with Appellant, the plan of action put Appellant on notice as to how she needed to improve, yet she failed to do so.

(2) 2000-2001 Evaluation: Appellant asserts that the 2000-2001 evaluation was flawed. She explains that initially only one principal completed the evaluation, and as a result of her appeal, the superintendent's designee directed both principals to develop a joint evaluation. She argues that instead of receiving one jointly developed evaluation, she received two separate evaluations from the two principals. One evaluation was satisfactory and the other was unsatisfactory, thus, she maintains they cancel each other out and cannot be used as a basis for her demotion. The ALJ found that all versions of the 2000-2001 evaluation are consistent in finding that Appellant lacked the necessary knowledge and skills to perform the duties of her position as an instructional technology support technician.

Appellant references the *Accardi* doctrine in her objections and maintains that the Anne Arundel County "Employee Performance & Conduct Management Manual," that describes procedures for evaluations of employees, confers important procedural and substantive benefits upon individual employees. In this regard 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).

In the matter at hand the ALJ ultimately determined that all procedural errors were cured by the superintendent's actions and the full evidentiary hearing. She concluded that the local board's decision demoting Appellant was supported by substantial evidence that Appellant did not possess the requisite skills to function as an instructional technology support technician and was therefore not arbitrary, unreasonable, or illegal:

As detailed in my findings of fact above, the 1999-2000 and 2000-2001 evaluations contain ample evidence that the Appellant did not possess the requisite skills to function as an Instructional Technology Support Technician. The only principal to rate the Appellant as overall satisfactory, Ms. Grade, also rated the Appellant as needing improvement in job knowledge and skills and noted that she needed to obtain basic technology skills. During the hearing before the Hearing Examiner, the Appellant did not present any evidence to demonstrate she did in fact possess the necessary skills, other than her own testimony. Thus, the weight of the evidence supports the County Board's conclusion.

Based upon our review of the record in this matter and consideration of the objections filed by the Appellant as well as the arguments of the parties, we adopt the findings of fact and conclusions of law of the administrative law judge. For the reasons noted above and those set forth by the ALJ, we affirm the demotion decision of the Anne Arundel County Board of Education.

Edward L. Root
President

Dunbar Brooks
Vice President

Lelia T. Allen

JoAnn T. Bell

J. Henry Butta

Beverly A. Cooper

Calvin D. Disney

Clarence A. Hawkins

Karabelle Pizzigati

Maria C. Torres-Queral

David F. Tufaro

August 25, 2004

EXHIBIT 1

DALLAS CROSBY * BEFORE LORRAINE EBERT FRASER,
APPELLANT * ADMINISTRATIVE LAW JUDGE
v. * OF THE MARYLAND OFFICE OF
ANNE ARUNDEL COUNTY * ADMINISTRATIVE HEARINGS
BOARD OF EDUCATION * OAH NO.: MSDE-BE-08-03-30578
* * * * *

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

ORDER

STATEMENT OF THE CASE

On July 31, 2003, the Appellant filed an appeal of the decision issued by the Anne Arundel County Board of Education (“the County Board”). In that decision, dated July 2, 2003, the County Board found that the Appellant’s demotion was supported by substantial evidence and that any procedural errors that occurred during the evaluation process were subsequently cured. On August 29, 2003, the Maryland State Department of Education (“MSDE” or “the State Board”) transmitted the case to the Maryland Office of Administrative Hearings (“OAH”) for a hearing; OAH received the case on September 3, 2003.

On January 20, 2004, a hearing was held at the County Board’s Central Office Building in Annapolis, Maryland before Lorraine Ebert Fraser, Administrative Law Judge (“ALJ”). The Appellant was represented by

Kristy K. Anderson, Maryland State Teachers Association. The County Board was represented by B. Darren Burns, Reese & Carney, LLP.

