

DIANA R. WILLIAMS

Appellant

v.

BALTIMORE COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-20

## OPINION

### INTRODUCTION

In this appeal, the Appellant challenges the decision of the Baltimore County Board of Education (local board) to terminate her from her position as a teacher. The Office of Administrative Hearings (“OAH”) issued a proposed decision. The Appellant filed Exceptions to the decision. The local board filed a reply to the exceptions and a memorandum of law in support of its reply.

### FACTUAL BACKGROUND

The Appellant has been a teacher for approximately 30 years, of which 10 years were with Baltimore County. During the 2010-2011 academic year, the Appellant taught 7<sup>th</sup> and 8<sup>th</sup> grade mathematics at Golden Ring Middle School (“GRMS”). The classes were geared towards students who need to establish a stronger foundation before they could begin 9<sup>th</sup> grade Algebra.

During the 2010-2011 school year, GRMS was in a school improvement program due to not meeting Adequate Yearly Progress in mathematics and reading for the previous 5 years. As part of the improvement program, mathematics teachers were instructed to collect data from students following lessons, input the data, and submit the results to school administration on a weekly basis. Appellant did not initially submit the data requested. Therefore, GRMS Principal, Kandice Taylor, scheduled a meeting for September 22, 2010 to discuss the non-submission of data with Appellant.

At the meeting, Ms. Taylor reiterated the expectation to collect and submit the student data. Appellant was accompanied by her union representative. The Appellant explained that she did not believe she had to collect the data, because data collection was not a teaching duty. On September 24, 2010, Ms. Taylor sent the Appellant a letter, explaining that her responsibilities as a teacher extended beyond the time of classroom instruction and indeed included student assessment, including data collection. Following the meeting, the Appellant continued to not collect and submit the requested student data. Ms. Taylor’s effort to remedy the problem by re-requesting the data in a September 28, 2010 letter did not prompt Appellant to submit any data. Following these initial letters and meetings, the school system began progressive discipline.

From early October through early November, 2010, Ms. Taylor issued the Appellant a litany of reprimands. On October 4, 2010, Ms. Taylor issued the Appellant a letter of reprimand for her refusal to collect and submit the data. On October 19, 2010, Ms. Taylor and the Assistant Principal of GRMS observed Appellant's lesson on Algebraic Thinking I and rated Appellant as unsatisfactory. On October 21, 2010, Ms. Taylor issued the Appellant another reprimand for failing to submit the required data on October 18, 2010. On October 29, 2010, Ms. Taylor issued the Appellant an additional reprimand for insubordination, failing to submit the required student data on October 25, 2010. On November 5, 2010, Ms. Taylor again issued Appellant a letter of reprimand for insubordination based on her failure to submit the required data on November 1, 2010 and to respond to previous reprimands. On November 8, 2010, Ms. Taylor issued Appellant a reprimand for continued insubordination, which had risen to the level of misconduct in office. The November 8, 2010 letter instructed Appellant to submit the required data by November 12, 2010 and that failure to do so could result in further disciplinary action.

Since Ms. Taylor's efforts to resolve the data collection issues with Appellant were unsuccessful, Assistant Superintendent, Dr. Rodriguez became involved. Dr. Rodriguez sent the Appellant an e-mail on November 16, 2010, asking her to meet with him on November 22, 2010. Appellant did not reply to the e-mail nor to messages that his office sent to the Appellant. The Appellant was ordered to meet with Dr. Rodriguez on December 1, 2010 but did not. On December 7, 2010, Ms. Taylor, the Assistant Principal, and Dr. Rodriguez observed Appellant's lesson and rated it unsatisfactory. On December 10, 2010, Dr. Rodriguez sent Appellant a letter scheduling a meeting.

On December 15, 2010, Appellant met with Dr. Rodriguez to discuss her insubordination and teaching performance. Specifically, Appellant's students were not achieving the necessary scores on standardized tests to be considered successful. Also, Appellant failed to provide the principal with an analysis of students' standardized test results, which is separate from the data collection process. Appellant received an unsatisfactory rating for her 2010 – 2011 mid-school year evaluation, because she did not meet standards in 9 out of 20 rating categories: planning, program implementation, communication skills, assessment of student learning, relationship with supervisory personnel, contributions to total school, promptness and accuracy of reports, maintenance of routine procedures and dependability. In December 2010, the data collection for school improvement ceased, so that was no longer an obligation for Appellant.

On January 14, 2011, GRMS implemented a Teacher's Plan of Assistance ("the Plan") to help Appellant meet her performance standards. The Plan required Appellant to plan instruction to meet various learning styles; to ensure all special education students were receiving accommodations; include an assessment in each lesson; incorporate technology into daily lessons; create a student-oriented learning atmosphere; and provide students the opportunity to work independently. Additionally, Appellant was obligated to attend all meetings, check e-mail once a day, submit all documentation by deadlines, complete student discipline reports and follow directions from her superiors. Appellant indicated that she did not need the Plan. Attempts to implement the Plan failed, because Appellant was not receptive to the Plan.

On February 11, 2011, an assistant principal, math department chair, and a math specialist observed Appellant's Algebraic Thinking 2 class and rated Appellant's lesson unsatisfactory. The lesson was missing some components of a lesson; the Appellant had not implemented the directives from the Plan; and it was unclear whether students were learning the material.

On February 25, 2011, the math department chair sent Appellant a memo for inappropriate conduct, because Appellant spoke to the chair in a demeaning and inappropriate way.

On March 11, 2011, the Assistant Superintendent, acting for the Superintendent, recommended to the local board that the Appellant be dismissed from employment. The Appellant appealed to the local board, and a hearing was convened on May 11, 2011 and June 6, 2011. The Hearing Examiner recommended that the local board uphold the Superintendent's recommendation.

