

DONNA E. STEWART,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-15

OPINION

Appellant, a tenured teacher with Baltimore County Public Schools, appeals the local board's decision adopting the superintendent's recommendation to terminate Appellant for insubordination and willful neglect of duty. The background facts are succinctly described by the local board:

The Appellant has been employed as a teacher for Baltimore County Public Schools since 1998. During the 2002-2003 school year, Appellant was assigned to Overlea High School, teaching AP Biology and Paramedical Biology. On September 24, 2002, the Appellant was observed in the classroom by a three-person observation team. (R.9) During the post-observation meeting held on September 24, 2002, Appellant was advised that her evaluation had been rated unsatisfactory. Following the post-observation conference, Appellant removed all of her possessions from her classroom and left Overlea High School. The Appellant did not tell school administrators that she would not be returning to work. She provided only one emergency lesson plan. By letter dated October 2, 2002, Appellant informed the Principal that she would not return to Overlea High School, but that she was requesting another assignment within Baltimore County Public Schools. Appellant was ordered to return to work by William Lawrence, the Northeast Executive Director of Schools, acting as Superintendent's Designee, but she did not. As a result of Appellant's failure to return to Overlea High School and inform administrators of the reason for her absences, the Superintendent has recommended that this Board terminate Appellant for insubordination and dereliction of duty.

Board opinion, p. 2.

Consistent with due process requirements, the local board referred the matter to a hearing examiner for review. After a full evidentiary hearing, the local hearing examiner recommended

that Appellant's termination be upheld. The hearing examiner explained that Appellant clearly understood the directive issued by the Executive Director of Schools for the Northeast District to return to Overlea High School, but that Appellant chose not to return because she believed that she would not get sufficient support in handling disruptive students in her classroom. The hearing examiner also explained that while Appellant was upset over her unsatisfactory evaluation, she inappropriately responded by leaving the school without notice rather than facing the complexities of teaching. Local Hearing Examiner Decision at 18 – 19.

Following oral argument, the local board affirmed the local hearing examiner's recommendation and upheld the termination decision by an 8 – 1 vote.¹ The local board found that Appellant was insubordinate when she refused a superior's order to return to her teaching position at Overlea High School. The local board also found that Appellant willfully neglected her duty by consciously abandoning her position. The local board stated as follows::

By way of justification for her actions, Appellant contends she refused to return to her teaching assignment and demanded a new position due to the administration's lack of support in disciplining two unruly students in her classroom, which resulted in a hostile work environment. Furthermore, she argues the poor performance rating was a subterfuge to mask either the students' bad conduct or the administration's poor response, or both. But as the Hearing Examiner found, the problems encountered by the Appellant with two unruly students and the perceived lack of response by the administration toward the students' behavior did not make a hostile work environment. We accept that fact-based finding. Moreover, even if the Board were to accept all of Appellant's assertions as to what happened at Overlea, they in no way justify her response. There is no excuse for abandoning her students; nor was Appellant justified in defying the directive to return to her school. (Citations to transcript omitted).

Local Board Decision at 4.

Appellant appealed the local board's decision to the State Board and the matter was transferred to the Office of Administrative Hearings. Following a hearing on the matter, an administrative law judge (ALJ) issued a proposed decision recommending that the motion for

¹One board member was absent, one abstained from the vote, and one dissented. The dissenting member noted that while he did not condone Appellant's abandonment of her position, he did not believe that termination was appropriate because in his view the administration was passive in disciplining disruptive students in Appellant's classroom and provided no assistance or guidance to Appellant in developing skills to deal with the behavior. Local Board Decision at 6 – 7.

summary affirmance filed by the local board be granted and that its decision to terminate Appellant for insubordination and willful neglect of duty be upheld. A copy of the ALJ's proposed decision is attached as Exhibit 1.

Appellant has filed an objection to the ALJ's recommended decision maintaining that termination is inappropriate based on the circumstances that led her to abruptly leave Overlea High School. On this point, the ALJ stated:

Clearly, the Appellant has not shown that a genuine dispute as to the material facts in this matter exists, even when considering the facts in a light most favorable to her. She walked out of Overlea High School at the end of the day on September 24 and did not return, leaving only one lesson plan. Her former colleagues were forced to fill in to cover her classes. Further, she disobeyed the direct order of William Lawrence, Executive Director of Schools for the Northeast Area. At the time of her October 4 meeting with Mr. Lawrence, he ordered her to return to work and warned her that her failure to return to work would be construed as insubordination and that she risked termination of her employment.