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

ISSUES

The issues are: 1) whether the County Board's decision that the Appellant's demotion was supported by substantial evidence is arbitrary, unreasonable or illegal; and 2) whether the County Board's decision that the procedural errors that occurred during the evaluation process were subsequently cured is arbitrary, unreasonable or illegal.

SUMMARY OF THE EVIDENCE

The evidence considered in this case consists of the record of the proceedings below. This record includes the transcript of the hearing before the County Board's Hearing Examiner, Appellant's exhibits 1 – 22, Superintendent's exhibits 1 – 8, the Hearing Examiner's decision, and the County Board's decision. No additional documents or testimony were admitted into evidence at the hearing before me.

FINDINGS OF FACT

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

1. During the 1999-2000 and 2000-2001 school years ("SY"), the Appellant worked for the Anne Arundel County Public Schools ("AACPS") as Instructional Technology Support Technician. Prior to those years, she worked as a Teacher's Assistant.
2. The essential job functions of the Instructional Technology Support Technician I position are as follows:
Provides instructional and technical support to teachers and students in implementing plans and programs related to computer-based instruction throughout the building. Work will involve providing technical training to the staff in using software and hardware available to them; providing technical assistance to students and teachers using instructional technology facilities; assisting teachers in the instructional use of software, hardware and the Internet; working with groups of students under the direction of the teacher; assisting teachers in locating instructional materials; and maintaining a system for sharing teacher created resources. Maintains an effective and orderly work environment, including troubleshooting and maintenance to minimize down time. This work involves daily, weekly, and monthly technical responsibilities relating to the

efficient and optimal operation of computer-related equipment. All school based duties will involve the school's computer facilities.

- Appellant Ex. # 1; Superintendent's Ex. # 4, attachment 1.
1. The Instructional Technology Support Technician I position receives general supervision from the Coordinator of IT Support and day to day guidance from the principal.
 2. During SY 1999-2000, the Appellant was assigned to Pasadena Elementary and South Shore Elementary Schools.
 3. On May 3, 2000, the Appellant received an overall unsatisfactory performance rating by Janis Horn, Principal, Pasadena Elementary, and Deborah Williams, Principal, South Shore Elementary.
 4. Specifically, the Appellant was found to need improvement in the following categories: job knowledge and skills; communication skills; quality of work; relationship with administrators, supervisors, and teachers; relationship with parents and public; dependability; flexibility; and initiative.
 5. The performance rating also included comments from Teresa Tudor, Support Specialist, Office of Instructional Technology, who found that after one year in her position the Appellant had "not shown the technical competencies needed for an Instructional Technology Support Technician." Superintendent's Ex. # 2. Ms. Tudor noted that the Appellant contacted senior support technicians and analysts for assistance but was unable to "transfer this knowledge" and perform her technical duties independently. *Id.*
 6. Sometime thereafter, Ms. Tudor gave the Appellant an Employee Plan of Action, which directed her to do the following:
 - demonstrate the ability to effectively interact with school staff, administration and students;
 - plan with classroom teacher to effectively integrate technology into the curriculum;
 - assist teachers and students when they use classroom computers or the computer lab; walk around and assist students when not introducing software to the class;
 - master technical skills to keep instructional labs operational and in compliance with AACPS regulations, such as loading software to the network and creating shortcuts and network maintenance including ghosting machines, creating a model, and troubleshooting peripheral devices;
 - learn to use and be able to instruct in the use of all software within assigned schools, including fixing specific software programs so that they function properly on the network and entering student names into software programs as required;
 - adhere to AACPS attendance policies and report to each school according to their specific hours.
 13. The Appellant appealed the 1999-2000 performance rating and Robert C. Leib, Director of Business and Government Services, acting as the Superintendent's designee, held a hearing in the matter. In a decision dated December 14, 2001, David D. Lombardo, Ph.D., Director of Human Resources, explained Mr. Leib's findings and determinations. Mr. Leib found that the established evaluation procedures were followed in the Appellant's evaluation, objective criteria were used in assessing the Appellant's job performance, and appropriate professional support was provided to the Appellant. Mr. Leib upheld the Appellant's May 3, 2000 performance rating.
 14. During SY 2000-2001, the Appellant was assigned to Ferndale Elementary and Severn Elementary Schools.
 15. On May 14, 2001, the Appellant received an overall unsatisfactory performance rating by Veronica B. Williams, Principal, Severn Elementary, who found the Appellant had very little knowledge about the computers and software in the school's lab. She noted the teachers had not been assigned passwords, the lab computers were not always functioning and the resource analyst performed requested service on stand alone computers, not the Appellant. She also noted that the Appellant needed to take more initiative when planning and working with classroom teachers and that her current productivity was insufficient to meet the students' instructional needs. In addition, she noted that the Appellant was not "flexible" in response to constructive criticism and spent a great deal of time on unrelated tasks. Appellant's Ex. # 13; Superintendent's Ex. #5.
 16. The May 14, 2001 performance rating also included comments from Ms. Tudor, who noted the Appellant's continuing need to improve her job knowledge, technical skills, and ability to communicate with administrators, teachers and students. She also noted the Appellant needed to improve her instructional skills in order to assist teachers to integrate technology into the curriculum.
 17. Prior to completing the May 14, 2001 performance rating, Ms. Williams spoke briefly with the principal at Ferndale Elementary, Mary Grande, regarding the Appellant's performance. Ms. Grande told Ms.

