

LISA McKELVIE,

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-03

OPINION

INTRODUCTION

Ms. McKelvie appeals the decision of the Prince George's County Board of Education (local board) upholding her termination as a probationary employee. The local board filed a Motion for Summary Affirmance. Ms. McKelvie filed a Motion in Opposition and the local board responded to the Opposition.

FACTUAL BACKGROUND

Ms. Judy Jefferson, Director of Internal Audit, hired Ms. McKelvie as an Internal IT Auditor, as a probationary employee, effective August 13, 2007. The probationary period was six-months. Failure to perform adequately during the probationary period could lead to termination of employment at any time during the probationary period. (*See* Motion, Ex. 1 ¶6).

Soon after Ms. McKelvie began work, Ms. Jefferson became concerned about Ms. McKelvie's ability to perform adequately. (*See* Motion, Attachment 7, Affidavit of Jefferson). On November 13, 2007, Ms. Jefferson placed Ms. McKelvie on a progressive discipline plan because of failure to satisfactorily complete work assignments, failure to work independently, and failure to follow the work schedule. (*Id.*, Attachment 1).

Thereafter, Ms. McKelvie filed various complaints about Ms. Jefferson accusing her, *inter alia*, of discrimination. (*Id.*, Attachments 2 & 3). Ms. Jefferson then began keeping a log of the deficiencies in Ms. McKelvie's performance. (*Id.*, Attachment 8).

On or about January 30, 2008, Ms. Jefferson evaluated Ms. McKelvie as unsatisfactory and terminated her, effective January 31, 2008. (*Id.*, Attachment 6). The reasons were:

- Consistently has issues with attendance and punctuality - - comes in late; leaves early; is sometimes unaccounted for during the day.
- Not productive; questionable skill level; fails to meet due dates; needs constant supervision.
- Attitude not positive; often challenges supervisor's authority.

(*Id.*).

Thereafter, the Chief Administrator for Human Resources and the Superintendent reviewed and upheld the termination. Ms. McKelvie appealed to the local board. The local board heard oral argument from the parties and the board issued a decision on January 21, 2010, upholding the termination. (Motion, Ex. 1). This appeal ensued.

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.03E(1).

LEGAL ANALYSIS

Ms. McKelvie argues that the local board's decision was illegal because she was denied procedural due process and because there was not sufficient evidence to support the termination.

As to the procedural due process claim, it is our view that Ms. McKelvie received the appropriate due process for the position she held. She was a probationary employee, subject to termination at any time during the probationary period. Her rights at termination are governed by § 4-205 of the Education Article, entitling her to appeal the superintendent's decision to the local board and to this Board. Ms. McKelvie has exercised those appeal rights. Unlike employees whose termination rights are governed by § 6-202 of the Education Article, Ms. McKelvie is not entitled to an evidentiary hearing at any stage of the termination process.¹ We decline to find that Ms. McKelvie was denied procedural due process.


¹Section 6-202 sets forth the due process rights of non-probationary school employees who hold professional certificates issued pursuant to § 6-101 *et seq.* of the Education Article.

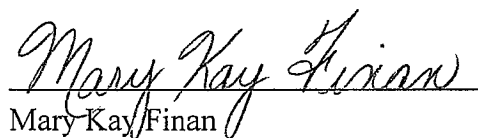
As to the sufficiency of evidence, the record is replete with contemporaneous memos from Ms. Jefferson to Ms. McKelvie and vice versa. Moreover, Ms. Jefferson has filed a sworn affidavit averring to facts demonstrating that Ms. McKelvie was an unsatisfactory employee. (Motion, Attachment 7). Ms. McKelvie does not agree with those facts, but that is not a sufficient reason to disregard the evidence. The evidence is, in our view, sufficient to support the termination.

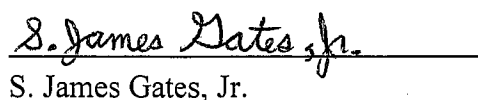
CONCLUSION

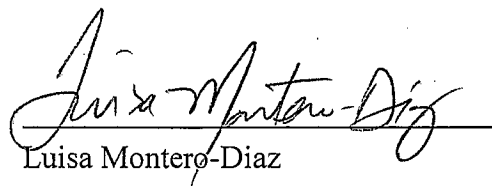
For all of these reasons, the decision of the local board is affirmed.


James H. DeGraffenreidt, Jr.
President


Charlene M. Dukes
Vice President


Mary Kay Finan


S. James Gates, Jr.


Luisa Montero-Diaz

absent

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Guffie M. Smith, Jr.

Guffie M. Smith, Jr.

Donna Hill Staton

Donna Hill Staton

Ivan C.A. Walks

Ivan C.A. Walks

Kate Walsh

Kate Walsh

January 25, 2011