The local board held oral arguments on January 24 – 25 2012 and adopted the Superintendent's recommendation to terminate the Appellant. This appeal ensued. The case was transferred to the Office of Administrative Hearings (OAH). On September 7, 2012, OAH issued a proposed decision, upholding the termination. The Appellant filed exceptions to that proposed decision.

### STANDARD OF REVIEW

The State Board referred this case to OAH for proposed findings of fact and conclusions of law. In such cases, the State Board may affirm, reverse, modify, or remand the ALJ's Proposed Decision. Because this appeal involves the termination of a certified 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)(2).

### ANALYSIS

In her exceptions, Appellant first poses 26 questions concerning her belief that the local board, counsel to the local board and the Hearing Examiner breached either legal or ethical duties to her in the prosecution of this termination case. Appellant also questions whether the Attorney General's Office, as counsel to the State Board, will deal fairly with her appeal. The mere posing of questions does not constitute proper exceptions to the ALJ's Proposed Decision.

In an effort to address Appellant's arguments, we have identified four points that run through the 50 pages of her Exceptions. First, the Appellant argues that the ALJ erred in stating that the sole issue was, "Was the termination proper?" Appellant begins this argument with a misstatement of the standard of review. Appellant asserts that the standard of review is whether the decision is arbitrary, unreasonable, or illegal, pursuant to COMAR 13A.01.05.05A-C. While Appellant is correct that this is typically the standard of review, there is a different standard of review specific to certificated employees: the State Board exercises *de novo* judgment before

deciding whether to sustain an employee suspension or dismissal. COMAR 13A.01.05.05F(2). As a teacher, Appellant is a certificated employee and thus this standard applies.

Appellant next argues that the local board and Hearing Examiner failed to thoroughly examine and rely upon her evidence. For example, she asserts that the local board attorneys violated their ethical duty by not disclosing in their memorandum of law the material facts in the Appellant's testimony and supporting exhibits. The local board attorneys, however, were her opposing counsel and thus their obligation was to develop an argument and support it with facts favorable to the position of the local board. There is no ethics violation for not incorporating Appellant's complete exhibits and testimony.

Similarly, Appellant takes issue with the Hearing Examiner's failure to rely upon all of her testimony and exhibits. It is the Hearing Examiner's duty to weigh all of the evidence and issue a decision based upon the evidence the Hearing Examiner finds to be credible and relevant. Under *Dep't of Health and Mental Hygiene v. Shrieves*, 100 Md. App. 283 (1994); *Anderson v. Dep't of Pub. Safety & Corr. Servs.*, 330 Md. 187 (1993), even when OAH has proposed decision-making authority, the agency decision maker must give due deference to the demeanor based credibility determinations made by the ALJ. The Hearing Examiner provided a list of the exhibits from both parties, a summary of each individual's testimony, findings of fact and conclusions of law. It is our view, the Hearing Examiner's decision focused on the relevant issues necessary to determine the propriety of the termination.

Second, the Appellant argues that the ALJ erred in stating that the record was attached, because her response and her exhibit, DX-169, Thanks, Praise, Honor, and Glory to the TRIUNE GOD for Leading and Guidance in Documenting Lead Poisoning in the Public Schools and the Obstructions of Justice in Order to Conceal the Indisputable Truths, was missing from the record. Both of these items, however, were properly included in the record that the Office of Administrative Hearings ("OAH") transferred to the State Board of Education for this review of the ALJ's proposed decision.

Third, the Appellant argues that the ALJ erred in not mentioning certain material facts and evidence that she presented at the hearing. This argument is similar to Appellant's first argument and thus the same logic applies. The ALJ properly listed each exhibit; however, the ALJ has the authority to determine the facts in each case and was not obligated to rely upon information provided by the Appellant if the ALJ did not find it to be relevant or credible.

Fourth, the Appellant argued that the ALJ erred in not disclosing in his report the material facts that are substantiated by material evidence in the Appellant's 50-page Exceptions, in her 27-page defensive testimony, 167 exhibits, in her 17 substantiated grievance complaints, in her Oral Argument, in her Notice of Appeal, in her Motion to Dismiss and in her Reply to the Motion for Summary Affirmance. Again, the ALJ is the fact finder and proposed decision maker charged with making relevance determinations. In our view, the ALJ's proposed decision is based on the relevant and material facts.

As to the Appellant's exceptions, therefore, we find them to be without merit, and, moreover, we conclude that the Appellant's termination was proper. Specifically, County Board Policy 4008 provides that all employees are expected to comply with the lawful direction of their supervisors. Failure to adhere to this policy may lead to disciplinary action. Under Md. Code Ann. Educ §6-202(a), (1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for: (ii) Misconduct in Office; (iii) Insubordination;...(v) Willful neglect of duty. Appellant's repeated refusal to complete the data collection and input constitutes insubordination, because the direction to do so was lawful. As Ms. Taylor explained to the Appellant in her September 24, 2010 letter, her responsibilities as a teacher extend beyond the hours of classroom instruction. In the letter, Ms. Taylor referenced Baltimore County Public School's Policy 4115, which states:

The professional tasks of teachers involve considerably more time than that devoted to actual class instruction....Some of these duties include but are not limited to: study and research to keep abreast of new knowledge and techniques; evaluation of students' work; record keeping; lesson planning and preparation; student, parent, and principal conferences; in service training meetings; and pupil supervision outside the classroom, and other related duties.

Appellant was insubordinate numerous times and Ms. Taylor and her colleagues repeatedly attempted to work with her to achieve positive results on the data collection effort, as well as teaching effectiveness under the Plan. Appellant refused to do the data collection and to follow the Plan. Her repeated failure to do so constitutes insubordination.

CONCLUSION

For all these reasons, we affirm the decision of the local board.

*Absent*

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Charlene M. Dukes  
President

*Mary Kay Finan*  
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Mary Kay Finan  
Vice President

*James H. DeGraffenreidt, Jr.*  
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James H. DeGraffenreidt, Jr.