Regardless of her motivations, the Appellant's actions constitute insubordination and willful neglect of duty and the Board is, therefore, entitled to a judgment as a matter of law.

ALJ Decision at 12. In this regard, we also note that Appellant during her tenure in the school system transferred from Franklin, Milford Mill, and Randallstown High Schools before going to Overlea. At each high school she had difficulty managing students in her classroom. *See* Local Hearing Examiner's Decision at 18-19.

CONCLUSION

Based upon our review of the record in this matter and consideration of the arguments of counsel, we adopt the Findings of Fact and Conclusions of Law as set forth in the ALJ's proposed decision. We therefore affirm the termination decision made by the Baltimore 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

April 20, 2005

DONNA E. STEWART APPELLANT v. BOARD OF EDUCATION OF BALTIMORE COUNTY	<p style="text-align: center;">EXHIBIT 1</p> * BEFORE THOMAS E. DEWBERRY, CHIEF * ADMINISTRATIVE LAW JUDGE, * MARYLAND OFFICE OF * ADMINISTRATIVE HEARINGS * OAH No.: MSDE-BE-01-04-00511
* * * * * * * * * * * *	

**PROPOSED ORDER ON THE BOARD OF EDUCATION'S
MOTION FOR SUMMARY AFFIRMANCE**

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

STATEMENT OF THE CASE

On October 11, 2002, Donna E. Stewart ("Appellant"), a teacher at Overlea High School employed by the Board of Education of Baltimore County, received notification from the local board's superintendent recommending termination. The Appellant appealed the recommendation to the Board of Education of Baltimore County (the "Board") on October 17, 2002. Carolyn H. Thaler, Esquire, a Hearing Examiner of the Board ("Hearing Examiner") conducted a hearing on April 1, 2003. Md. Code Ann., Educ. § 6-203 (1999 & Supp. 2002).

The Hearing Examiner ruled that the Appellant's appeal be denied. The Appellant appealed the Hearing Examiner's recommendation to the Board. After hearing arguments from both parties on September 23, 2003, and reviewing the record compiled by the Hearing Examiner, the Board adopted the findings of fact and concluded that the Appellant should be terminated. The Appellant appealed the Board's order to the Maryland State Board of Education and the matter was scheduled before the Office of Administrative Hearings. Md. Code Ann., Educ. § 6-202(4) (Supp. 2003).

On December 29, 2003, the Board filed an Answer and Motion for Summary Affirmance ("Motion") requesting that the determination of the Board be upheld without a hearing.

A telephonic Prehearing Conference was held on March 9, 2004. At that time the Board advised that it would not press its Motion until the Appellant had her opportunity to be heard at the hearing.

A hearing was conducted on April 9, 2004, before Thomas E. Dewberry, Chief Administrative Law Judge ("ALJ"), at 11101 Gilroy Road, Hunt Valley, Maryland 21031. Code of Maryland Regulations ("COMAR") 13A.01.01.03P. The Appellant represented herself. Nevett Steele, Jr., Esquire, represented the Board. The Board renewed its Motion at the hearing.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board of Education, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code

Ann., State Gov't §§ 10-201 through 10-226 (1999 & Supp. 2003); COMAR 13A.01.01.03P; COMAR 28.02.01.

ISSUE

The issue presented is whether the Board's Motion for Summary Affirmance should be granted because the Appellant has not raised any genuine dispute concerning any material fact.

SUMMARY OF THE EVIDENCE

A. Exhibits

The parties jointly submitted: (a) the record of the April 1, 2003 hearing before Hearing Examiner, Carolyn H. Thaler, Esquire with exhibits, including 126 pages of transcript; and (b) the Hearing Examiner's June 5, 2003 Findings of Fact, Conclusions of Law, and Recommendations; and (c) the transcript of the September 23, 2003 oral arguments of the parties. (Joint Exhibit #1)

The following additional exhibit was admitted into evidence as submitted by the Appellant:

Appellant's Exhibit #1	November 24, 2003 letter to Jackie C. LaFiandra, Assistant Attorney General for the Maryland State Department of Education
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The Board also submitted the following exhibits that were admitted into evidence:

Board Exhibit #1	Transcript of September 23, 2003 Oral Argument
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Board Exhibit #2 September 23, 2003, statement by Dr. Donna E. Stewart to the
Board

Board Exhibit #3 October 21, 2003 Opinion and Order of the Board

B. Testimony

At the telephone pre-hearing conference held on March 9, 2003, the Board stipulated to the testimony of its witnesses from the April 1, 2003 local board hearing. The Appellant did not call any witnesses and read her Exhibit #1 into the record.

