SARA BELIN,

Appellant

v.

WASHINGTON COUNTY
BOARD OF EDUCATION,

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-04

OPINION

The Appellant challenges the decision of the Washington County Board of Education (local board) to terminate her for misconduct in office and willful neglect of duty. The termination relates to the Appellant's actions concerning MSA testing violations just prior to the administration of the MSA on March 16, 2010 in which the Appellant reviewed several vocabulary words from the first section of the MSA with her students.

We transferred this case pursuant to COMAR 13A.01.05.07 to the Office of Administrative Hearings for a hearing before an Administrative Law Judge (ALJ). The ALJ consolidated the matter with Appellant's case concerning the revocation of her teaching certificate, which was also pending at OAH and involved the same set of facts. The revocation of Appellant's certification, however, is an issue for the State Superintendent and not the State Board. The only issue before this Board in this case is whether Appellant's termination should be upheld.

On July 15, 2011, the Administrative Law Judge issued a proposed decision recommending that the State Board uphold the local board's decision to terminate the Appellant for misconduct in office and willful neglect of duty based on her test security violations.[1]

Appellant did not file any exceptions to the ALJ's proposed decision on the termination.

FACTUAL BACKGROUND

The factual background in this case is set forth in the ALJ's Proposed Decision, Findings of Fact, pp. 8 – 16.

STANDARD OF REVIEW

Because this appeal involves the termination of a certificated employee pursuant to §6-202 of the Education Article, the State Board exercises its independent judgment on the record before it in determining whether to sustain the termination. COMAR 13A.01.05.05(F)(1) and

[1] The ALJ also recommended that the Appellant's teacher certificate be revoked. As already stated, that issue is to be decided by the State Superintendent of Schools and not the State Board.

(F)(3).

The State Board referred this case to the OAH for proposed findings of fact and conclusions of law by the ALJ. In such cases, the State Board may affirm, reverse, modify, or remand the ALJ's Proposed Decision. The State Board's final decision, however, must identify and state reasons for any changes, modification, or amendments to the Proposed Decision. See Md. Code Ann., State Gov't §10-216. In reviewing the ALJ's Proposed Decision, the State Board must give deference to the ALJ's demeanor based witness credibility findings unless there are strong reasons present that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

CONCLUSION

Based on our review of the record, we concur with the ALJ that the local board's decision to terminate Appellant should be upheld. We, therefore, adopt the ALJ's Proposed Decision and affirm the local board's termination for misconduct in office and willful neglect of duty.

James H. DeGraffenreidt, Jr.
President

Charlene M. Dukes
Vice President

Mary Kay Finan

S. James Gates, Jr.

Luisa Montero-Diaz

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Guffie M. Smith, Jr.

Abstain

Donna Hill Staton

Ivan C.A. Walks

Kate Walsh

January 24, 2012

File
MSDE-BE-01-10-45

SARA BELIN,[1]	*	BEFORE KATHLEEN A. CHAPMAN,
APPELLANT	*	ADMINISTRATIVE LAW JUDGE,
V.	*	MARYLAND OFFICE OF
BOARD OF EDUCATION	*	ADMINISTRATIVE HEARINGS
OF WASHINGTON COUNTY	*	OAH Nos.: MSDE-BE-01-10-45761 (Termination Case)
	*	
	*	MSDE-SU-10-11-00974 (Revocation Case)

* * * * * * * * * * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On April 20, 2010, Elizabeth M. Morgan, Ph.D, Superintendent of the Washington County Public Schools (WCPS), notified Sara Belin (Appellant), a teacher at Bester Elementary School (Bester), that she was recommending to the Washington County Board of Education (County Board) that the Appellant be terminated on the grounds of misconduct in office and willful neglect of duty. Md. Code Ann., Educ. § 6-202 (2008 & Supp. 2010). On April 21, 2010, the Appellant appealed this recommendation to the County Board. Thereafter, the County Board appointed Edward J. Gutman, a Hearing Examiner, to conduct a due process hearing and provide it with a recommendation about whether to terminate the Appellant. After conducting a two-day hearing on June 24-25, 2010, Mr. Gutman recommended to the County Board, on July 29, 2010, that the

[1] At times throughout the hearing, the Appellant was also referred to by her married name which is Sara Moser.

Appellant be reinstated as a teacher. However, the County Board rejected Mr. Gutman's recommendation and, on November 2, 2010, ordered the termination of the Appellant. Md. Code Ann., Educ. § 6-203 (2008). On November 16, 2010, the Appellant filed an appeal to the Maryland State Board of Education (State Board).

On November 23, 2010, Dr. Donna Newcomer, Director of Human Resources and Teaching Staffing, WCPS, submitted a written request to Dr. Nancy S. Grasmick, Maryland State Superintendent of Schools, to have the Appellant's Maryland teaching certificate revoked on the basis that she willfully and knowingly committed a violation of the test security and data reporting policy and procedures set forth in COMAR 13A.03.04. *See* COMAR 13A.12.05.03A(1). On December 6, 2010, in relation to the revocation of the Appellant's teaching certificate, the State Board mailed a notice of charges to the Appellant.

On December 20, 2010, the State Board referred the Appellant's Termination case to the Office of Administrative Hearings (OAH) for further proceedings pursuant to Section 6-202 of the Education Article. Md. Code Ann., Educ. § 6-202(a)(4) (2008). *See also* Code of Maryland Regulations (COMAR) 13A.01.05.05F.

On December 21, 2010, the Appellant appealed the revocation of her teaching certificate to the State Board. On January 6, 2011, the State Board transmitted the Appellant's Certification case to the OAH for a hearing pursuant to COMAR 13A.12.05.04.

I held a telephone prehearing conference (Conference) on February 17, 2011.[2] In consultation with the parties, I scheduled a consolidated merits hearing for April 4, 11, 12, and 14, 2011. On the first three dates, I conducted the hearing at the offices of the County Board,

[2] Administrative Law Judge J. Bernard McClellan also participated in the Conference as the OAH originally assigned him to preside over the Appellant's Certification case. However, after a consolidation of the Termination and Certification cases, Judge McClellan's involvement was terminated.

located at 820 Commomwealth Avenue, Hagerstown, Maryland. On the last date, I conducted the hearing at OAH in Hunt Valley, Maryland. Edmund J. O'Meally, Esquire, and Andrew G. Scott, Esquire, represented the County Board. Saurabh Gupta, Esquire, represented the Appellant, who was present.

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, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); COMAR 13A.01.05; COMAR 28.02.01.

ISSUES

1) Did the County Board establish that its decision to terminate the Appellant was supported by the preponderance of the evidence and in accordance with the applicable law?

2) Is the revocation of the Appellant's teaching certificate supported by the preponderance of the evidence and in accordance with the applicable law?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted on behalf of the parties the following joint exhibits:

Joint Ex. 1 – Binder One

I. Section 6-202 Hearing Transcript Volume I – June 24, 2010
Section 6-202 Hearing Transcript Volume II – June 25, 2010

II. Exhibits presented during the Section 6-202 Hearing

A. Superintendent's Exhibits
B. Employee's Exhibits

III. Employee's Closing Arguments – July 16, 2010
Superintendent's Closing Arguments – July 16, 2010

IV. Decision of Hearing Examiner Edward J. Gutman – July 29, 2010

V. Communications

- August 19, 2010 letter to Mr. Gupta from Mr. O'Meally and Mrs. Finklestein
- September 2, 2010 letter to Mr. Gupta from Mr. Ridenour
- July 19, 2010 e-mail from Mr. O'Meally
- July 23, 2010 e-mail from Mr. O'Meally

VI. Memorandum of Law in Support of the Superintendent's Exception to the Recommended Decision of the Hearing Examiner and Request for Oral Argument – September 2, 2010

VII. Memorandum in Opposition to the Superintendent's Memorandum of Law in Support of the Superintendent's Exception to the Recommended Decision of the Hearing Examiner and Request for Oral Arguments – September 24, 2010

Joint Ex. 2 – Binder Two

VIII. Oral Arguments Transcript – October 12, 2010

IX. County Board's Decision – November 2, 2010

X. Memorandum from the State Board acknowledging receipt of an appeal from [the Employee] – November 22, 2010

Joint Ex. 3 – Forensic Analysis of [the Appellant's] USB Flash Drive, Summary Report by Clint A. Modesitt, HSSK Computer Forensics & E-Discovery, March 7, 2011

I admitted a Black Binder on behalf of the County Board containing the following exhibits:

WCBE Ex. 1 – March 16, 2010 Statement of Michelle Carosella, Kindergarten teacher, Bester (introduced at the Board Hearing as Superintendent's Ex. 5)

WCBE Ex. 2 – March 16, 2010 Statement of Claire Wainscott, Intervention teacher, Bester (introduced at the Board Hearing as Superintendent's Ex. 5)

WCBE Ex. 3 – March 17, 2010 Summary of Meeting prepared by Eric Meredith, Assistant Principal, Bester (introduced at the Board Hearing as Superintendent's Ex. 5)

WCBE Ex. 4 – March 17, 2010 Summary of Meeting prepared by Kristi Bachtell, Principal, Bester (introduced at the Board Hearing as Superintendent's Ex. 5)

WCBE Ex. 5 – March 1, 2010 Test Administration and Certification of Training Form and Non-Disclosure Agreement signed by [the Appellant] on March 1, 2010 (introduced at the Board Hearing as Superintendent's Ex. 6)

WCBE Ex. 6 – March 17, 2010 Statement of [the Appellant] (introduced at the Board Hearing as Superintendent's Ex. 6)

WCBE Ex. 7 – Student Statements (introduced at the Board Hearing as Superintendent's Ex. 12)

WCBE Ex. 8 – Summaries of Student Statements (introduced at the Board Hearing as Superintendent's Ex. 5)