*S. James Gates, Jr.*  
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S. James Gates, Jr.

Absent

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Luisa Montero-Diaz

Absent

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Sayed M. Naved

*Madhu Sidhu*

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Madhu Sidhu

*Donna Hill Staton*

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Donna Hill Staton

Absent

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Guffrie M. Smith, Jr.

*Linda Eberhart*

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Linda Eberhart

March 28, 2013

**DIANA WILLIAMS,**

**APPELLANT**

**V.**

**BOARD OF EDUCATION**

**OF BALTIMORE COUNTY**

**\* BEFORE RICHARD F. ROTHENBURG,**

**\* ADMINISTRATIVE LAW JUDGE,**

**\* MARYLAND OFFICE OF**

**\* ADMINISTRATIVE HEARINGS**

**\* OAH No.: MSDE-BE-01-12-10209**

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On or about March 16, 2011, Manuel Rodriguez, the Assistant Superintendent for Middle Schools, the designee of the Superintendent of the Board of Education of Baltimore County (County Board) notified the Appellant, Diana Williams, a teacher at Golden Ring Middle School (School or GRMS), that he was recommending to the County Board that the Appellant be terminated. The Appellant appealed the recommendation to the County Board. On October 3, 2011, a hearing examiner (Hearing Examiner), after a hearing, recommended the Appellant's termination to the County Board. On January 5, 2012, the County Board accepted the Hearing Examiner's recommendation and terminated the Appellant. Md. Code Ann., Educ. § 6-203 (2008).

On February 7, 2012, the Appellant appealed the County Board's decision, and the State Board referred the matter to the Office of Administrative Hearings (OAH) for further

3. During the 2010-2011 school year Dr. Kandice Taylor was the principal (principal) of GRMS. In addition to teaching mathematics, the Appellant was also responsible for managing student behavior, compiling data to insure students actually learned what the Appellant taught.
4. During the 2010-2011 school year, GRMS was in a Restructuring Planning process of School Improvement due to not meeting Adequate Yearly Progress (AYP) in mathematics and reading for the previous five years.
5. On September 22, 2010 the Appellant met with the principal, assistant principal, Mathematics Department chair and teachers' union representative during which the principal outlined her expectations for the Appellant's performance of her professional duties. During the meeting the principal communicated the need to collect, analyze, and submit data collected from the students in her class. Specifically, the data collected was to be submitted by all mathematics teachers on Friday mornings during the second mod. The purpose of collecting the data was to determine whether the students were falling short of what was expected. (T.61) At the meeting the Appellant communicated to the principal that, in her view, data collection was a non-teaching duty and the data the principal wanted collected was not necessary.
6. The principal sent the Appellant a letter summarizing their meeting on September 22, 2010. In the letter the principal emphasized that the information communicated during the meeting is the expectation she had for the professional responsibilities of all math teachers. (Supt. # 5B)



7. The Appellant failed to submit the data as required by the principal on Friday, September 17, 2010 and again on September 24, 2010.
8. On September 28, 2010 the principal, by letter, informed the Appellant that this was her third request that the Appellant submit the missing data and that she submit the data by September 30, 2010. (Supt. # 5C).
9. The principal issued the Appellant a letter of reprimand on October 4, 2010 for her refusal to comply with the expectations that had been established and that they discussed. The principal related the need to obtain and submit data from the students she taught in her mathematics class, and she had complied after being reminded to do so on three separate occasions. (Supt. #5D).
10. On October 19, 2010 the Appellant was observed in the classroom for a lesson of Algebraic Thinking I by the department chair, principal and assistant principal. The Appellant was rated unsatisfactory because the lesson was not student centered. It was not clear whether the students understood the lesson because no exit ticket or other assessment was collected. (Supt. #8).
11. The principal issued the Appellant a letter of reprimand on October 21, 2010 for insubordination because she did not submit the required data on October 18, 2010. (Supt. # 5E).
12. The principal issued the Appellant a letter of reprimand on October 29, 2010 for insubordination because she did not submit the required data on October 25, 2010, and because she failed to respond to her previous warnings and reprimands issued on October 4, 2010 and October 21, 2010 to submit the data requested. (Supt. # 5F).

13. On November 4, 2010 the Appellant met with assistant principals Hines and Sullivan. The purpose of the meeting was to discuss the Appellant's refusal to allow students to enter her classroom when they have been administratively assigned and providing administration with discipline referrals when she must remove students from class. (Supt. #5G).
14. The principal issued the Appellant a letter of reprimand for insubordination on November 5, 2010 because she failed to submit the required data on November 1, 2010 and her failure to respond to previous warnings and reprimands. (Supt. #5H.)
15. The principal, by letter dated November 8, 2010, issued the Appellant a formal reprimand for continued insubordination, which amounted to misconduct in office, her failure to support student achievement and carry out her duties as a teacher. In the letter, the principal noted that the Appellant was issued a written reprimand on October 4, 2010 for failing to follow a directive; issued a written reprimand on October 21, 2010 for insubordination for failing to follow a directive; and issued a written reprimand on October 29, 2010 for insubordination for failing to follow a directive. The Appellant was instructed to submit the required data by November 12, 2010 and that failure to do so would be considered insubordination and subject her to further disciplinary action. (Supt. # 5I).
16. Because the principal was still not receiving the data from the Appellant even after numerous reprimands, the principal requested that the assistant superintendent, Dr. Rodriguez, meet with the Appellant and discuss disciplinary action. (T.69).
17. Dr. Rodriguez, the assistant superintendent for middle schools, sent the Appellant an email on November 16, 2010 inviting her to meet with him on November 22,

2010 to discuss her recent insubordinate behavior as outlined in the principal's letter of reprimand issued to the Appellant on November 8, 2010. The Appellant failed to reply to the email and failed to reply to messages his office sent to her. The Appellant then was ordered to meet with Dr. Rodriguez on December 1, 2010 and warned that failure to comply would be treated as insubordination and subject her to disciplinary action.