- Williams that the Appellant was doing fine and meeting Ferndale's needs. Ms. Grande did not rate the Appellant in any of the specific categories set forth on the evaluation instrument.
18. On July 18, 2001, the Appellant was notified that she was involuntarily demoted to the position of Teacher Assistant – Kindergarten at Annapolis Elementary School, effective August 20, 2001. The Appellant's demotion was based upon her two consecutive unsatisfactory performance ratings.
 19. The Appellant appealed the 2000-2001 performance rating, dated May 14, 2001, and David D. Lombardo, Ph.D., Director of Human Resources, acting as the Superintendent's designee, held a hearing in the matter. In a decision dated June 13, 2002, Dr. Lombardo found that the appropriate procedures were not followed in the Appellant's evaluation because Ms. Grande did not provide any evaluative comments. Dr. Lombardo invalidated the May 2001 performance rating and remanded the matter to the principals "for review and action to ensure that the evaluation reflects the comments and observations of both Principals." Appellant's Ex. # 16.
 20. On August 28, 2002, Ms. Grande completed an evaluation for the Appellant. Ms. Grande rated the Appellant as overall satisfactory. Ms. Grande rated the Appellant as needing improvement in the following categories: job knowledge and skills, dependability, and attendance. Ms. Grande also rated the Appellant as in between meeting job expectations and needing improvement in the following categories: instructional skills, organization, and initiative. Ms. Grande noted that Ferndale did not have a computer lab and had a limited number of free standing computers, many of which were in disrepair. She noted further that the Appellant was limited in her ability to fix the computers, although she was able to obtain outside help to get the computers running. She suggested that the Appellant "[o]btain and practice basic to intermediate operational and sustained facility with technology." Appellant's Ex. # 17; Superintendent's Ex. # 6.
 21. Sometime after Ms. Grande completed her evaluation of the Appellant, Veronica Williams completed a second evaluation of the Appellant for SY 2000-2001. Ms. Williams reviewed Ms. Grande's evaluation prior to completing her own. Ms. Williams rated the Appellant's overall performance as unsatisfactory. Ms. Williams found the Appellant needed improvement in the following areas: job knowledge and skills, quantity of work, quality of work, relationship with co-workers, flexibility, organization, and initiative. She reiterated her comments from the prior evaluation regarding the Appellant's lack of technical competence, computer knowledge, initiative, productivity, and flexibility. She noted the Appellant "needs a great deal of assistance to be considered proficient as an Instructional Technology Support Technician." Appellant's Ex. # 14; Superintendent's Ex. # 7. Ms. Williams' evaluation also included Ms. Tudor's comments from the May 2001 evaluation.
 22. Ms. Williams' second evaluation of the Appellant was completed on a form for Permanent Secretarial/ Clerical And Technical – Teacher Assistant positions rather than on the form for Instructional Technology Support Technician positions. The forms are essentially identical, with the following exceptions. Under the professional competencies section, the former form contains the rating categories quantity of work and leadership (if applicable) that are not contained on the latter form. Also under the same section, the former form does not contain the rating categories instructional skills, lab readiness, and lab organization and management, categories that do appear on the latter form. The remaining categories are identical on the two forms.
- On January 13, 2003, Douglas Clark Hollmann, Hearing Examiner for the County Board, held a hearing regarding the Appellant's demotion.¹ In his report dated February 26, 2003, Mr. Hollmann found that the decision to demote the Appellant was supported by substantial evidence and recommended that her appeal be denied. He also found that the flaws in the Appellant's evaluations were remedied by the Superintendent and/or were insufficient to "erode the basis for the Superintendent's actions." Hearing Examiner's Report, p. 2, dated February 26, 2003.
- On May 7, 2003, the County Board heard oral arguments based upon the Hearing Examiner's Report. The County Board also independently reviewed the record, including the transcript and exhibits. The County Board adopted the Hearing Examiner's recommendations and denied the Appellant's appeal. Specifically, the County Board found that the decision to demote the Appellant was supported by substantial evidence and that the procedural errors were cured by the subsequent actions of the Superintendent and by the full evidentiary hearing afforded to the Appellant.