WCBE Ex. 9 – April 12, 2010 Investigation Report from Dr. Michael Markoe, WCPS Assistant Superintendent of Elementary Schools, to Dr. Elizabeth Morgan, WCPS Superintendent (introduced at the Board Hearing as Superintendent's Ex. 5)

WCBE Ex. 10 – Testing Incident Report Form (TIRF) with fax cover and supporting documents, dated March 19, 2010, from Jeremy Jakoby, Supervisor, WCPS Office of Testing and Accountability, to Dr. Tamara Lewis, Maryland State Department of Education (MSDE) State Test Security Officer (introduced at the Board Hearing as Superintendent's Ex. 6)

WCBE Ex. 11 – March 31, 2010 letter from Dr. Lewis to Mr. Jakoby (introduced at the Board Hearing as Superintendent's Ex. 5)

WCBE Ex. 12 – Bester's Maryland School Assessment (MSA) test results

WCBE Ex. 13 – Bester's MSA test results with interpretive comments

WCBE Ex. 14 – MSA test results for [the Appellant's] 5th grade class

WCBE Ex. 15 – March 18, 2010 letter from Timothy D. Thornburg, WCPS Supervisor of Employee and Labor Relations, to the Appellant (introduced at the Board Hearing as Superintendent's Ex. 7)

WCBE Ex. 16 – April 15, 2010 Memorandum from Dr. Donna Newcomer, WCPS Director of Human Resources, to Dr. Morgan (introduced at the Board Hearing as Superintendent's Ex. 4)

WCBE Ex. 17 – April 20, 2010 letter from Dr. Morgan to the Appellant (introduced at the Board Hearing as Superintendent's Ex. 3)

WCBE Ex. 18 – April 2010 Memorandum to the County Board from Dr. Morgan (introduced at the Board Hearing as Superintendent's Ex. 2)

WCBE Ex. 19 – April 23, 2010 letter from Dr. Lewis to Mr. Jakoby (introduced at the Board Hearing as Superintendent's Ex. 1)

WCBE Ex. 20 – June 8, 2010 Affidavit of Ray Scott, MSDE Reading Project Manager (introduced at the Board Hearing as Superintendent's Ex. 8)

WCBE Ex. 21 – June 8, 2010 Affidavit of Dr. Lewis (introduced at the Board Hearing as Superintendent's Ex. 9)

WCBE Ex. 22 – County Board's November 2, 2010 Decision and Order

WCBE Ex. 23 – November 23, 2010 letter from Dr. Newcomer to Dr. Nancy S. Grasmick, Maryland State Superintendent of Schools

WCBE Ex. 24 – *Bridge to Terabithia* Vocabulary; Vocabulary for *Matilda*

WCBE Ex. 25 – 2010 MSA Grade 5 Reading Test Book (Form 6)[3]

WCBE Ex. 26 – 2010 MSA Grade 5 Reading Test Book (Form 5)

The Appellant referenced a pre-marked white "Witness Binder" at the hearing containing the following exhibits that were admitted under Joint Ex. 1, Section II, B. These exhibits were often referred to by the Appellant's last name:

B* Ex. 1 – Lesson Plans for February 23, 2010 and March 11, 2010

B* Ex. 2 – Vocabulary Overview for *Bridge to Terabithia* and for Guided Reading Novels

B* Ex. 3 – *Bridge to Terabithia*, Higher order questions

B* Ex. 4 – *Bridge to Terabithia* Vocabulary; Vocabulary for *Matilda*

B* Ex. 5 – 5th grades' MSA Maniac Monday!

B* Ex. 6 – MSA Schedule

B* Ex. 7 – Test Administration and Coordination Manual, Reading and Mathematics (2009)

B* Ex. 8 – Bester, Student Incident Statements

[3] WCBE Exhibits 25 and 26 contain confidential and proprietary material and shall be sealed and not opened except by order of the Court.

B* Ex. 9 – June 22, 2010 letter from Kathy Stiles, Principal

B* Ex. 10 – Appellant's Professional Development and Leadership Activities

B* Ex. 11 – November 3, 2009 letter from Dr. Morgan to the Appellant (regarding perfect attendance during the 2008-2009 school year); October 5, 2007 letter from Dr. Morgan to the Appellant (regarding perfect attendance during the 2006-2007 school year); November 18, 2008 letter from Dr. Morgan to the Appellant (regarding perfect attendance during the 2007-2008 school year)

B* Ex. 12 – Performance evaluations and Observations

B* Ex. 13 – Teacher of the Year nomination

Testimony[4]

The County Board presented the following witnesses:

1. Michelle Carosella, Kindergarten teacher, Bester
2. Claire Wainscott, Intervention teacher, Bester
3. Eric A. Meredith, Assistant Principal (AP), Bester
4. Kristi Bachtell, Principal, Bester
5. Dr. Michael Markoe, Assistant Superintendent for Elementary Education, WCPS
6. Timothy D. Thornburg, Supervisor of Employee and Labor Relations, WCPS
7. Jeremy Jakoby, Supervisor of Testing and Accountability, WCPS
8. Dr. Tamara L. Lewis, State Test Security Officer, MSDE
9. Raymond Scott, Maryland School Assessment (MSA) Project Manager
10. Dr. Donna Newcomer, Director of Human Resources, WCPS (Bd. Hr'g Tr. Vol. I, 18 – 59, June 24, 2010)

[4] Both parties relied on transcripts from the June 24-25, 2010 Board Hearing in lieu of live testimony for a number of their witnesses. For those witnesses whose testimony was presented through transcripts, I have identified the witness and referenced their respective transcript pages from the hearing below.

The Appellant testified and presented the following witnesses:

1. T. Scott Miller, UniServ Director, Washington County Teachers Association
2. Barbara Courter, 5th grade teacher, Bester
3. Kathy Stiles, Principal, Rockland Woods Elementary School
4. Tiffany Tresler, AP, Maugansville Elementary School
5. Jeffrey Brian Walker, parent (Bd. Hr'g Tr. Vol. II, 389 – 401, June 25, 2010)
6. Jacqueline Sydnor, parent (Bd. Hr'g Tr. Vol. II, 401 – 410, June 25, 2010)
7. Vicki Lynn Flaherty, parent (Bd. Hr'g Tr. Vol. II, 410 – 416, June 25, 2010)
8. Michelle Dutrow, parent (Bd. Hr'g Tr. Vol. II, 416 – 430, June 25, 2010)
9. Allen Knight, parent (Bd. Hr'g Tr. Vol. II, 430 – 438, June 25, 2010)
10. Jennifer Schaefer, parent (Bd. Hr'g Tr. Vol. II, 438 – 445, June 25, 2010)
11. Ralph Crawford, parent (Bd. Hr'g Tr. Vol. II, 445 – 450, June 25, 2010)

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Appellant has been a teacher with the WCPS, at Bester, since 2003.

2. Bester is a Title One school, which means it has a large concentration of low-income students who are enrolled in the free and reduced lunch program (FARM) and there is a very high rate of mobility among its student population.

3. At the conclusion of the 2002 – 2003 school year, the MSDE ordered all teachers at Bester to re-apply for employment due to low test scores on the Maryland School Assessment (MSA). This process is known as zero-basing. After the zero-basing period, the Appellant was re-hired at Bester and has remained at Bester ever since.

4. During the 2009 – 2010 school year, the Appellant taught 5th grade at Bester. The Appellant was a looping teacher, meaning that most of the students in her classroom were taught by the Appellant from grades three through five.

5. In March 2010, the Appellant was assigned the task of administering the MSA to her 5th grade students. At the time, she had 21 students in her class.

6. The MSA is a test given annually in grades three through eight in reading and math, and in grades five and eight in science to gauge whether school systems and their teachers are meeting State and federal achievement standards consistent with the No Child Left Behind (NCLB) Act of 2001.

7. The MSA test includes both selected response (multi-choice) and brief constructed response (BCR) items. The test items are based on grade-specific Maryland academic content standards (also referred to as the Voluntary State Curriculum).

8. The 2010 Reading Test Book for Session One of the MSA is five pages in length and contains eleven multiple choice questions. (WCBE Exs. 25 – 26.) The first five questions contain a sentence with a key word underlined. The student must then choose an answer in which the underlined word is used in the same way. The next six questions contain a sentence with a key word underlined. The student must then figure out what the underlined word means.

9. The questions and answers contained in the 2010 Reading Test Book for Session One of the MSA are highly sensitive and must be kept confidential at all times.

10. On March 1, 2010, the Appellant signed the Test Administration and Certification of Training Form and Non-Disclosure Agreement noting receipt and knowledge of the MSA test administration responsibilities, which states as follows:

> I understand that it is a breach of professional ethics to provide or alter answers, provide non-verbal clues, teach items on the test, share prompts, coach, hint, or in any way influence a student's performance during the test. The only materials students will use are those authorized in the tests Test Administration and Coordination Manual or Examiner's Manuals. (Alt-MSA Test Examiners may provide students with the prompts and accommodations consistent with the student's Mastery Objectives.)
>
> . . .
>
> I have thoroughly read the above and have been prepared for my role in this test administration. I know that violations of test administration and security provisions may include invalidation of test results, costs assessed to my district, disciplinary actions against me by my district and/or certificate suspensions or revocations by the MSDE as applicable.

(WCBE Ex. 5.)

11. During a routine discussion a few weeks before the MSA testing, the Appellant told Principal Kristi Bachtell that she was concerned her students may not perform as well as they had previously performed as 4th graders on the MSA.