18. On December 7, 2010, the Appellant was observed in the classroom by the principal, assistant principal and the assistant to the assistant superintendent. The lesson was rated unsatisfactory because the lesson was not student centered and lacked student engagement. The Appellant did not assess students during the lesson nor did she provide closure to the first portion of the lesson at the end of class. Pacing was not effective during the lesson and components of the Algebraic Thinking Part I were not evident during the lesson. (Part of Supt. #8).
19. Dr. Rodriguez sent the Appellant a letter dated December 10, 2010 scheduling a mandatory meeting on December 16, 2010 and the letter contained a warning that failure to appear at the meeting would result in his immediate recommendation for her termination.
20. The Appellant and Dr. Rodriguez met on December 15, 2010 to discuss her continued acts of insubordination and to respond to the principal's request that she be disciplined. Dr. Rodriguez reviewed the numerous letters from the principal to the Appellant regarding submitting the required data and the several letters of reprimand issued by the principal to the Appellant for failure to provide the required data. He also noted that she had not responded to his November 15,

2010 email or to messages left for her. Dr. Rodriguez noted that the Appellant considered him to be mean spirited because he scheduled a meeting when she had already scheduled a meeting with another school official. Dr. Rodriguez noted that the principal was under the impression that the Appellant was going to meet with Dr. Rodriguez when she requested coverage for her class at the time she was to meet with him. Dr. Rodriguez then noted that the Appellant was ordered to meet with him on December 1, 2010 and she failed to do so, citing family bereavement.

21. AssessTrax is a system used to assess where the students are in the curriculum and the system. Teachers scan the standardized assessment tests, which are taken by all middle school students, into the system and the system calculates and scores the tests for the teacher. (T. 70, 71). Based on the data for the Appellant's classes the students were not meeting with success. (T. 74 & Supt. 6).
22. The principal suggested a plan to the Appellant to improve her student's scores, but the plan was never enacted. (T. 76, 77).
23. When discussing her students, the Appellant rarely used their names. Rather, she used terms like "handsome," "ladies," "gentlemen," or "doll." (T. 77, 78) (See also T. 145, 146). In the opinion of the principal, this interfered with the Appellant establishing a relationship with the students that was important at the time the student was awarded a grade.
24. After the assessments, the principal meets with each mathematics teacher who is asked to prepare a strategy that indicates they reviewed the tests and how they are going to address their deficit objectives. In other words, what is their plan of

action to address the objectives? When the principal met with the Appellant, she did not have the necessary and prescribed analysis.

25. The Appellant received an unsatisfactory rating for her 2010-2011 mid-school year evaluation. She was evaluated as not having met standards in nine of the 20 rating categories. Prior to the rating, she received two formal observations, both of which were rated unsatisfactory. The Appellant did not meet standards in the following categories: planning, program implementation, communication skills, assessment of student learning, relationship with supervisory personnel, contributions to total school, promptness and accuracy of reports, maintenance of routine procedures and dependability. (Supt. #9).
26. In December 2010, Dr. Rodriguez informed the principals that they were no longer required to collect the data for interventions. However, if the data had not been collected, necessary instructional adjustments could not have been made. (T. 329)
27. On January 14, 2011, based upon both formal and informal observations of the Appellant's classes, a teacher's plan of assistance was developed by the principal and assistant principal that the Appellant was expected to implement. The plan provided that the Appellant was specifically expected to effectively plan instruction to meet various learning styles, to insure all special education students were receiving accommodations; include an assessment in each lesson to ascertain that the learning objective was obtained; incorporate technology into daily lessons; create a student centered learning environment and provide students an opportunity to work independently. Further, the Appellant was expected to attend all meetings, check email once a day, submit all documentation when due,

- complete student discipline reports as needed and comply with directives given by the leadership team. (Supt. 10).
28. In response to the plan, the Appellant stated that after 10 years of teaching she did not need to be put on an assistance plan, which she called an insult. (Supt. # 11).
  29. The plan of assistance was not effective in providing assistance to the Appellant because she was not receptive. The department chair would offer suggestions and ways to implement the plan, but the Appellant refused to accept them.
  30. On January 28, 2011, Dr. Rodriguez wrote the Appellant a letter informing her that he had reviewed her recent evaluation of teacher progress and that he was concerned that there were areas that needed improvement, and that her overall effectiveness of teaching was rated unsatisfactory. The Appellant was told that she needed to address her areas of weakness and show improvement. (Supt. # 14G, Exhibit 1).
  31. On February 11, 2011, the Appellant was observed in the classroom during a lesson for an Algebraic Thinking 2 class by an assistant principal, the math department chair and a mathematics specialist. The lesson was rated unsatisfactory because it was not clear to the observers that the information being assessed had been mastered. The observers further noted that key strategies of the plan of assistance had not been included in the lesson. To the observers, it was clear that the lesson was missing most of the components of an effective lesson. (Supt. 14C, Exhibit 2).
  32. On February 25, 2011, the Mathematics Department Chairperson, GSMS, sent the Appellant a counseling memo for inappropriate conduct. The chairperson noted

that the Appellant spoke to her in a way that was demeaning, inappropriate and lacked the professionalism expected of teachers. (Supt. # 5J).

33. The principal recommended to the assistant superintendent that the Appellant be terminated for uncooperative behavior, failure to complete assigned work, failure to attend meetings and disruptive behavior on campus.
34. By letter dated March 11, 2011, the assistant superintendent, acting for the superintendent, recommended to the County Board that the Appellant be dismissed from employment for insubordination, misconduct in office, and willful neglect of duty. In his letter of recommendation, the assistant superintendent noted that the Appellant was insubordinate, obstinate and openly defiant as it relates to campus efforts to improve student learning, upset the campus climate and caused the principle to focus her efforts on correcting her behavior instead of working to improve the math skills of the students.
35. The Appellant appealed to the County Board which referred the appeal to a hearing examiner, who conducted a hearing on May 11, 2011 and June 6, 2011.
36. The Hearing Examiner recommended that the County Board uphold the Superintendent's recommendation.
37. The County Board heard oral arguments by the parties on January 24, 2012 and on January 25, 2012, adopted the Superintendent's recommendation and terminated the Appellant.