FINDINGS OF FACT

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

1. The Appellant is a teacher with Baltimore County Public Schools possessing a Ph.D in Physiology and Biophysics.
2. The Appellant was assigned to Overlea High School for the 2002-2003 school year to teach Advanced Placement Biology and Paramedical Biology.
3. Prior to being assigned at Overlea High School, Appellant had been assigned to Milford Mill, Franklin and Randallstown High Schools.
4. On September 24, 2002, a three-person appraisal team observed the Appellant teach a paramedical biology class.
5. The appraisal team rated Appellant's lesson as unsatisfactory.
6. On September 24, 2002, the appraisal team met with Appellant at the end of the school and apprised her of their rating.

7. On September 25, 2002, the Appellant did not report to work and called in sick.
8. On September 25, 2002, school administrators found that Appellant had removed all personal belongings, bulletin boards and posters.
9. The Appellant provided one emergency lesson plan.
10. On September 26, 2002, Overlea High School's principal, James Thanner, wrote to Appellant noting that it appeared as if her classroom was abandoned and expressed concern that she had abandoned her position. He requested that she contact him.
11. On October 2, 2002, Appellant advised that she removed her personal property from the classroom because she did not intend to return to Overlea High School.
12. On October 2, 2002, Appellant filed a Grievance Report advising that she had received unfair treatment and an unfair evaluation and advised that she was seeking an alternative teaching position and requested administrative leave.
13. On October 4, 2002, Appellant, and her advocate, met with William Lawrence, Executive Director of Schools for the Northeast Area.
14. Mr. Lawrence ordered Appellant to return to work and warned her that her failure to return to work would be construed as insubordination and that she risked termination of her employment.
15. Appellant called in sick from September 25, 2002 through October 7, 2002 and presented medical documentation to support her initial absence. The Appellant was released to return to work as of October 7, 2002 but never returned.

16. In the Appellant's absence, Overlea High School personnel had to provide coverage for her classes.
17. On October 11, 2002, William Lawrence advised the Appellant that he was recommending to the Board that she be terminated from employment.
18. On October 17, 2002, the Appellant advised the Board that she was appealing the "Recommendation of Termination."
19. On April 1, 2003, a local board hearing was conducted before Hearing Officer, Carolyn H. Thaler, Esquire.
20. On May 5, 2003, the Superintendent issued a Post Hearing Memorandum requesting that his Recommendation of Termination be upheld.
21. On June 5, 2003, Ms. Thaler issued a decision recommending that the Superintendent's decision to terminate the Appellant be upheld.
22. On June 19, 2003, the Appellant requested oral argument with the Board.
23. On September 23, 2003, oral argument was held and on October 21, 2003 the Board issued an Opinion and Order affirming the termination of the Appellant for insubordination and willful neglect of duty.
24. On November 24, 2003, the Appellant appealed the Board's decision to the OAH.
25. On December 29, 2003, the Board filed a Motion for Summary Affirmance with the ALJ.

DISCUSSION

COMAR 28.02.01.16C(1) states that a party to an administrative hearing before the Office of Administrative Hearings "may move for summary decision² on any substantive issue in the case." An order for summary decision is appropriate under COMAR 28.02.02.16D(2) if a judge finds that there is no genuine dispute as to any material fact and that the moving party is entitled to prevail as a matter of law.

The requirements for summary decision under COMAR 28.02.01.16D are virtually identical to those for summary judgment under Maryland Rule 2-501, which contemplates a "two-level inquiry". In *Richman v. FWB Bank*, 122 Md. App. 110, 146, 712 A. 2d 41, 58 (1998), *aff'd*, *FWB Bank v. Richman*, 354 Md. 472, 731 A.2d 916 (1999) the Court describes the Maryland Rule:

Maryland Rule 2-501, which governs summary judgment, contemplates a two-level inquiry. It requires that, in order to grant summary judgment, the trial court must determine that no genuine dispute exists as to any material fact, and that one party is entitled to judgment as a matter of law. *Bagwell v. Peninsula Regional Medical Ctr.*, 106 Md.App. 470, 488, 665 A.2d 297 (1995), *cert. denied*, 341 Md. 172, 669 A.2d 1360 (1996); *see also Southland Corp. v. Griffith*, 332 Md. 704, 712 633 A.2d 84 (1993); *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737-38, 625 A.2d 1005 (1993), *Bits "N" Bytes Computer Supplies, Inc. v. Chesapeake & Potomac Tel. Co.* 97 Md.App. 557, 580-81, 631 A.2d 485 (1993) *cert. denied*, 333 Md. 385, 635 A.2d 425 (1994); *Seaboard Sur. Co. v. Richard F. Kline, Inc.*, 91 Md.App. 236, 242-45, 603 A.2d 1357 (1992). In its review of the motion, the court must consider the facts in the light most favorable to the non-moving party. *Dobbins v. Washington Suburban Sanitary Com'n*, 338 Md. 341, 345, 658 A.2d 675 (1995); *King v. Bankerd*, 303 Md. 98,111, 492 A.2d 608 (1985). It must also construe all inferences reasonably drawn from those facts in favor of the non-movant. *Tennant v. Shoppers Food Warehouse*, 115 Md.App. 381, 387, 693 A.2d 370 (1997); *Bagwell*, 106 Md.App. at 488, 665 A.2d 297.

² The terms "summary affirmance" and "summary decision" are essentially equivalent and, therefore, interchangeable. In addition, COMAR 13A.01.01.03K provides for a Motion for Summary Affirmance on appeals to the Board.

To defeat a motion for summary judgment, the non-moving party must establish that a genuine dispute exists as to a material fact. *Moura v. Randall*, 119 Md.App. 632, 640, 705 A.2d 334, cert. denied, 349 Md. 495, 709 A.2d 140 (1998). A material fact is one that will somehow affect the outcome of the case. *King*, 303 Md. at 111, 492 A.2d 608. If a dispute exists as to a fact that is not material to the outcome of the case, the entry of summary judgment is not foreclosed. *Scroggins v. Dahne*, 335 Md. 688, 691, 645 A.2d 1160 (1994).

Also see *Grimes v. Kennedy Krieger Inst., Inc.*, 366 Md. 29, 72 – 73, 782 A.2d 807, 833 – 34 (2001).

Additionally, “the purpose of the summary judgment procedure is not to try the case or to decide the factual disputes, but to decide whether there is an issue of fact, which is sufficiently material to be tried. See *Goodwich*, 343 Md. at 205-06, 680 A.2d at 1077; *Coffey v. Derby Steel Co.*, 291 Md. 241, 247, 434 A.2d 564, 567-68 (1981); *Berkey v. Delia*, 287 Md. 302, 304, 413 A.2d 170, 171 (1980). Thus, once the moving party has provided the court with sufficient grounds for summary judgment, the nonmoving party must produce sufficient evidence to the trial court that a genuine dispute to a material fact exists. See, e.g., *Hoffman Chevrolet, Inc. v. Washington County Nat'l Sav. Bank*, 297 Md. 691, 712, 467 A.2d 758, 769 (1983).” *Grimes*, 366 Md. at 73, 782 A.2d at 834.

Applying the preceding to this case, COMAR 13A.01.01.03E, establishes the standard of review of decisions of county Boards of Education that involve local policy. That section states the following in its entirety:

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.

(2) State School Laws and Regulations. The State Board shall exercise its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations.

(3) Teacher Dismissal and Suspension.

(a) The standard of review in teacher dismissal or suspension actions shall be de novo as defined in §E(3)(b).

(b) The State Board shall exercise its independent judgment on the record before it in determining whether to sustain a disciplinary infraction.

- (c) The county board shall have the burden of proof.
- (d) The State Board, in its discretion, may modify a penalty.

...

In the instant case, the Board's Motion states the following:

1. This is an appeal of the final decision of the Board of Education of Baltimore County (hereinafter, County Board") to terminate the employment of the Appellant, a certificated and tenured employee, pursuant to §6-202 of the Education Article of the Annotated Code of Maryland.
2. Pursuant to COMAR 13A.01.01.03K(1), there are no genuine issues of material fact in this matter.
3. The Appellant has repeatedly admitted that she disobeyed the direct order of the supervisor and refused to return to her assignment at Overlea High School (Co. Bd. Ex. 6 R. 115; Co. Bd. Ex. 13, at 20) She has therefore willfully neglected her duty and committed insubordination, as defined by §6-202 of the Education Article of the Annotated Code of Maryland.
4. Pursuant to COMAR 13A.01.01.03C(3) a copy of the record of the local proceedings before the County Board is enclosed herewith ("Record Before the Board of Education of Baltimore County").