12. The MSA reading section was administered on Tuesday, March 16, 2010, and Wednesday, March 17, 2010.

13. On Tuesday, March 16, 2010, at approximately 8:00 a.m., the Appellant picked up and signed out her classroom's MSA bin from AP Eric Meredith's office. The bin contained the 2010 Reading Test Books (hereinafter referred to as the test booklets), sharpened pencils, a notice for her classroom door, and a class list.

14. Upon return to her classroom with the MSA bin, the Appellant looked through the test booklet to "see how long the sessions [were], what they [the passages and the questions] entailed, and when to give appropriate breaks for students" prior to the administration of the MSA. (Hr'g Tr. Vol. 2, 392:19 – 25; 393:8.)

15. Bester school administrators Principal Bachtell and AP Meredith allowed teachers to review the test booklets one to two hours prior to the administration of the MSA to allow teachers to determine how long each test section was and where to administer certain breaks. (Hr'g Tr. Vol. 1, 18:1 – 8.)

16. The MSDE approved of this administrative procedure and, in 2009, consistent with this procedure, the MSDE permitted teachers to access to the test booklets twenty-four hours in advance.

17. The Appellant retained the test booklets in her classroom until the administration of the MSA. (Hr'g Tr. Vol. 1, 81:14 – 17.)

18. At approximately 8:30 a.m., students began arriving at the Appellant's classroom.

19. Following student breakfasts and announcements, at approximately 9:00 a.m., the Appellant began her instructional day by asking her students to move to a carpeted area located in her classroom. For approximately twenty minutes, in preparation for administration of the MSA reading section, the Appellant conducted a review of: (a) test taking strategies, (b) text features, and (c) components of a BCR, and she gave a pep talk. (*See* WCBE Exs. 3, 4 and 6.)

20. Immediately before testing, the Appellant also reviewed four or five of the vocabulary words that were on Session One of the MSA by giving students examples on whiteboards in her own sentences. (*See* WCBE Ex. 6.)

21. At approximately 9:20 a.m., the Appellant's students returned to their seats to begin the MSA. The MSA administrator, or proctor, assigned to the Appellant's classroom arrived. At about this same time, Jesse, a student, left the classroom in order to take the MSA with a smaller

group consistent with testing accommodations dictated by his Individualized Education Program (IEP). According to Jesse's IEP, he needed a reader.[5]

22. Claire Wainscott, an Intervention teacher, and Michelle Carosella, a Kindergarten teacher, were assigned to Jesse's MSA test group as the administrator and assessment accommodator, respectively.

23. At approximately 9:35 a.m., Ms. Wainscott began reading the MSA directions for Session One to Jesse's MSA test group.

24. When Ms. Wainscott indicated to the students that they could begin the vocabulary section of the MSA, Jesse immediately bubbled[6] in the first three answers before Ms. Carosella, his reader, had a chance to read the sentences to him. After Ms. Carosella pointed this out to Jesse, he stated that he already knew the words because the Appellant had gone over them in class earlier in the day.

25. Ms. Wainscott observed the interaction between Ms. Carosella and Jesse, and overheard bits and pieces of their conversation.

26. Ms. Carosella mentioned Jesse's actions and comments to Terri Mullican, a Bester teacher, who recommended that she and Ms. Wainscott report the incident to Bester administrators as a possible MSA test security violation.

27. At approximately 2:00 p.m., Ms. Carosella and Ms. Wainscott reported the incident to AP Meredith.

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[5] Both parties agreed that Jesse was capable of reading; however, he read below grade level. (Hr'g Tr. Vol. 1, pp. 106 – 107.) Principal Bachtell provided the following explanation: "In an IEP situation, if a child is at least two grade levels below reading, in testing situations then we are able to give an accommodation of a verbatim reader." *Id.*

[6] The term "bubble" references the manner in which a test taker darkens a circle to answer a question on the MSA.

28. Concerned that there may have been a test infraction, AP Meredith reported the incident to Principal Bachtell.

29. Principal Bachtell, in turn, reported the incident to Dr. Michael Markoe, WCPS Assistant Superintendent for Elementary Education, that same evening.

30. Upon request by Principal Bachtell, Ms. Carosella and Ms. Wainscott submitted separate written statements to Bester school administrators, on March 17, 2010, detailing the events that occurred during the MSA testing involving Jesse. (WCBE Exs. 1 and 2.)

31. On March 17, 2010, at approximately 8:15 a.m., Principal Bachtell and AP Meredith called the Appellant into the principal's office. AP Meredith took notes of the meeting, including the questions asked and answers given. (WCBE Ex. 3.)

32. At the outset of the meeting, Principal Bachtell stated to the Appellant that it had been brought to her attention that one or more students from the Appellant's class may have been exposed to information on the MSA prior to the administration of the test on March 16, 2010. (WCBE Ex. 3.) Principal Bachtell asked the Appellant if she had "any explanation for why someone would believe that [her] students might have had prior knowledge of the MSA?" *Id.* In response, the Appellant told Principal Bachtell and AP Meredith that she had discussed vocabulary words that were on the test. When Principal Bachtell queried, "Actual words from the first session," the Appellant replied, "yes," she had reviewed four or five vocabulary words that appeared on the MSA with her students prior to the administration of the MSA. *Id.* She also indicated that the review contained MSA content specific material.

33. Thereafter, the Appellant apologized for her actions, explaining that her students were smart and did not need the help. (WCBE Exs. 3 and 4.)

34. At the conclusion of the meeting, the Appellant provided a handwritten account of the events that transpired on March 16, 2010. Specifically, she wrote:

> Before testing, I reviewed some of the vocabulary words (4-5) that were on Session One by giving students examples on white boards (in my own sentences in addition to other words). We talked about test taking strategies and reviewed text features, and the components of a BCR (answer the question, two pieces of text evidence, and I think or I know). I also gave them a pep talk and talked about pacing themselves.

(WCBE Ex. 6.)

35. On March 17, 2010 and March 18, 2010, Dr. Markoe, with Principal Bachtell present in the room, conducted interviews with all the students assigned to the Appellant's classroom. (WCBE Ex. 8.)

36. After each interview, Dr. Markoe and/or Principal Bachtell escorted the student to a separate room for the student to provide a handwritten account of the events that transpired on March 16, 2010. (WCBE Ex. 7.)

37. Dr. Markoe briefed Jeremy Jakoby, WCPS Supervisor of Testing and Accountability, regarding the incident.

38. By law, Mr. Jakoby was required to submit a Testing Incident Report Form (TIRF) to Dr. Tamara Lewis, MSDE State Test Security Officer, within five days of learning of a possible test violation.

39. T. Scott Miller, UniServ Director for the Washington County Teachers Association, Inc., acting on behalf of the Appellant, wrote a letter to Timothy D. Thornburg, Supervisor of Employee and Labor Relations, WCPS, on March 18, 2010, indicating that the Appellant would be submitting a formal statement in lieu of her previously submitted handwritten statement. (WCBE Ex. 10.)

40. The Appellant also made a handwritten notation on her previously submitted statement indicating that the "statement does not accurately represent incident at issue and should be disregarded." (WCBE Ex. 10.)

41. In a formal typewritten statement, the Appellant indicated that prior to the administration of the MSA, on the morning of March 17, 2010, she reviewed vocabulary words from the *Bridge to Terabithia*, a recent class novel. The Appellant further noted that "[s]ome of these words were the same words from Section One of the MSA test." (WCBE Ex. 10.)

42. In a letter dated March 18, 2010, the WCPS advised the Appellant that it was placing her on administrative leave with pay pending the outcome of a review of an allegation of inappropriate and unprofessional conduct during the testing protocol leading up to the administration of the MSA. (WCBE Ex. 15.)

43. On March 18, 2010, Timothy Thornburg, WCPS Supervisor of Employee and Labor Relations, met with the Appellant and her union representative, Mr. Miller, to discuss the standard protocol for when there is an allegation of employee misconduct. Mr. Thornburg also asked the Appellant to sign the March 18, 2010 letter acknowledging receipt of it. During this meeting, the Appellant did not discuss any information with reference to what occurred on March 16, 2010.

44. On March 19, 2010, Mr. Jakoby submitted the TIRF. (WCBE Ex. 10.)

45. The State Test Administration and Security Committee is charged with the obligation of reviewing the TIRF and providing feedback to the local education agency (LEA) concerning whether it agrees with the direction the LEA is taking with its investigation and whether the proposed sanction is deemed appropriate based on the alleged violation.

46. On March 31, 2010, Dr. Tamara L. Lewis, State Test Security Officer, sent Mr. Jakoby a letter acknowledging receipt of the TIRF. (WCBE Ex. 11.) She also asked Mr. Jakoby to

forward her an Excel spreadsheet with identifying information for the students in the Appellant's classroom and their test booklet numbers. *Id.*

47. Dr. Markoe submitted a report to Dr. Morgan on April 12, 2010. (WCBE Ex. 9.) The report consisted of background information, a synopsis of Principal Bachtell and AP Meredith's meeting with the Appellant, the Appellant's written and verbal statements, the students' written and verbal statements, a review of MSA protocols, and findings. *Id.*

48. On April 15, 2010, Dr. Donna Newcomer, WCPS Executive Director of Human Resources, wrote a letter to Dr. Morgan recommending that the Appellant be terminated from her teaching position at Bester, but she also recommended a suspension of the Appellant's teaching certificate for a period of two to four years. (WCBE Ex. 16.)

49. In a letter dated April 20, 2010, Dr. Morgan advised the Appellant that she was recommending to the County Board that her employment as an elementary school teacher at Bester be terminated on the grounds of misconduct in office and willful neglect of duty. (WCBE Ex. 17.)

50. On this same date, April 20, 2010, Dr. Morgan submitted a memorandum to the County Board informing it of her recommendation to terminate the Appellant. (WCBE Ex. 18.)