## DISCUSSION

Md. Code Ann. Educ. §6-202 (2006) provides as follows:

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

- (ii) Misconduct in office;
- (iii) Insubordination;
- (v) Willful neglect of duty.

Md. Code Ann. Educ. § 4-205(c)(3) provides, in pertinent part, that a decision of the county Superintendent may be appealed to the County Board and the decision may be further appealed to the State Board if taken in writing within 30 days of the decision of the County Board.

COMAR 13A.01.05.05F provides as follows:

F. Certificated Employee Suspension or Dismissal pursuant to Education Article, §6-202, Annotated Code of Maryland.

(1) The standard of review for certificated employee suspension and dismissal actions shall be de novo as defined in §F(2) of this regulation.

(2) The State Board shall exercise its independent judgment on the record before it in determining whether to sustain the suspension or dismissal of a certificated employee.

(3) The local board has the burden of proof by a preponderance of the evidence.

(4) The State Board, in its discretion, may modify a penalty.

In 1991, the County Board adopted Policy 4002, entitled Precepts, Beliefs, and Values of the Baltimore County Public schools. The policy, in pertinent part, addressed the belief "in the importance of public education." Further, it provided that every program was shaped to provide and support instruction of the students to enable them



to be educated and productive citizens. (Supt. #3A). In 2007, the County Board adopted Policy 4008, which provides that all employees are expected to comply with the lawful direction of their supervisors in the performance of their duties. Further, the policy provided that failure to adhere to the policy shall be cause for disciplinary action and may be characterized as misconduct in office, insubordination, willful neglect of duty or incompetence. (Supt. # 3B). County Board Policy 4118.1 adopted in 1972 and revised in 2002 provides a procedure for terminating teachers on tenure whose work is not satisfactory. The policy provides that conferences are to be held with the teacher with a summary listing the weaknesses or shortcomings. At a follow-up conference, the teacher's progress relative to the shortcomings will be evaluated. If there is still no improvement, the next step is to rate the teacher's certificate second class and a salary step is frozen. Finally, if there continues to be no improvement, termination will be recommended. The policy further provides that the rules apply only to teaching performance and do not limit the power of the superintendent to recommend dismissal for willful neglect of duty, insubordination or misconduct in office. (Supt. #3C).

During the 2010-2011 school year the Appellant was employed at GRMS as a math teacher teaching Algebraic Thinking I and II to 7<sup>th</sup> and 8<sup>th</sup> grade students. Algebraic Thinking is a program for students who need a better foundation to go into Algebra. The Appellant taught two classes with a total of approximately 75 students.

For the five previous school years, GRMS had not been meeting progress goals in math, and the students needed additional skill building. The GRMS principle expected all math teachers to collect data and submit it every Friday. The purpose of collecting the data was in reference to skill building and interventions that were being

incorporated in each math class. The principal needed to know if the students were falling short in their learning.

The principal scheduled a meeting with the Appellant on September 22, 2010 to review her data collection responsibilities. At the meeting, the principal communicated the need to collect, submit and analyze data from students in the Appellant's classes. The principal emphasized that the data was needed because the school was currently in the restructuring planning process of school improvement owing to not meeting adequately yearly progress in math for five consecutive years.

The Appellant pushed back at the meeting with her view that gathering data was a non-teaching duty, that the data requested by the principal was not necessary, and that the data collection was excessive, requiring her to complete the task during weekend hours. The Appellant referred to herself as a professional, having taught for 20 years and indicated that she collects and assesses data from her students on a daily basis. At the end of the meeting, the Appellant told the principal that she was going to file a grievance against her.<sup>1</sup>

Notwithstanding three requests from the principal, the Appellant did not submit the data. On October 4, 2010, the principal issued the Appellant a written reprimand for not submitting the data. Subsequently, other reprimands for insubordination related to not submitting the data ensued on October 21, 2010, October 29, 2010, November 5, 2010, November 8, 2010 and November 18, 2010. In the November 18, 2010 letter,

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<sup>1</sup> During the 2010-2011 school year the Appellant filed 17 grievance complaints, each of which is at least two single spaced pages long.

the principal told the Appellant that if she failed to submit the data she would request further disciplinary action be taken by the assistant superintendent.

As a result of her repeated failures to comply with the principal's data collection, the matter was referred to the assistant superintendent who invited the Appellant, via email and a phone message left at her school, to meet with him, which she disregarded. The Appellant stated that she thought the assistant superintendent was being "mean spirited" because he scheduled a meeting on the same date she had a meeting with the human resources manager. The assistant superintendent then issued a written order for the Appellant to meet with him on December 1, 2010, a meeting she did not attend, claiming family bereavement. After the meeting, the assistant superintendent consulted the principal for a recommendation. The principal recommended termination for uncooperative behavior, failure to complete work assigned, failure to attend meetings and disruptive behavior on campus.

The Appellant's mid-year assessment was an unsatisfactory rating. The results of the objective assessments (AssessTrax) revealed that the Appellant's students were not progressing satisfactorily. Two classroom assessments of the Appellant were rated as unsatisfactory.

At the hearing before me, the Appellant argued that the County Board erred and that the findings of fact made by the Hearing Examiner were not supported by the evidence. She claimed that all her colleagues said the collection and submission of the data was overwhelming. She also claimed that the new mandate, as she called data collection, had to go to the faculty council for interaction before it was implemented.

