

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 7th and 8th 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 9th 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

Charlene M. Dukes
President

Mary Kay Finan

Mary Kay Finan
Vice President

James H. DeGraffenreidt, Jr.

James H. DeGraffenreidt, Jr.

S. James Gates, Jr.

S. James Gates, Jr.

Absent

Luisa Montero-Diaz

Absent

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Absent

Guffrie M. Smith, Jr.

Linda Eberhart

Linda Eberhart

March 28, 2013