51. On April 23, 2010, Dr. Lewis wrote to Mr. Jakoby acknowledging receipt of the Verification of Personnel Action Form. (WCBE Ex. 19.) Dr. Lewis also informed Mr. Jakoby that the State Test Administration and Security Committee accepted, as a resolution in this case, the letter of termination issued to the Appellant. *Id.*

52. On June 23, 2010, the MSDE informed Bester school administrators that it invalidated the Appellant's classroom scores, thus resulting in each student receiving only a basic score. As a consequence, Bester did not make Adequate Yearly Progress (AYP). (WCBE Exs. 13 – 15.)

DISCUSSION

I. Law

Section 6-202 of the Education Article provides the framework under which a teacher may be suspended or dismissed and provides that "[o]n the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, other professional assistant" for reasons including "[m]isconduct in office" and "[w]illful neglect of duty." Md. Code Ann., Educ. § 6-202(a)(1)(ii), (v) (2008). It further states that the individual "may appeal from the decision of the county board to the State Board." Md. Code Ann., Educ. § 6-202(a)(4). Under COMAR 13A.01.05.07A, the State Board "shall transfer an appeal to the [OAH] for review by an administrative law judge" under circumstances including an "appeal of a certificated employee suspension or dismissal" pursuant to section 6-202 of the Education Article. Under COMAR 13A.01.05.05, the standard of review for dismissal actions involving certificated employees is *de novo*: "[t]he State Board shall exercise its independent judgment on the record before it in determining whether to sustain the . . . dismissal of a certificated employee." In addition, the local board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05F.

Section 6-202 of the Education Article does not define "willful neglect of duty." However, aside from a layman's common sense understanding of what this phrase means, willful neglect of duty in regard to the Education Article has been defined by the MSBE as "a willful failure to discharge duties which are regarded as general teaching." *See, Margaret R. Crawford v. Bd. of Educ. of Charles County*, 1 Op. MSBE (1976); *Steward v. Baltimore County Bd. of Educ.*, MSBE Op. No. 05-15 (2005). *See also, Moore v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 04-

03 (2003). (The MSBE found Moore's failing to follow the assistance plan was willful neglect of duty).

In this case, the County Board seeks to terminate the Appellant's employment for misconduct in office or willful neglect of duty because the Appellant allegedly committed testing violations arising just prior to the administration of the MSA on March 16, 2010. In relevant part and related to alleged testing violations, COMAR 13A.03.04.05 provides:

> .05 Testing Behavior Violations.
>
> A. It is a violation of test security for an individual to fail to follow test administration procedures promulgated by the local board of education or the State Board of Education and published in test administration manuals and related materials for mandatory tests administered by or through the State Board of Education to students or educators.
>
> B. It is a violation of test security for an individual to:
>
> (1) Give examinees access to secure test items or materials before testing;
> ...
>
> (3) Copy, reproduce, use, or otherwise disclose in any manner inconsistent with test security regulations and procedures any portion of secure test materials;
>
> (4) Provide answer keys or answers orally, in writing, or by any other means, to examinees;
>
> (5) Coach examinees during testing by giving them answers to test questions or otherwise directing or guiding their responses or altering or interfering with examinees' responses in any way;
> ...
>
> (9) Participate in, direct, aid, counsel, assist, encourage, or fail to report any of the acts prohibited in this chapter; or

Any conduct which constitutes a testing behavior violation under COMAR 13A.03.04.05 constitutes misconduct, insubordination, or neglect of duty for which personnel sanctions may be imposed by the Department or local school system, whichever is the employer. COMAR

13A.03.04.07B(1).

A teacher employed in a Pre-Kindergarten through 12th grade program in the public school systems of Maryland shall hold an appropriate certificate under COMAR 13A.12.02. In addition to the personnel sanction of employment termination for a testing behavior violation, COMAR 13A03.04.07B(2) provides that "administrative credentials, teaching credentials, or both, of the violator may be suspended or revoked under COMAR 13A.12.05. In relevant part, COMAR 13A.12.05.02 provides:

> A. [A] certificate and all specific certification areas issued under this subtitle shall be suspended or revoked by the State Superintendent of Schools for the causes set forth in this regulation.
>
> ...
>
> B. Suspension or Revocation. A certificate shall be suspended or revoked by the State Superintendent of Schools if the certificate holder:
>
> ...
>
> (2) Willfully and knowingly:
>
> ...
>
> (c) Commits a violation of the test security and data reporting policy and procedures set forth in COMAR 13A.03.04;

In a hearing to suspend or revoke a teacher's certification, the ALJ "shall determine if the charges against the certificate holder are supported by a preponderance of the evidence." COMAR 13A.12.05.04D.

Finally, applicable to both the Termination case and the Certification case and in relation to the appropriate sanction to be imposed for testing violations, COMAR 13A.03.04.07 provides:

> C. Mitigating Circumstances.
>
> (1) Any mitigating circumstances shall be considered before a sanction is imposed for a testing behavior violation as described in Regulation .05 of this chapter, a data collection and reporting violation as described in Regulation .06 of this chapter, or violation of any other regulation in this chapter.

(2) An individual may be sanctioned if the individual failed to take appropriate action after learning about the violation.

D. Reasonable Person Standard. All conduct with respect to test administration and data reporting will be reviewed under a reasonable person standard, that is, what a reasonable person would do under similar circumstances.

II. Contention of the parties

a. County Board

According to the County Board, this case involves the related issues of MSA test security and alleged MSA test violations by the Appellant, a highly respected and beloved teacher at Bester. Specifically, the County Board argues that, on March 16, 2010, the Appellant reviewed four MSA vocabulary words from the 2010 test booklet with her 5th grade students just prior to administering the MSA on the same date.

The County Board asserts that the Appellant's actions were exposed when one of her students, Jesse, immediately bubbled in his answer to the first three questions on the MSA without having the questions first read to him by his reader, Ms. Carosella. At this hearing in this matter, the County Board called both Ms. Carosella and Ms. Wainscott to testify concerning the incident involving Jesse, and presented a copy of their written statements prepared and submitted the day after the incident. (WCBE Exs. 1 and 2.)

Ms. Carosella testified that when Ms. Wainscott initiated the MSA test by stating "Okay, you may begin," she observed Jesse bubble in the first three answers. Ms. Carosella further testified that when she asked Jesse why he did not wait for her to read the questions, he stated, "Well, I already know these. We went over them today, this morning with [the Appellant] in class." (Hr'g Tr. Vol. 1, 24:14 – 21.)

Ms. Wainscott testified that she was also in the classroom with Jesse and Ms. Carosella when she observed "a strange conversation that took place between Ms. Carosella and Jesse, but I didn't hear what Jesse said." (Hr'g Tr. Vol. 1, 37:1 – 4.) However, in her statement, written and submitted the day after the incident, Ms. Wainscott wrote, "I overheard a student say something regarding that he had already done something like that earlier today." (WCBE Ex. 2.)

According to the County Board, under the provisions of COMAR, it was imperative and incumbent on Ms. Carosella and Ms. Wainscott to report Jesse's comments and conduct to school administrators. In fact, Ms. Carosella discussed her concern and struggle about reporting the incident during her testimony because she considered the Appellant "a good teacher." (Hr'g Tr. Vol. 1, 27:13.) Similarly, Ms. Wainscott stated "I didn't feel comfortable with what it is that I was being told [by Ms. Carosella]" and "I did what I thought was right, which was report anything that made me uncomfortable 'cause I felt like it was a strange thing." (Hr'g Tr. Vol. 1, pp. 46 – 47; 45:15 – 18.) Moreover, both witnesses confirmed during their testimony that they brought this incident to the attention of AP Meredith in the afternoon of March 16, 2010. According to the County Board, in essence, this is what got the ball rolling concerning the allegations facing the Appellant.

Next, the County Board presented the testimony of Principal Bachtell and AP Meredith to discuss their involvement in the case as well as their interactions with the Appellant. The County Board contended that both administrators went into this meeting with the Appellant with the hope and expectation that she could provide a simple explanation for Jesse's comments. In addition, the County Board was quick to exclaim that the Appellant was considered a star teacher and well respected in the WCPS school community, so learning of this possible test infraction was a shock to the Bester school administrators. (Hr'g Tr. Vol. 1, 133:10 – 23.)

Specifically, AP Meredith testified that he immediately reported the incident to Principal Bachtell as a possible test infraction because he was sufficiently concerned about not only Jesse's actions but his statements to Ms. Carosella and Ms. Wainscott as well. (Hr'g Tr. Vol. 1, 55:7 – 15.) Thereafter, as Principal Bachtell stated, she contacted her supervisor, WCPS Assistant Superintendent Dr. Markoe, to inform him of the alleged facts involving the Appellant. According to Principal Bachtell, Dr. Markoe recommended to her that she obtain written statements from Ms. Carosella and Ms. Wainscott (which she did), and then meet with the Appellant. (Hr'g Tr. Vol. 1, 108:10 – 18; *See also* WCBE Exs. 1 and 2.) All parties agree that on the next day (March 17, 2010), Principal Bachtell and AP Meredith met with the Appellant. AP Meredith was clear, however, that he was simply an observer in the room, taking notes. Principal Bachtell testified that when the Appellant reached her office door, "She asked if she was in trouble." (Hr'g Tr. Vol. 1, 110:2 – 3.) Instead of responding to this question, Principal Bachtell indicated that she began asking the Appellant a series of open-ended questions to discern what occurred in her classroom prior to the administration of the MSA. Nevertheless, AP Meredith described the interaction between the Appellant and Principal Bachtell as not threatening. (Hr'g Tr. Vol. 1, 60:13 – 21.) In fact, AP Meredith added during his testimony that throughout the meeting "[Principal] Bachtell was very compassionate toward [the Appellant], again, using comments like, "I'm sure this is a misunderstanding. You know, you've done everything we've always asked you. You're a great teacher. We'll do the best we can to work this out." (Hr'g Tr. Vol. 1, 60:16 – 23.) During their respective testimonies, both Principal Bachtell and AP Meredith recalled that the Appellant admitted, both in writing and verbally, that she had, in fact, reviewed four or five MSA vocabulary words from the actual MSA test with her students on the morning of March 16, 2010. (Hr'g Tr. Vol. 1, pp. 57 – 58 and 110; *See also* WCBE Ex. 6.) Moreover, both administrators testified that

after she gave her statement, the Appellant began crying and repeatedly apologized for her actions, stating that she did not know why she did it because her students were smart and did not need the help. (Hr'g Tr. Vol. 1, pp. 58, 112 and 115 – 116.) According to the County Board, after the meeting with the Appellant, it was the opinion of both administrators that the Appellant had committed a MSA test violation. AP Meredith testified that based on the questions Principal Bachtell asked and the answers the Appellant provided, he gleaned that "she had engaged with giving her students knowledge to the test." (Hr'g Tr. Vol. 1, pp. 61 – 62.) Moreover, Principal Bachtell testified that after she observed the Appellant's demeanor and considered her verbal and written statements, she, too, believed that the Appellant willfully reviewed MSA vocabulary words with her students on the morning of March 16th. (Hr'g Tr. Vol. 1, 112:20 – 24.)