The Appellant's witness from the teachers association testified that they were receiving numerous complaints about data collection, especially in the middle schools. The association's reaction was to encourage the teachers to take up the issue with their faculty councils and to work it out with the administration. Also, the witness admitted that it never encouraged its members to disobey the instructions of their superiors unless it was a safety issue.<sup>2</sup>

The Appellant stated that she loved teaching and her students were learning absolutely, and that she is one to stand for righteousness. She also stated that she had been terminated by the city school system because she exposed lead poisoning in the city.

The County Board's attorney asked Dr. Rodriguez why he still recommended the Appellant for termination when, as of December 2010, the schools were no longer required to collect data for interventions. His answer was that it was about being insubordinate to the principal, assistant principal and department chair, not being a team member, not being able to demonstrate the efficacy of her instruction for the students. It was also about her being disruptive on campus. (T. 331, 332).

The County Board's evidence clearly established the Appellant's repeated acts of insubordination when she failed to follow the instructions of her principal, which support Dr. Rodriguez's recommendation for termination: misconduct in office, insubordination and neglect of duty.

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<sup>2</sup> Her example of a safety issue was that she had some members who were asked to disarm fire extinguishers which could be dangerous.

The term insubordination was defined in *Janice Pepperman, v. Board of Education of Montgomery County*, 7 Opinions of Maryland State Board of Education (MSBE) 555 (1997) at 576 as follows:

"Insubordination imports a willful disregard of express or implied directions of the employer and a refusal to obey reasonable orders...(citations omitted) and a lack of cooperation is characteristically a subtle species of insubordination. Both terms are descriptive of the class of censurable practices disruptive to the efficiency of the employer's organization."

The Appellant was reminded, in the principal's September 24, 2010 letter summarizing their September 22, 2010 meeting, that Baltimore County Public School's policy 4115 states that the professional tasks of teachers involve considerably more than that devoted to actual classroom instruction. This was in response to the Appellant's view that data collection was a non-teaching duty, was unnecessary, and would require weekend work. The Appellant was also reminded in each letter of reprimand why the data was necessary and that she had been asked to provide the data on more than one occasion. The Appellant was also warned in the letters of reprimand, beginning with the one dated October 21, 2010, that the letter of reprimand was for insubordination by failing to provide the required data. The County Board's evidence established the Appellant's repeated acts of insubordination.

The County Board's evidence also established the Appellant's willful neglect of duty. Willful neglect of duty is charged when there is a willful failure to discharge duties which are regarded as general teaching responsibilities. See *Crawford v. Board of Education of Charles County*, 1 Opinions of the MSBE 503 (1976) at 519. In her letters of review of meetings with the Appellant and letters of reprimand, the Appellant was reminded of her duty to collect and submit data and the reasons why it was being collected. In essence,

it was being collected to judge whether the student was being educated and whether the instruction needed to be adjusted. It is ironic that the Appellant testified that her students were special needs students and the assessment provided evidence that they were not succeeding. Had the data been submitted, the instruction could have been adjusted and possibly provide them a better opportunity to succeed.

In *Crawford v. Board of Education of Charles County*, 1 Opinions of the MSBE 503 (1976) at 518, the MSBE noted that misconduct is charged where the activities of the teacher are a violation of some rule the teacher is required to observe. The County Board's evidence established that the Appellant repeatedly failed to obey the instructions of her principal. Baltimore County Public Schools' Policy 4008 provides that "[a]ll employees are expected to comply with the lawful direction of their supervisors in the performance of their duties.

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Appellant should be terminated for misconduct in office, insubordination and willful neglect of duty. Md. Code Ann., Educ. § 6-202(a)(1)(ii)(iii) & (v) (2008 & Supp. 2011); COMAR 13A.01.05.05F.

### **PROPOSED ORDER**

I **PROPOSE** that the decision of the Board of Education of Baltimore County terminating the Appellant for misconduct in office, insubordination and neglect of duty be

**UPHELD.**

September 7, 2012  
Date Decision Mailed

  
Richard F. Rothenburg  
Administrative Law Judge

RFR/fe  
# 136554

**NOTICE OF RIGHT TO FILE OBJECTIONS**

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.

**Copies Mailed To:**

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**DIANA WILLIAMS,**

**APPELLANT**

**V.**

**BOARD OF EDUCATION**

**OF BALTIMORE COUNTY**

**\* BEFORE RICHARD F. ROTHENBURG,**

**\* ADMINISTRATIVE LAW JUDGE,**

**\* MARYLAND OFFICE OF**

**\* ADMINISTRATIVE HEARINGS**

**\* OAH No.: MSDE-BE-01-12-10209**

\* \* \* \* \*

**EXHIBIT LIST**

By agreement of the parties, the matter was considered on the record, which consisted of the following:

I. Transcript of hearing on May 11, 2011

II. Transcript of hearing on June 6, 2011

Superintendent's Exhibits

1. March 16, 2011 Termination Recommendation

2. January 28, 2011 letter to the Appellant regarding an unsatisfactory evaluation

3. Board Policies and Superintendent's Rules

A. Board of Education Policy 4002

B. Board of Education Policy 4008

C. Superintendent's Rule 4118.1

4. December 10, 2010 Mandatory Meeting With Assistant Superintendent

5. Letters of Reprimand and Warning

A. September 10, 2010 letter to the Appellant scheduling a meeting

B. September 24, 2010 letter from the Principal summarizing the September 22, 2010 meeting



- C. September 28, 2010 warning letter to the Appellant from the Principal
  - D. October 4, 2010 Letter of Reprimand
  - E. October 21, 2010 Letter of Reprimand
  - F. October 29, 2010 Letter of Reprimand
  - G. November 4, 2010 letter summarizing November 4, 2010 Appellant's meeting with two Assistant Principals.
  - H. November 5, 2010 Letter of Reprimand
  - I. November 8, 2010 Letter of Reprimand
  - J. February 20, 2011 Counseling Memo for Inappropriate Conduct from Math Department Chairperson.
6. AssesTrax Objective Analysis for Appellant's Algebraic Thinking Class, 2010-2011 school year.
  7. GRMS Incident Reports beginning November 3, 2010 regarding the Appellant (A-L).
  8. BCPS Classroom Observation Forms, unsatisfactory ratings, for classes on October 19, 2010 and December 7, 2010.
  9. The Appellant's 2010-2011 mid-year evaluation, dated January 7, 2011; deemed less than satisfactory.
  10. Plan of Assistance for the Appellant, dated January 14, 2011.
  11. Memorandum of meeting attended by the Appellant and the Assistant Principal, dated January 11, 2011.
  12. Emails from the Mathematics Department Chairperson to the Appellant and the Principal and the Assistant Principal regarding the Appellant's performance.
    - A. March 20, 2011 email