¹ At the hearing before me, counsel for the Appellant admitted that the Appellant appealed the 1999-2000 and 2000-2001 evaluations; however, she had not filed a separate appeal regarding the demotion itself. Regardless, the County Board's hearing examiner and the County Board itself held hearings and issued decisions regarding the Appellant's demotion as well as her evaluations.

1. As of the date of the hearing, the Appellant worked as a Teacher Assistant – Media Aide for AACPS, a position she has held since her demotion in August 2001.

DISCUSSION

Section § 4-205 of the Education article provides in part as follows:

(c)(1) Subject to the authority of the State Board under [§ 2-205\(e\)](#) of this article, each county superintendent shall explain the true intent and meaning of:

- (i) The school law; and
- (ii) The applicable bylaws of the State Board.

(2) Subject to the provisions of [§ 6-203](#) and [Subtitle 4](#) of Title 6 of this article and without charge to the parties concerned, each county superintendent shall decide all controversies and disputes that involve:

- (i) The rules and regulations of the county board; and
- (ii) The proper administration of the county public school system.

(3) A decision of a county superintendent may be appealed to the county board if taken in writing within 30 days after the decision of the county superintendent. The decision may be further appealed to the State Board if taken in writing within 30 days after the decision of the county board.

Md. Code Ann., Educ. § 4-205 (Supp. 2003).

COMAR 13A.01.01.03E, provides as follows:

E. Standard of Review.

(1) Decisions.

(a) Decisions of a county board involving a local policy or a controversy and dispute regarding the rules and regulations of the county board shall be considered prima facie correct, and the State Board may not substitute its judgment for that of the county board unless the decision is arbitrary, unreasonable, or illegal.

(b) A decision may be arbitrary or unreasonable if it is one or more of the following:

(i) It is contrary to sound educational policy;

(ii) A reasoning mind could not have reasonably reached the conclusion the county board reached.

(c) A decision may be illegal if it is one or more of the following:

(i) Unconstitutional;

(ii) Exceeds the statutory authority or jurisdiction of the county board;

(iii) Misconstrues the law;

(iv) Results from an unlawful procedure;

(v) Is an abuse of discretionary powers; or

(vi) Is affected by any other error of law.

(d) The appellant shall have the burden of proof.