Next, the County Board presented the testimony of Dr. Markoe to describe his meeting with the Appellant's students individually on March 17 – 18, 2010. The County Board explained that Dr. Markoe, with Principal Bachtell present in the room to observe the interviews, asked the children a series of open-ended questions to ascertain what, if anything, the children recalled on the morning of March 16, 2010 just prior to the administration of the MSA. It is the position of the County Board that not only did several of the students corroborate Jesse's remarks, but they corroborated the Appellant's admissions as well.

Dr. Markoe testified that when he met with the students, he took extra care and was very cautious not to give any kind of inclination to them that he was conducting an investigation concerning the Appellant. (Hr'g Tr. Vol. 1, 145:6 – 18.) Instead, he told the students that it was part of his job to travel to the various schools to conduct a follow-up on the MSA. (Hr'g Tr. Vol. 1, 144:9 – 24.) He then asked each student a set of questions, as follows:

1. How do you think you did on the MSA?

2. Share with me everything you remember about Tuesday morning before beginning the test.
3. Before you began the test on Tuesday, how did [the Appellant] get you ready?
4. Did [the Appellant] give you any clues on the test that may have helped you on the test? Tell me about the clues.
5. Before you watch a movie there are often previews about upcoming movies that tell you about what the movie is about. Did your teacher give you a preview of what was going to be on the test? If so, tell me about it.

(Hr'g Tr. Vol. 1, 149:8 – 24: *See also* WCBE Ex. 8.) Dr. Markoe testified that when he "collectively sat down and gathered the different statements as well as the interview respondents {sic} and collectively placed in a report to the superintendent," it suggested to him "that there were testing violations." (Hr'g Tr. Vol. 1, 164:7 – 12.) Of the twenty-one students he interviewed, Dr. Markoe paid particular attention to statements from Jesse, Tyler, Chelsea, Brianna, McCoy, Hope, Cierrah, Bailey, Tatiana, Sierra, and Zach because he found they conveyed a common theme that the Appellant had exposed her student's to MSA material prior to taking the exam. Noted below are the exact excerpts from the interviews that Dr. Markoe referenced in his testimony as being significant in terms of his investigation:[7]

Jesse

Question: Did your teacher give you a preview of what was going to be on the test? If so, tell me about it.

Answer: Yes, she gave us a couple here and there that I saw on the test.

(Hr'g Tr. Vol. 1, pp. 149 – 150.)

Tyler

Question: Share with me everything you remember about Tuesday morning before beginning the test.

Answer: I went to the carpet. [The Appellant] went over some questions that might have been hard for us.

Question: The questions she went over, did you see them on the test?

[7] The excerpts may also be found at WCBE Ex. 8.

Answer: Yes.

(Hr'g Tr. Vol. 1, pp. 150 – 151.)

Chelsea
Question: Did she share with you any words that were going to be on the test?

Answer: Yeah.

(Hr'g Tr. Vol. 1, pp. 151 – 152.)

Brianna
Question: Did your teacher give you a preview of what was going to be on the test? If so, tell me about it.

Answer: Yeah, she told us that there would be tricky questions. She gave us some more examples.

Question: Same words that were on the test?

Answer: Yeah.

Question: Before the test?

Answer: Yeah.

(Hr'g Tr. Vol. 1, p. 153.)

McCoy
Question: Share with me everything you remember about Tuesday morning before beginning the test.

Answer: I ate breakfast. Then we did a positive thought. Got two sharpened pencils. We went to the carpet, wrote down some words on the white board. Then we had to see which one – I forget "e..."[8] Then we looked at the questions that fitted the best.

Question: Did any of the words appear on the test?

Answer: Yeah.

(Hr'g Tr. Vol. 1, pp. 153 – 154.)

Hope

[8] For test security purposes, I redacted the word.

Question: Did [the Appellant] give you any clues that may have helped you on the test? Tell me about the clues.

Answer: She gave us a couple. She would give us some of the questions and check out answers.

(Hr'g Tr. Vol. 1, p. 155.)

Cierrah

Question: Before you watch a movie there are often previews about upcoming movies that tell you about what the movie is about. Did your teacher give you a preview of what was going to be on the test? If so, tell me about it.

Answer: Yeah, on the test. There was vocabulary – she took the MSA vocabulary.

Question: Did she teach them to you?

Answer: Yes.

(Hr'g Tr. Vol. 1, p. 156.)

Bailey

Question: Share with me everything you remember about Tuesday morning before beginning the test.

Answer: We worked on some review. [The Appellant], she was like working on stuff that we didn't get to go over before the test. She wanted us to do good on the test and thought we needed to do some review before the test.

(Hr'g Tr. Vol. 1, p. 160.)

Tatiana

Question: Share with me everything you remember about Tuesday morning before beginning the test.

Answer: We did review. [The Appellant] took some questions from the test and we tried to answer them.

Question: Did [the Appellant] give you any clues that may have helped you on the test? Tell me about the clues.

Answer: Yes, she told us to think about it. She told us to look back on our

work and make sure they were correct.

Question: Before you watch a movie there are often previews about upcoming movies that tell you about what the movie is about. Did your teacher give you a preview of what was going to be on the test? If so, tell me about it.

Answer: Yes, she would give us BCRs. We would answer questions and she would tell us they were correct.

Question: Vocabulary?

Answer: She would give us vocabulary that was on the test.

(Hr'g Tr. Vol. 1, p. 161.)

Sierra

Question: Share with me everything you remember about Tuesday morning before beginning the test.

Answer: We went in there, reviewed some of the stuff that was going to be on the test. We went over some words, meanings. She put words in a sentence.

Question: Were these words on the test?

Answer: Some of them.

Question: Did [the Appellant] give you any clues that may have helped you on the test? Tell me about the clues.

Answer: A little bit because we reviewed different words on the test that we haven't seen before. She put those...went over big words like "b...," "p...," "e..."[9]

Question: Were these words on the test?

Answer: Yeah.

(Hr'g Tr. Vol. 1, p. 162.)

Zach

Question: Before you watch a movie there are often previews about upcoming movies that tell you about what the movie is about. Did your teacher

[9] For test security purposes, I redacted the words.

give you a preview of what was going to be on the test? If so, tell me about it.

Answer: Yeah, like she did on the day of the MSA. She got to look over the test before and pick out things that she needs to help us with. She taught us what they meant.

Question: Words?

Answer: Yeah.

(Hr'g Tr. Vol. 1, p. 163.) Dr. Markoe added during his testimony that the students' handwritten statements revealed a similar theme running through them as well that the Appellant reviewed the MSA vocabulary before administering the test. (*See* WCBE Exs. 7 and 8.) Dr. Markoe further stated that the students' handwritten statements contradicted the Appellant contention that she spent the morning covering vocabulary from the *Bridge to Terabithia*. (*See* WCBE Ex. 7.)

Finally, Dr. Markoe testified that after he met with the children he submitted a report to Dr. Morgan, WCPS Superintendent, on April 12, 2010, encompassing all that had occurred up to this point during the County Board's investigation. (WCBE Ex. 9.) Dr. Markoe also stated that in his report he included portions of the student interviews, as noted above. Dr. Markoe testified that in light of the "collective interviews with staff members, the student statements, as well as [the Appellant's] statement on the 17th," he had reached a conclusion "that there was, in fact, a testing violation." (Hr'g Tr. Vol. 1, p. 163.) Dr. Markoe even went further to state that he believed disciplinary actions were appropriate because "given the substantial evidence that existed both at the time of the investigation and additional information that has come forth prior to our last hearing, unquestionably I would say there is a testing violation." (Hr'g Tr. Vol. 1, 169:14 – 18.) Considering the totality of the circumstances, Dr. Markoe testified that the Appellant's "first

statement was probably the most accurate as to what occurred prior to the administration of the MSA. [He found] [t]he students' statements [to be] very compelling in that these fifth grade students readily provided this information...And they demonstrated a sincere fondness for [the Appellant], so I would have to think that they would not want to put her in any kind of position where she would be in jeopardy of any kind of discipline." (Hr'g Tr. Vol. 1, pp. 169 – 170.)