- B. March 16, 2011 email
  - C. March 3, 2011 notes
  - D. February 17, 2011 email
  - E. February 15, 2011 email
  - F. February 12, 2011 email
  - G. February 11, 2011 email
  - H. February 10, 2011 email
  - I. February 1, 2011 email
  - J. January 24, 2011 email
  - K. December 14, 2010 scheduling request
  - L. December 3, 2010 email
  - M. November 10, 2010 email
13. Emails from the principal regarding missing data, September 2010
14. Appellant's letters of complaint
- A. March 12, 2011,
  - B. March 11, 2011
  - C. February 25, 2011
  - D. February 20, 2011
  - E. February 11, 2011
  - F. February 1, 2011
  - G. January 26, 2011
  - H. January 16, 2011
  - I. January 11, 2011

- J. January 6, 2011
  - K. December 10, 2010
  - L. December 4, 2011
  - M. November 11, 2011
  - N. November 4, 2010
  - O. October 29, 2010
  - P. October 10, 2010
  - Q. September 25, 2010
  - R. September 18, 2010
  - S. January 21, 2010
  - T. October 18, 2010
  - U. September 27, 2009
  - V. June 25, 2009
  - W. June 14, 2009
  - X. May 19, 2007
  - Y. November 1, 2006
  - Z. August 6, 2004
  - AA. January 13, 2004
  - BB. January 11, 2003
  - CC. June 17, 2003
15. Assistant superintendent's letter to the Appellant, dated November 29, 2010 regarding her failure to respond to an invitation to meet with him to discuss the principal's letter regarding her insubordination.

Appellant's Exhibits

1. Meeting Minutes
2. Survey
3. Survey Summary
4. Email
5. Algebraic Thinking Guide
6. Solve Document
7. Grade Pro
8. Grievance Report Form
9. Undated letter from George Duque regarding the Appellant's Grievance 2010-2011-03, undated
10. Appellant's closing comments
11. TABCO Master Agreement
12. Supervisor-Paint Removal and Demolitions Certificate
13. Residential and Commercial Building Contractor Certificate
14. Inspector Technician Certificate
15. Lead Paint Inspection Contractor
16. Hearing Examiner's decision regarding a 1999 termination recommendation in Baltimore City Schools
17. Appellant's October 17, 2003 letter
18. Appellant's October 27, 2003 letter
19. November 5, 2003 letter to Appellant from Mr. Krempel
20. Appellant's November 5, 2003 letter

21. Appellant's November 9, 2003 FOIA request
22. Appellant's November 9, 2003 letter
23. Appellant's Mid-Term Evaluation 2003-2004 school year
24. February 26, 2004 letter from Mr. Gehring to the Appellant
25. October 19, 2010 Classroom Observation and Grievance
26. December 7, 2010 Classroom Observation
27. February 11, 2011 Classroom Observation
28. Mid-Term Evaluation 2010-2011 school year
29. February 11, 2011 Classroom Observation (duplicate)
30. September 18, 2010 Grievance
31. September 25, 2010 Grievance
32. October 10, 2010 Grievance
33. October 24, 2010 Grievance
34. October 29, 2010 Grievance
35. December 4, 2010 Grievance
36. December 10, 2010 Grievance
37. December 10, 2010 Grievance
38. January 5, 2011 Grievance
39. January 16, 2011 Grievance
40. January 26, 2011 Grievance
41. January 31, 2011 Grievance
42. February 1, 2011 Grievance
43. February 3, 2011 Grievance

44. February 20, 2011 Grievance
45. February 25, 2011 Grievance
46. March 12, 2011 Grievance
47. September 16, 2011 Grievance
48. Appellant's Perfect Attendance Certificate
49. Appellant's October 2, 2010 Medical Work Release
50. November 16, 2010 letter from Appellant
51. Faculty Council Questions Document
52. Page 10 of the TABCO Master Agreement
53. Page 23 of the TABCO Master Agreement
54. Page 12 of the TABCO Master Agreement
55. Page 38 of the TABCO Master Agreement
56. Appellant's February 16, 2011 Remarks to the TABCO Board of Directors
57. January 19, 2011 Police Report (Complaint)
58. January 19, 2011 Police Report (Appellant's interview)
59. Page 16 of the TABCO Master Agreement
60. Page 17 of the TABCO Master Agreement
61. Appellant's Final Evaluation for the 2008-2009 school year
62. January 9, 2000 Letter to Appeal from Michael Bond
63. September 25, 2008 Classroom Observation
64. Appellant's Final Evaluation for the 2006-2007 school year
65. Appellant's June 14, 2007 letter to Mr. Bond
66. March 2, 2011 Observation Feedback Form