At the March 9, 2004 telephonic Prehearing Conference the Board advised that it would not press its Motion until the Appellant had her opportunity to be heard at the hearing. The Board renewed its Motion at the hearing. The parties also stipulated to the admission of all exhibits and witnesses' testimony from the April 1, 2003 local board hearing.

At the April 15, 2004 OAH hearing, the Appellant referred to the statement that she submitted at the local board hearing on April 1, 2003 and read into the record her statement of November 24, 2003 to MSDE's Office of the Attorney General. In

Appellant's April 1 and November 24, 2003 statements she does not dispute that she walked out of Overlea High School on September 24, 2002 after receiving an unsatisfactory rating on her lesson and later disobeyed a direct order of a supervisor to return to her assignment at that school. Her statements reflect that she considered that the principal of Overlea High School had created a hostile environment for her; and that the Board did not consider the extenuating circumstances which led her to abruptly leave Overlea High School, specifically, that the school had developed no plan for dealing with two "unbearably disruptive" students in her class.

Section 6-202 Education Article Annotated Code of Maryland states:

A. Grounds and Procedures for Suspension and Dismissal

(1.) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:

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

The State Board has previously defined insubordination as "willful disregard of express or implied directions of an employee and a refusal to obey reasonable orders."³

³ See *Anastasi v. St. Mary's County Board of Education*; 4 Op. MSBE 192 (1985) and *Pepperman v. Board of Education of Montgomery County*, 7 Op. MSBE 555 (1997).

The fact that the Appellant disobeyed the Executive Director of Schools for the Northeast Area's direct order, a material fact in this matter, is not in dispute.

Additionally, the State Board has previously defined willful neglect of duty as "a willful failure to discharge duties which are regarded as general teaching responsibilities."⁴

Further, the State Board has found that abandoning a teaching position constitutes "willful neglect of duty and insubordination." (See *Harlan v. Baltimore City Public Schools*, 2 Op. MSBE 685 (1982). The fact that the Appellant abandoned her teaching position and classroom on September 25, 2002, a material fact in this matter, is not in dispute.

Clearly, the Appellant, has not shown that a genuine dispute as to the material facts in this matter exists, even when considering the facts in a light most favorable to her. She walked out of Overlea High School at the end of the day on September 24 and did not return, leaving only one lesson plan. Her former colleagues were forced to fill-in to cover her classes. Further, she disobeyed the direct order of William Lawrence, Executive Director of Schools for the Northeast Area. At the time of her October 4 meeting with Mr. Lawrence he ordered her to return to work and warned her that her failure to return to work would be construed as insubordination and that she risked termination of her employment.

Regardless of her motivations, the Appellant's actions constitute insubordination and willful neglect of duty and the Board is, therefore, entitled to a judgment as a matter of law.

⁴ See *Crawford v. Board of Education of Charles County*, 1 Op. MSBE 503 (1976) and *Watson v. Board of School Commissioners of Baltimore City*, 2 Op. MSBE 116 (1979).

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Board of Education of Baltimore County has shown that summary affirmance is appropriate in this case because there is no genuine dispute as to any material fact and that the Board is entitled to prevail as a matter of law. COMAR 28.02.02.16D(2); COMAR 13A.01.01.03E. Accordingly, the Board's decision to terminate the Appellant's employment should be affirmed. Md. Code Ann. Educ. § 6-202.

PROPOSED ORDER

I **PROPOSE** that the Motion for Summary Affirmance filed by the Board of Education of Baltimore County be **GRANTED** and that its decision to terminate the Appellant's employment be **AFFIRMED**.

June 1, 2004

Thomas E. Dewberry
Chief Administrative Law Judge

TED/bv
63004

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.

DONNA E. STEWART	* BEFORE THOMAS E. DEWBERRY, CHIEF
APPELLANT	* ADMINISTRATIVE LAW JUDGE,
v.	* MARYLAND OFFICE OF
BOARD OF EDUCATION	* ADMINISTRATIVE HEARINGS
OF BALTIMORE COUNTY	* OAH No.: MSDE-BE-01-04-00511
* * * * *	* * * * *

FILE EXHIBIT LIST

A. Exhibits

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The following additional exhibit was admitted into evidence as submitted by the Appellant:

Appellant’s Exhibit #1 November 24, 2003 letter to Jackie C. LaFiandra, Assistant
Attorney General for the Maryland State Department of
Education

The Board also submitted the following exhibits:

- | | |
|------------------|-----------------------------------------------------------------------|
| Board Exhibit #1 | Transcript of September 23, 2003 Oral Argument |
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