The County Board also presented Jeremy Jakoby, WCPS Supervisor of Testing and Accountability (also referred to as the local accountability coordinator (LAC)), as a witness to explain his role in the investigation and to describe the reporting requirements between the County Board[10] and the State with respect to a possible test violation. To that end, Mr. Jakoby testified that once Dr. Markoe shared with him that there was an investigation ongoing involving the Appellant, it was his responsibility to bring this information to the attention of the MSDE, specifically, the State Testing Security Office, within five days. (Hr'g Tr. Vol. 1, pp. 200 – 202; *See also* WCBE Ex. 10.) Mr. Jakoby stressed that the TIRF he submitted to Dr. Lewis contained all the relevant materials concerning the test violation, as well as the Appellant's Official Statement, dated March 18, 2010. Moreover, Mr. Jakoby testified that he included in his report those provisions of the procedures and requirements for MSA test administration as set forth in the MSDE and Pearson Appendices, Appendix C, that the County Board accused the Appellant of violating. Thereafter, Mr. Jakoby explained, the State reviews the TIRF and reports back to the County Board with instructions on how to proceed.

The County Board also presented the testimony of Dr. Tamara L. Lewis, State Security Officer, to explain her role, and that of her committee, the State Test Administration and Security Committee (Committee), regarding the TIRF once it is received. Dr. Lewis stated that when she

[10] In his testimony, Mr. Jakoby referred to the County Board as the LEA.

initially receives an incident report form, she will assign it a case number for recordkeeping purposes. She then inputs the case number and details from the incident into a secure database. According to Dr. Lewis, only the other members of the Committee have access to the information contained on the server. Furthermore, Dr. Lewis testified that if the incident involves any potential personnel sanctions, she will make recommendations based on the case history for similar cases contained in the database. Dr. Lewis also pointed out, the LAC, in consultation with their superintendent, might recommend a sanction. Dr. Lewis testified that it is her job to review the recommendation and determine whether the Committee needs more information or if they consider the LAC's recommendations to be adequate. With regard to the Appellant's case, and after reviewing the TIRF submitted, Dr. Lewis testified that she and the Committee had expressed some concern that the allegations involved the Appellant reviewing vocabulary words prior to testing. Specifically, Dr. Lewis stated that the Committee felt "normally on the morning testing there isn't necessarily time to do any vocabulary words. Not that that's improper or wrong, but just typically in our experience we don't see that happening. It was one of the things that came up in our dialogue." (Hr'g Tr. Vol. 1, 326:6 – 10.) Dr. Lewis then stated, however, that the Committee was particularly concerned by the allegation that the Appellant had reviewed four or five vocabulary words. Dr. Lewis testified that the Committee was aware of the Appellant's contention that she was reviewing vocabulary words from a classroom novel, the *Bridge to Terabithia,* with her students as opposed to reviewing vocabulary words specifically found on the MSA. In fact, Dr. Lewis stated that she asked Raymond Scott, MSA Project Manager, to check the *Bridge to Terabithia* vocabulary list provided by the Appellant in June 2010 at the Board hearing against the actual test content (the 2010 test booklets) to determine whether any of the words appeared as described. (*See* WCBE Ex. 21.) However, Dr. Lewis pointed out in her testimony that the Committee was not initially aware

there was a vocabulary list for the *Bridge to Terabithia* when it performed its initial review in March 2010. Dr. Lewis also stated that the Committee found the student's statements "carried a significant amount of weight, [because] [f]rom reviewing the student statements, it actually seemed that something inappropriate occurred prior to the testing that cued the students to the correct answer choices." (Hr'g Tr. Vol. 1, 328:6 – 9.) Dr. Lewis testified, too, that Principal Bachtell's written statement carried "a great amount of weight on the [Committee's] evaluation and recommendations for personnel action." (Hr'g Tr. Vol. 1, 328:16 – 18.) Particularly poignant, according to Dr. Lewis, was the Appellant's admission "indicating that she wasn't sure why she did this, and that she was sorry for it occurring." (Hr'g Tr. Vol. 1, 328:20 – 21.) Referencing her letter of March 31, 2010, Dr. Lewis highlighted the Committee's findings "that she [the Appellant] reviewed at least four vocabulary words. And it goes on to say, this is a direct test security violation, and that it warrants personnel action." (Hr'g Tr. Vol. 1, 329:16 – 21; *See also* WCBE Ex. 11.)

At the request of the County Board, Mr. Scott brought with him to this hearing the actual test booklets that were used in March 2010 for the 5th grade exam. (WCBE Exs. 25 and 26.) Consistent with Dr. Lewis' testimony, Mr. Scott confirmed that he checked the 2010 test booklets against the *Bridge to Terabithia* vocabulary list provided by the Appellant and found several words from the vocabulary list also on the MSA. Mr. Scott expressed great concern that when you consider Session One only had eleven questions, covering four or five of words would suggest a breach of the test security.

The County Board lastly contended that the fall out from this incident has been great. First, as a result of the Appellant's actions, her students' MSA scores were invalidated, meaning each child received a basic score, causing Bester to not make AYP, which goes to one of the fundamental

components of the federal NCLB Act. During his testimony, Mr. Jakoby explained at length the data used by the MSDE when it determined that Bester failed to make AYP. (Hr'g Tr. Vol., pp. 199 – 218.) Moreover, Mr. Jakoby's testimony was unflappable and certain that but for the Appellant's failed classroom scores, Bester would have made AYP. *Id.* Dr. Markoe and Principal Bachtell also explained the serious ramifications of a school not making AYP because it results in state intervention by MSDE officials at the local school level to ensure that the school meets AYP the following year and also a potential loss of federal funds. (Hr'g Tr. Vol. I, pp. 120 – 121; 172 – 173.) Second, the Appellant's actions potentially jeopardized the proprietary nature of the MSA test according to Mr. Scott. (Hr'g Tr. Vol., pp. 477 – 483.)

b. State Board

The State Board relied entirely on the aforementioned evidence presented by the County Board in support of its position that the Appellant's teaching certificate should be revoke. In addition, the State Board asked that I consider Dr. Donna Newcomer's June 24, 2010 testimony before the Board (*see* Bd. Hr'g Tr. Vol. I, 18 – 59, June 24, 2010); her Request for Revocation, dated November 23, 2010 (WCBE Ex. 24); her Recommendation for Termination, dated April 15, 2010 (WCBE Ex. 16); and, the County Board's November 2, 2010 Decision and Order (WCBE Ex. 23), as a basis to uphold the request for revocation.

Just prior to her testimony in June 2010, Dr. Newcomer submitted a Recommendation for Termination to Dr. Morgan and Dr. Markoe, dated April 15, 2010. In the body of this confidential memorandum, Dr. Newcomer outlined two reasons she contended supported action against the Appellant's teaching certificate. They are:

> 1. From information obtained from reliable students and review of materials, the preponderance of the evidence points to the fact that there were ethical violations on the part of the teacher, [the Appellant], in how she prepared students for this MSA

> test. Her initial acknowledgement of providing students with MSA vocabulary right before the start of the assessment supports this allegation. Several days later, she provided a typed memo indicating, "...at no time did I review MSA vocabulary with my students prior to the administration of any portion of the MSA test." This memo provided cause for further concern regarding [the Appellant's] ethical standards.
>
> 2. During the course of this investigation, staff further analyzed MSA tests from this teacher's class over the past two years. The data revealed a pattern indicating [the Appellant's] classes test scores were consistently higher than the combined class average as well as county averages, again giving cause that a pattern of unethical behavior on the part of [the Appellant] may have extended back at least two years.

(WCBE Ex. 16.)

Similarly, during her testimony in June 2010, Dr. Newcomer told the Hearing Examiner that after she reviewed the investigation materials, it became obvious to her that "students had been prompted regarding the words that were on the MSA test." (Bd. Hr'g Tr. Vol. I, p. 31.) Moreover, she found that "[t]here was substantial evidence to indicate that students had been prompted and words were reviewed that were found on the MSA testing on the day of the testing." (Bd. Hr'g Tr. Vol. I, p. 32 – 33.) In reaching a decision to terminate the Appellant, Dr. Newcomer added,

> Well, the decision to terminate is never an easy decision. In this particular case there were many factors outside the employ that had to be considered. I think we've all experienced cheating on tests with students and how that impacts the student. In this particular case, [the Appellant's] actions were far more reaching. It branched out the arms of the particular students, it touched the class as well as the school. And, I think, as you indicated earlier, we now know that it's also impacted the adequate yearly progress of that school. So its much more serious than just a particular child cheater. She has premeditated actions there that she knew could impact the scores in her class. And, in fact, it has impacted the entire community.

(Bd. Hr'g Tr. Vol. I, p. 39.)

Lastly, in requesting the revocation, Dr. Newcomer told Dr. Grasmick, in her November 23, 2010 letter, that her request was based, in part on COMAR 13A.12.05.03A(1) and 13A.03.04.05 as well as the Board's November 2, 2010 decision (WCBE Ex. 23).

c. Appellant

The Appellant argued that the only thing she may be guilty of is a lack of self-preservation skills. She feels that had she had more of a sense of self-preservation, she would not have voluntarily submitted the handwritten statement on March 17, 2010. The Appellant testified that her emotional state was "not great, I've never been in trouble, so I was very upset and not really grasping what was happening." (Hr'g Tr. Vol. 2, pp. 403 – 404.) As such, the Appellant indicated that she should have collected her thoughts and consulted with someone before giving a statement. Therefore, she insists that her typewritten statement, prepared with the assistance of her union representative, Mr. Miller, best reflects her actions on the morning of March 16, 2010. Moreover, she contends that there is nothing contradictory in the typewritten statement; it only expands, or clarifies, on the information contained in the handwritten statement. Within this same vein, the Appellant strongly objects to the County Board's ineptitude in flushing out what she meant by "four or five words." The Appellant insists that since neither Principal Bachtell nor AP Meredith properly prompted her to expand on statements, both verbal and handwritten, she didn't know what additional information to include. (Hr'g Tr. Vol. 2, pp. 406 – 407.)