67. February 2, 2011 Observation Feedback Form
68. January 25, 2011 Observation Feedback Form
69. January 4, 2011 Observation Feedback Form
70. November 16, 2010 Observation Feedback Form
71. November 11, 2010 Observation Feedback Form
72. September 23, 2010 Observation Feedback Form
73. September 20, 2010 Observation Feedback Form
74. September 15, 2010 Observation Feedback Form
75. September 8, 2010 Observation Feedback Form
76. April 7, 2010 Observation Feedback Form
77. December 17, 2009 Observation Feedback Form
78. December 1, 2009 Observation Feedback Form
79. November 17, 2009 Observation Feedback Form
80. November 10, 2009 Observation Feedback Form
81. November 03, 2009 Observation Feedback Form
82. October 27, 2009 Observation Feedback Form
83. October 20, 2009 Observation Feedback Form
84. September 22, 2009 Observation Feedback Form
85. September 17, 2009 Observation Feedback Form
86. September 17, 2009 Observation Feedback Form
87. September 10, 2009 Observation Feedback Form
88. September 8, 2009 Observation Feedback Form
89. September 3, 2009 Observation Feedback Form

90. April 17, 2009 Observation Feedback Form
91. April 22, 2009 Observation Feedback Form
92. September 11, 2008 Observation Feedback Form
93. September 4, 2008 Observation Feedback Form
94. September 3, 2008 Observation Feedback Form
95. May 2008 Informal Observation Form
96. April 2008 Informal Observation Form
97. February 6, 2008 Informal Observation Form
98. January 8, 2008 Informal Observation Form
99. June 26, 2009 4-205 Appeal
100. Appellant's June 15, 2009 Grievance Letter
101. Email from Linda Kane to Appellant
102. Appellant's June 9, 2009 Letter to TABCO
103. June 8, 2009 Letter of Reprimand
104. Appellant's February 26, 2007 Letter
105. IEP Snapshot, Present Levels of Academic Performance
106. IEP Snapshot Supplementary Aids
107. IEP Snapshot Supplementary Aids Continued
108. IEP Snapshot Continued
109. IEP Snapshot Continued
110. March 6, 2007 Letter from Bond to Appellant
111. Appellant's March 14, 2007 Letter to Bond requesting IEP information
112. Appellant's March 6, 2007 Letter to Bond regarding a student IEP



113. February 7, 2007 4-205 Appeal Letter
114. Appellant's February 4, 2007 letter to TABCO
115. 4-205 Appeal Response
116. December 20, 2006 Appeal Letter
117. Appellant's November 24, 2007 Discrimination Complain
118. November 2, 2006 Letter and Response from Appellant
119. November 1, 2006 Letter requesting to expunge letter of reprimand
120. October 25, 2006 Letter of Reprimand
121. Appellant's August 6, 2004 Letter regarding lead-based paint
122. April 15, 2004 Classroom Observation
123. September 23, 2003 Classroom Observation
124. Appellant's June 17, 2003 Letter to Board
125. Appellant's 2002-2003 Final Evaluation
126. June 2003 Evaluation of Teacher Progress
127. March 18, 2003 Classroom Observation
128. March 6, 2003 Classroom Observation
129. March 17, 2003 4-205 Appeal Response
130. January 29, 2003 4-205 Appeal Letter
131. January 11, 2003 Evaluation Rebuttal Letter
132. Mid-Term Evaluation 2002-2003
133. October 4, 2002 Classroom Observation
134. September 4, 2002 Classroom Observation
135. Final Evaluation 2001-2002

136. March 5, 2002 Classroom Observation
137. November 14, 2001 Classroom Observation
138. June 4, 2004 Grievance Response
139. March 26, 2004 Response to March 26, 2004 Memo
140. March 26, 2004 Memo to Appellant regarding bus duty
141. March 25, 2004 Grievance Extension Request
142. Appellant's March 24, 2004
143. March 23, 2004 Letter of Reprimand
144. March 17, 2004 Letter to Appellant regarding bus duty
145. March 15, 2004 Letter to Appellant regarding lesson plans
146. March 15, 2004 Letter of Reprimand
147. March 11, 2004 Letter to Appellant and Appellant's response
148. March 4, 2004 Appellant's Request for Hearing
149. Appellant's February 2, 2004 Letter
150. February 2, 2004 Letter to Appellant
151. January 28, 2004 Appeal Letter
152. January 23, 2003 Letter to Appellant
153. Appellant's Request for Grievance
154. Appellant's January 13, 2004 letter to the Board
155. January 28, 2004 Grievance Complaint
156. Appellant's December 22, 2003 Letter
157. Appellant's December 22, 2003 Letter regarding lesson plans
158. Appellant's December 19, 2003 Letter

159. December 18, 2003 Letter to Appellant
160. Appellant's November 23, 2003 Request for a Grievance
161. November 19, 2003 letter to Appellant
162. Appellant's November 11, 2003 Request for Grievance
163. Appellant's November 7, 2007 Letter
164. Appellant's November 7, 2007 Letter
165. November 7, 200 Letter to Appellant
166. October 28, 2003 Letter to Appellant
167. October 24, 2003 Letter to Appellant
168. October 22, 2003 Letter to Appellant
169. Appellant's October 21, 2003 Harassment Complaint
170. Appellant's October 10, 2003 Complaint
171. October 10, 2003 Letter to Appellant regarding absences
172. Appellant's September 8, 2003 Rebuttal to Memo
173. September 4, 2003 Letter to Appellant regarding professional responsibility
174. Appellant's September 3, 2003 Letter
175. Appellant's May 29, 2003 Letter
176. September 2, 2003 Letter to Appellant
177. Appellant's March 24, 2003 Request for Grievance
- III. Transcript of Hearing on June 6, 2011
- IV. Appellant's Post-Hearing Brief, dated September 14, 2011
- V. Superintendent's Post-Hearing Memorandum, dated September 14, 2011
- VI. Hearing Examiner's Recommendation, dated October 4, 2011

- VII. Appellant's request for oral arguments before the County Board
- VIII. Oral argument notice dated October 12, 2011
- IX. Appellant's exhibits 1-177
- X. Oral argument reschedule notice dated October 18, 2011
- XI. Appellant's personal exceptions to hearing examiner's decision
- XII. Transcript of oral argument before County Board, January 24, 2012
- XIII. County Board Opinion and Order, dated January 25, 2012