The Appellant contends that the procedural errors made during the process of the 1999-2000 and 2000-2001 evaluations require the invalidation of those evaluations, and as a result, the invalidation of her demotion. Specifically, she asserts that after her 1999-2000 evaluation she was given a plan of action; however, the proper procedures were not followed in developing that plan of action, nor was there any follow up on the plan by the Instructional Technology division or the principals. She alleges this procedural defect was never cured. In addition, she maintains that the 2000-2001 evaluation was flawed. She explains that initially only one principal completed the evaluation, and as a result of her appeal, the Superintendent's Designee directed both principals to develop a joint evaluation. She argues that instead of receiving one jointly developed evaluation, she received two separate evaluations from the two principals. One evaluation was satisfactory and the other was unsatisfactory, thus, she maintains they cancel each other out and cannot be used as a basis for her demotion. As a result of these procedural errors, the Appellant asserts that the County Board's decision was not based upon substantial evidence; therefore, the decision was arbitrary and unreasonable. As a remedy, the Appellant requests that the unsatisfactory evaluations be removed from her record, her step and salary for SY 2000-2001 be restored, she be compensated for at least one additional year as an Instructional Technology Support Technician, and she be provided training to enable her to return to the Instructional Technology Support Technician position.

The County Board asserts that the County Board's decision to reassign the Appellant was not arbitrary, unreasonable or illegal. The County Board maintains that it reviewed the entire record and found evidence to support the Superintendent's decision to reassign the Appellant. The County Board contends that it found that the procedural errors were corrected by the Superintendent and were cured by the full evidentiary hearing. The County Board argues that the State Board may not substitute its judgement in this matter because its decision was not arbitrary, unreasonable or illegal.

For the reasons that follow, I find that the County Board's decision that the Appellant's demotion was supported by substantial evidence was not arbitrary, unreasonable or illegal. I further find that the County Board's decision that the procedural errors that occurred during the evaluation process were subsequently cured was not arbitrary, unreasonable or illegal.

As detailed in my findings of fact above, the 1999-2000 and 2000-2001 evaluations contain ample evidence that the Appellant did not possess the requisite skills to function as an Instructional Technology Support

Technician. The only principal to rate the Appellant as overall satisfactory, Ms. Grande, also rated the Appellant as needing improvement in job knowledge and skills and noted that she needed to obtain basic technology skills.

During the hearing before the Hearing Examiner, the Appellant did not present any evidence to demonstrate she did in fact possess the necessary skills, other than her own testimony. Thus, the weight of the evidence supports the County Board's conclusion.

The County Board acknowledged there were procedural errors in the evaluation process but found those procedural errors were cured. The record shows that the 2000 plan of action and the 2000-2001 evaluation were not developed properly. However, the 2000 plan of action put the Appellant on notice as to how she needed to improve yet she did not do so. In addition, the Superintendent's Designee directed that the 2000-2001 evaluation be completed a second time and include evaluative comments from both principals. That the principals completed two separate documents and that one used a wrong but similar form is immaterial. Significantly, all versions of the 2000-2001 evaluation are consistent in finding the Appellant lacked the necessary knowledge and skills to perform in her position. The County Board considered the procedural errors and found that the Superintendent's subsequent actions and the Appellant's full evidentiary hearing cured those errors. I do not find the County Board's conclusion unreasonable.

CONCLUSIONS OF LAW

Based upon the foregoing, I conclude as a matter of law that the County Board's decision that the Appellant's demotion was supported by substantial evidence was not arbitrary, unreasonable or illegal. COMAR 13A.01.01.03E(1).

I further conclude as a matter of law that the County Board's decision that the procedural errors that occurred during the evaluation process were subsequently cured was not arbitrary, unreasonable or illegal. COMAR 13A.01.01.03E(1).

ORDER

I hereby **PROPOSE** that the County Board's decision issued on July 2, 2003 be **UPHELD**.
February 24, 2004
Date

Lorraine Ebert Fraser
Administrative Law Judge

LEF/lh
60101

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.