At this hearing, to better explain her actions, the Appellant testified at length regarding her teaching style as well as the expectation of the County Board that its teachers, especially those who teach at Bester, to engage the students in learning vocabulary. The Appellant unequivocally stated that one strategy she uses to teach vocabulary is synonyms and antonyms of words. In fact, the Appellant introduced as witnesses, Barbara Courter, 5th grade teacher at Bester; Kathy Stiles, Principal; and, Tiffany Tresler, AP, to corroborate that this approach was, and still is, routinely used in the WCPS and at Bester. The Appellant also indicated that she and the other teachers at Bester regularly maintained vocabulary lists from books they read to the children. (B* Exs. 2 – 4.)

However, the Appellant stated that she goes a step further and allows the vocabulary word list to be driven by the students in her classroom. Meaning, the students decide what words they will learn the synonyms and antonyms for. The Appellant testified that this is what had occurred when the class began reading the *Bridge to Terabithia* in February 2010.

The Appellant testified that she and her students maintained a sort of daily ritual of reading chapters and exploring the words contained in the book. Much of this activity, according to the Appellant, involved sitting on the carpeted area of the classroom and using white boards. The Appellant testified that "it was routine every day from whenever we were doing our *Bridge to Terabithia* novel to talk about the vocabulary that we did. It was something that the students did each and every day. So I decided while they had their whiteboards out that I would do the activities that I would do at the beginning of our day in reading." (Hr'g Tr. Vol. 2, 398:14 – 20.) The Appellant further explained during her testimony why she picked this activity before the administration of the MSA, "Because it was routine. It was something that the students were used to. It was something that it would take the pressure off them by doing something that they were comfortable with and something I could have fun with. It was writing it on whiteboards. Me acting things out as far as, you know, 'Oh, and *Bridge to Terabithia*. You know, remember, think about this word. Remember synonyms and antonyms, how important they are.' You know, reading ahead, reading back and, also, you know, doing things like that." (Hr'g Tr. Vol. 2, pp. 398 – 399.) When asked why she wrote in her handwritten statement "I reviewed some vocabulary words (four or five) that were on session one," the Appellant testified "Because when I reviewed the vocabulary, they were my vocabulary words, the *Bridge to Terabithia* vocabulary words...That was part of my review that I did." (Hr'g Tr. Vol. 2, pp. 398 – 399.) When asked to clarify why she told Principal Bachtell that she had reviewed MSA vocabulary, the actual words, the Appellant stated "While

session one was going on, our job was to walk around. We were not to sit at our computers. We were advised by [Principal] Bachtell to walk around and monitor students to make sure that they were pacing themselves. And as I was walking around and my proctor was walking around, I was looking over the shoulders of the students to make sure that they were bubbling, to make sure they weren't just sitting there kind of, hum, since it is timed. And I noticed that some of the words from our *Bridge to Terabithia* study were on the test." (Hr'g Tr. Vol. 2, pp. 400 – 401.) Afterwards, the Appellant pointedly disagreed with Principal Bachtell's assessment or conclusion that she taught the MSA vocabulary. She said, "I disagree to the point where it was my vocabulary list; that it happened to be the MSA vocabulary." (Hr'g Tr. Vol. 2, pp. 400 – 401.) The Appellant also feels her vocabulary list proves that she did not pre-teach her students the MSA vocabulary words because all of the words are either synonyms or antonyms of a word. (Hr'g Tr. Vol. 2, 402: 13 – 15; *See* B* Ex. 4.) The Appellant went one step further and argued that there is not a single policy, rule, recommendation, or edict that was presented by the County Board to show that you may only do "X," "Y," or "Z" during the MSA preparation period prior on the day of MSA, nor is there a policy that states you cannot review vocabulary from a class novel. Without more, she cannot be held accountable for running afoul of the rules.

As such, the Appellant maintained at the hearing that the appearance of the *Bridge to Terabithia* vocabulary words on the MSA was purely coincidental. Moreover, she argued that since the book is routinely taught, pursuant to the Voluntary State Curriculum, she would have expected to see words from the book on the MSA. The Appellant presented the testimony of Ms. Courter and AP Tresler to prove the point that coincidences can, and do happen, during the administration of the MSA. Ms. Couter testified that she once presented a picture book, *Anansi the Spider*, to her students moments prior to the administrating the MSA and she noticed, while walking around the

room, "a tiny little article on *Anansi*." (Hr'g Tr. Vol. 3, 520: 5 – 9.) AP Tresler testified that she once read *Frindle*, by Andrew Clements, to her students weeks before the MSA and she, too, noticed a passage from the same book on the MSA. (Hr'g Tr. Vol. 3, 520: 5 – 9.) Both witnesses further stated that they did not feel the need to inform school administrators, because their actions were unintended but also, to some degree, they expected to see some overlap in the material taught and seen on the MSA.

Lastly, the Appellant asked that I consider the parents' testimony from the Board Hearing. (Joint Ex. 1, I, Transcript, Vol. II.) Without exception, the parents who testified had glowing reviews of the Appellant as a teacher and a human being. Again, without exception, none of them believe for one moment that the Appellant is capable of cheating or doing anything unethical. The parents, as a whole, too, said that they spoke to their respective child to understand what occurred on March 16, 2010 and none of the children, according to the parents, suspected any wrongdoing by the Appellant. The Parents also reviewed their respective child's handwritten statement and felt it did not implicate the Appellant in any wrongdoing. The Appellant's other witnesses, Ms. Courter, Principal Stiles, and AP Tresler, also voiced similar strong sentiment towards the Appellant as a superior teacher, ethical person and role model.

III. Analysis

After having considered the evidence and testimony in this case, I am persuaded by the County and State Boards' presentation that the Appellant committed a wilfull test violation during the administration of the MSA on March 16, 2010.

a. The Appellant's concern prior to the MSA that her students would not perform well.

Principal Bachtell's testimony that the Appellant told her in advance of the administration of the MSA that she did not believe her students would perform well hung out there without any

challenge from the Appellant. The Appellant never made an effort to contradict this statement nor did she pepper Principal Bachtell with questions in cross examination. When I considered all the facts and the actions of the Appellant, this statement weighed heavily on my mind in that I could reasonably infer from it that the Appellant took evasive action, such as reviewing the MSA vocabulary with her students, to avoid a poor showing on the test scores.

b. Jesse's disclosure

Throughout the hearing, the Appellant took the position that Jesse's initial disclosure was based on a faulty premise that he was unable to read. Stated differently, the Appellant contends that it was perfectly legitimate for him to answer the first three questions without assistance from his reader and that his having done so should not count against her. In support of this position, the Appellant directed me to Jeffrey Brian Walker's testimony from the June 25, 2010 Board Hearing. (Bd. Hr'g Tr., Vol. II, 389 – 401, June 25, 2010.) Mr. Walker is Jesse's father. Mr. Walker insisted that his son was able to read and that Jesse's IEP records had not been updated to reflect his improvements in reading. (Bd. Hr'g Tr., Vol. II, p. 393.) While this may be true, and in fact neither the County nor the State Board took the position that Jesse was unable to read, both Boards, instead, contended that Jesse's actions, coupled by his statements, caused enough concern for teachers Carosella and Wainscott to pause and wonder if there was something awry that it should be reported.

First, I found both teachers credible in their description of what occurred on the morning of March 16, 2010. The only three persons in the room with knowledge of what happened were Ms. Carosella, Ms. Wainscott and Jesse. Jesse did not testify at this hearing, but after reviewing his father's testimony, I am not persuaded that he could have added anything additional to the record that I did not already have. Moreover, I am persuaded that the incident occurred exactly as

described by the teachers since they would have no reason to know that Jesse was capable of reading and the Appellant did not contend that they did.

Second, and more importantly, the Appellant herself agreed that she had reviewed words from the *Bridge to Terabithia* that, in her opinion, happened to appear on the MSA. When I asked the Appellant "Would it be fair to say other than the way Jesse characterized how he came to learn those words that he, indeed, had learned those words before taking the test?" she replied, "He had learned those words practically a month before, some of the words a month before." I clarified my question and asked, "And the day of the test?" the Appellant replied, "Yes." (Hr'g Tr., Vol. 2, 469: 15 – 23.) From the mind's eye of a 5th grader, Jesse's statements make perfect sense—it is entirely consistent with his statement to Ms. Carosella, to wit: "We went over them today, this morning with [the Appellant] in class." (Hr'g Tr. Vol. 1, 24:14 – 21.)

Third, the Appellant did not challenge, or even suggest, that Ms. Carosella or Ms. Wainscott reported Jesse's statements and behavior as a means to undermine her. I found both Ms. Carosella and Ms. Wainscott sincere and their testimony credible that they struggled with the prospect of reporting what they heard because they held the Appellant in high esteem. Both Boards also established by a preponderance of the evidence that the teachers were required to report what occurred that morning. The Appellant never challenged this aspect of the Boards' presentation.

c. The Appellant's disclosure on March 17, 2010

On this point, the Appellant took the position that since she was not offered an opportunity to have representation during the meeting, she made regrettable statements that implicated her in a MSA testing violation. The Boards, on the other hand, contend that the Appellant's actions and statements, taken as a whole, establish that her admissions were valid, sincere statements against interest that should not be ignored.

I am persuaded by the Boards' position on this point. I found the Appellant, in the effort to explain her actions that day, made grievous misstatements during her testimony that she was not able to overcome. First, the Appellant testified that when Principal Bachtell called her to her office on March 17, 2010, she "thought it might be something for Teacher of the Year because I was nominated." (Hr'g Tr. Vol. 2, 403:5 – 6.) Yet, she did not rebut or dispute Principal Bachtell's testimony that when she reached Principal Bachtell's office door, "She asked if she was in trouble." (Hr'g Tr. Vol. 1, 110:2 – 3.) Because, the Appellant made no effort to rectify this obvious contradiction in testimony, I was left wondering how she went from "[I] didn't think really anything of it"—meaning being called to the office, to wondering why she was in trouble. (Hr'g Tr. Vol. 2, 403:4 – 5.) As a result, I began questioning the Appellant's sincerity and credibility as a whole.

I was also persuaded by Principal Bachtell's and AP Meredith's testimony that they found the Appellant's demeanor and statements on March 17, 2010 to be consistent with someone making an apology for her actions. Neither witness testified that they could have confused what they heard or observed to mean that what the Appellant really meant to say was that she had reviewed the *Bridge to Terabithia* vocabulary to her students and it just so happened to appear on the MSA. I found it reasonable for these two witnesses, and the Boards, to infer from the record that the Appellant clearly reviewed the MSA vocabulary with her students. Again, the Appellant does not dispute that she had the test booklets in her room for almost two hours before the administration of the test. Moreover, there were no other adults in the room to observe or corroborate her actions.

Likewise, the Appellant could not overcome the discrepancy between her presentation and insistence that she reviewed the *Bridge to Terabithia* and her disclosure on March 17, 2010. On this point, the Boards relied heavily on Dr. Markoe's testimony and that of the student's interviews and handwritten statements as proof that the novel was never read or discussed by the Appellant on

March 16, 2010. I paid particular attention to this aspect of the evidence and have to agree with the Boards that the students never once mentioned the novel during either the interviews or in their handwritten statements. (WCBE Exs. 7 and 8.)

d. Dr. Markoe's interview of the students and their handwritten statements

The Appellant's admission, Jesse's disclosure and actions, coupled with the students' interviews and handwritten statements made for a powerful, compelling and persuasive case against the Appellant which the Appellant simply could not overcome. Dr. Markoe's manner of questioning the children was even-handed and permitted the children to offer thoughtful answers. The questions were also open-ended and Dr. Markoe testified that he took great pains to make certain that the children did not believe they were in trouble or that the Appellant did anything wrong. The Boards also noted, and I agree, that the children truly love the Appellant and would do nothing to harm her. So I considered their statements, both written and verbal, credible.

On the other hand, I disregarded the parents' testimony entirely because of the manner in which they questioned their children. Each parent stated that they confronted their children to ascertain if the Appellant had cheated after the Appellant's counsel called them to discuss this case. There is no way for me to test the reliability of those statements or the manner in which the children were questioned by their parents.

e. The Appellant's typewritten statement on March 18, 2010

The Appellant's typewritten statement is not harmonious with her testimony either. First, the Appellant testified that she had prepared the *Bridge to Terabithia* vocabulary list in February 2010 and kept adding words to it whenever she and her students finished a chapter. The Appellant also stated that she worked on the vocabulary at home and in the classroom and kept it on a flash drive. The Appellant claimed that the flash drive remained in her classroom until June 2010 when

she had a chance to return to her classroom in preparation for the Board Hearing. However, the Appellant never told Principal Bachtell about the flash drive on March 17, 2010 during their meeting, she did not mention the existence of a flash drive in her March 18, 2010 letter, nor did exclaim in excitement to anyone that she had found her flash drive in her classroom in June. She kept this aspect of the case to herself until her testimony in June. The point here is when she realized she covered vocabulary material from the *Bridge to Terabithia* and noted that in her March 18, 2010 letter, nowhere in that letter does she mention that she had a list of words. I found this odd and unsettling since she placed such an emphasis on this list as part of her defense of the charges lodge against her.

Second, it is the Appellant's position that she realized she had reviewed the vocabulary list with her students on the morning of the MSA and disclosed that to the County Board in her March 18, 2010 letter as soon as the shock wore off that she was in trouble. The problem I have with this contention is that the Appellant never once told the Board, either on March 17, 2010 or March 18, 2010, that she realized she might have unintentionally covered words that happened to appear on the MSA while she was walking around her classroom during the MSA test. I am persuaded by the 'Boards' presentation that the Appellant's credibility is again in question because her statements up to this point keep expanding as to what did or did not occur on the morning of March 16, 2010.

f. *Bridge to Terabithia* vocabulary list

The Appellant testified that she used the novel's vocabulary list as a tool to calm her students just prior to the administration of the MSA. She stated that it was natural for her to cover the list on a daily basis, so she did not think anything of it. Frankly, I was not persuaded by the Appellant's explanation. The *Bridge to Terabithia* vocabulary list is five pages in length and it has thirty-seven words defined with numerous words identifying the synonyms and antonyms. (B* Ex.

4.) When I considered the actual words that were on the 2010 test booklets the Appellant is accused of reviewing, she had to cover the entire *Bridge to Terabithia* vocabulary list in order for the children to have had exposure to them because the four or five words the Appellant testified to as being coincidences appear on different pages of the vocabulary list. In light of the fact that the Appellant only had twenty minutes to prepare the children for the MSA, this type of preparation cannot possibly calm the fears of the students just before the administration of the reading portion of the MSA. Each of the Boards' witnesses and the Appellant's witnesses who are educators unequivocally testified that the students, especially at Title One schools, have a very difficult time with these types of exams and the test preparation activities ought to be light otherwise it may undermine the student's performance.

g. The Appellant's witnesses

By all accounts the Appellant was a very gifted teacher and her colleagues and parents think the world of her. However, as sincere as Ms. Courter, Principal Stiles, and AP Tresler were that coincidences do occur during the MSA testing, the examples offered were entirely different than the allegations in this case. The two examples dealt with material covered by the BCRs where the student is required to provide an answer in his or her own words. Having a fact pattern that might be similar to a picture book or story crop up on the MSA is an entirely different matter than giving the four or five answers to a test that only had eleven questions. When presented with that fact pattern, the three witnesses could not, justifiably, equate their experiences with that of the Appellant.

h. Forensic Analysis of the USB Flash Drive

The County Board sought a forensic analysis of the flash drive to determine the date it was created. (Jt. Ex. 3.) The report revealed some anomalies in the date and time stamp suggesting

some manipulation of the data. Since the County Board did not present, as a witness, the author of the report, I did not give any weight to this exhibit. To give it any weight to the report by me, would result is nothing short of speculation as to what it means or how it impacts the Appellant's credibility regarding the *Bridge to Terabithia* vocabulary list. Nevertheless, for reasons I have already stated, I do not believe this was just a coincidence as the Appellant claimed.

i. Conclusion

Both Boards established for me that its decision to terminate the Appellant and revoke her teaching certificate was supported by the preponderance of the evidence and was in accordance with the applicable law. By reviewing the MSA vocabulary words in advance of the administration of the test, amounts to misconduct in office and a wllful neglect of duty. Md. Code Ann., Educ. § 6-202(a)(1)(ii), (v) (2008). The Appellant, by virtue of her various explanations, could not and did not rebut that. I find, as the Boards did, her verbal and handwritten admission is the best evidence that she reviewed MSA vocabulary to her students. I also found, as Dr. Newcomer did, that this action was premeditated because the Appellant feared her students would not do well. Since the Appellant readily admitted on March 17, 2010 that she reviewed the MSA vocabulary words with her students, there is no question she violated COMAR 13A.03.04.05 as well. The Boards also persuasively made the case that the Appellant's actions were most damaging and irreparable to Bester because the school did not make AYP.

After considering the Appellant's testimony and evidence, she could not establish with any credibility that her actions before, during or after the administration of the MSA were reasonable. The explanations she offered for her actions fell woefully short. As such, I agree, again, with Dr. Newcomer that her conduct throughout these proceedings also calls into question her suitability as a teacher.

Therefore, I shall affirm the proposed sanction to terminate the Appellant's employment as well as the revocation of her teaching certificate.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law that the County Board has established by a preponderance of the evidence that that the Appellant committed testing behavior violations which constitutes a willful neglect of her duties and committed misconduct in office as a teacher, and that the Appellant's termination was proper. Md. Code Ann., Educ. § 6-202(a); COMAR 13A.01.05.05F; COMAR 13A.03.04.05; COMAR 13A.03.04.07B(1).

I further conclude as a matter of law that the Appellant willfully and knowingly committed testing behavior violations and that the revocation of her teaching certificate is supported by the evidence and the law. COMAR 13A.03.04.05; COMAR 13A.03.04.07B(2).

PROPOSED ORDER

I PROPOSE that the decision of the Washington County Board of Education terminating the Appellant for misconduct in office and willful neglect of duty, Md. Code Ann., Educ. § 6-202 (2008 & Supp. 2010), be **UPHELD**.

I FURTHER PROPOSE that the decision of the Maryland State Board of Education to revoke the Appellant teacher certificate be **UPHELD.**

July 15, 2011
Date Decision Mailed

Kathleen A. Chapman
Administrative Law Judge

KAC/ch
122394

NOTICE OF RIGHT TO FILE EXCEPTIONS – (REVOCATION OF TEACHING CERTIFICATE CASE)

Any party adversely affected by this Proposed Decision has the right to file exceptions **within ten calendar days** of receipt of this Proposed Decision. COMAR 13A.12.05.04F. A party may respond to the exceptions **within ten calendar days** of receipt of the exceptions. Id. Both the exceptions and any responses thereto shall be filed with the State Superintendent of Schools, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595. The Office of Administrative Hearings is not a party to any review process.

NOTICE OF RIGHT TO FILE OBJECTIONS – (TERMINATION CASE)

Any party adversely affected by this Proposed Decision has the right to file written objections **within fifteen days** of receipt of the decision; parties may file written responses to the objections **within fifteen 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.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

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