

RONALD BROWN,

Appellant

v.

QUEEN ANNE'S COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-37

OPINION

INTRODUCTION

The Appellant, Ronald Brown, challenges the decision of the Queen Anne's County Board of Education to terminate him as a custodian. The Queen Anne's County Board of Education ("local board") filed a Motion for Summary Affirmance to which the Appellant responded. The local board replied to that response.

FACTUAL BACKGROUND

The Appellant worked for Queen Anne's County Public School System as both a bus driver and as a custodian. On May 31, 2012 the bus contractor requested that the Appellant take a random drug test. The drug results were positive for marijuana. On June 5, 2012 the bus contractor sent the results to Thad Kalmanowicz, Director of Operations. Thereafter, Mr. Kalmanowicz informed the Appellant that because of a zero-tolerance policy for drugs, he could no longer drive buses for the State of Maryland. However, Mr. Kalmanowicz did give the Appellant an opportunity to be retested at his own expense. The Appellant declined.

Kalmanowicz informed the Appellant that he was also in jeopardy of losing his custodial position at Queen Anne's County Public Schools. On June 7, 2012, Appellant met with Daniel Lessard, Human Resources Officer, and Sidney Pinder, Supervisor of Facilities. He was given an opportunity to tell his side of the story concerning the positive drug results.

Appellant said he had attended a party over Memorial Day weekend and, while at the party, he smoked marijuana. During the meeting, Lessard again informed the Appellant that he could have his urine sample retested. Again, the Appellant declined the retest.

Shortly afterward, Lessard met with Superintendent Carol Williamson to discuss disciplinary options. The school system has a Drug-Free Work Policy that outlines two options for a first positive of drug use: (1) Terminate the employee, or (2) Place on an immediate leave of absence without pay and an option to participate in a rehabilitation program.

Lessard contacted Appellant on June 11, 2012 and informed him that they were terminating his employment as custodian for violation of the Drug-Free Work Place Policy.

The Appellant appealed the termination decision to the Superintendent on June 29, 2012. He asked that, because of his otherwise clean record, she consider the second option available under the policy. He also asked that the Superintendent consider the Progressive Disciplinary Policy that had been in place for a multi-step and uniform approach to discipline. However, on August 13, 2012, the Superintendent denied the Appellant's appeal. *Record 3*.

Appellant then requested a hearing before the Board or an opportunity to submit all arguments, affidavits, and documents. *Record 4*. At this time, he also asserted that he had never smoked marijuana. *Id.* Instead, he said that he had attended a party where others smoked marijuana and one of his friends blew smoke in his face. *Id.* On December 5, 2012, the Board of Education sent the Appellant a letter affirming the Superintendent's decision. This appeal ensued.

STANDARD OF REVIEW

A non-certified support employee is entitled to administrative review of a termination pursuant to §4-205(c)(4) of the Education Article. *Livers v. Charles County Bd. of Educ.*, 6 Op. MSBE 407 (1992). The local board's decision is prima facie correct and the State Board may not substitute its judgment unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

ANALYSIS

The Appellant contends that the local board acted unreasonably and arbitrarily when it affirmed his dismissal. He also contends that the local board's failure to conduct a formal hearing was illegal.

The decision to terminate Appellant is consistent with Progressive Disciplinary Policy

The Progressive Disciplinary Policy provides a multi-step approach where discharge of an employee usually results after the fourth offense. The policy states that employees will receive an oral warning, then a written warning, then a written warning or suspension, and, lastly, discharge. *Record* Tab 2. However, "conduct noted by an asterisk is serious enough to be subject to immediate dismissal." *Exhibit 6*. Reporting to work under the influence or in possession of drugs while on duty is noted with an asterisk. *Id.* Moreover, the policy states that non-probationary employees, although entitled to review, can be discharged at the Superintendent's discretion for violating the rules. *Id.*

The Superintendent followed the Progressive Disciplinary Policy when she terminated Appellant's employment. After conducting a random drug test of Appellant, the school bus contractor learned that Appellant tested positive for marijuana. Testing positive for marijuana is subject to discipline under the Progressive Disciplinary Policy for reporting to work under the influence, which is then subject to immediate discharge. Although not a mandatory discharge, the decision is left to the Superintendent. Superintendent Williamson chose to terminate Appellant's employment with the school system because of the Appellant's interaction with

children at a school. It is our view that the Superintendent's decision was neither unreasonable nor illegal.

The decision to terminate Appellant is consistent with the Drug-Free Work Place Policy

The school system uses a Drug-Free Work Place Policy that gives the Superintendent guidance on disciplining an employee who tested positive for drugs. The policy proposes two options for a first positive on a drug test: (1) The employee shall be terminated, or (2) At the school system's option, placed on an immediate leave of absence without pay and given an option to participate in a drug rehabilitation program. *Appellant's Exhibit 2*. Termination of employment is mandated for a second positive on a drug test. *Id.* However, termination is permitted for either a first or second positive on a drug test. *Id.*

Appellant maintains that, because of his clean work record, he should have received the second option as punishment for his first positive drug test. *Appellant's Exhibit 2*. Appellant had worked in the school system for 13 years without testing positive for drugs. *Id.* However, the Superintendent stated that "drug use while driving a bus with school children or while working in a school near children is not acceptable." *Appellant's Exhibit 3*. Later, the local board decided that the "no tolerance policy concerning drug use by students or staff while performing school functions" was enough to justify the Superintendent's decision. *Appellant's Exhibit 7*.

The Drug-Free Work Policy does not require the Superintendent to offer an employee leave of absence without pay and rehabilitation. With a clear statement by the Appellant during the meeting with Lessard and Pinder that he smoked marijuana and a positive drug test, the Superintendent had the authority to terminate Appellant's employment. Although the Superintendent could have offered the second option, she decided that "termination was the appropriate course" for a person working in the school system. Although undesirable to the Appellant, the Superintendent's decision was legal and, based on the facts and circumstances, reasonable.

The local board provided due process, even if Appellant did not have a formal hearing

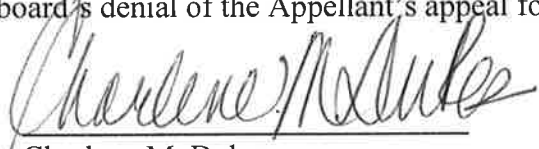
An appeal on the record can be decided without hearing an oral argument if it does "not involve a dispute of material fact." COMAR 13A.01.01.06; *Johnson v. Howard County Bd. of Educ.*, MSBE Op. No. 09-28 at 9 (2009). Thus, after both sides have provided all pertinent paperwork, the local board can make a decision based on the record. To show that an issue of material fact exists, "an opposing party must demonstrate that there is a factual dispute" by producing "factually accurate and credible" assertions. *Johnson v. Howard County Bd. of Educ.*, MSBE Op. No. 09-28 at 7 (2009) (citing *Ewing v. Cecil County Bd. of Educ.*, 6 Ops. MSBE 818 (1995)). In *Johnson*, we observed that the Appellant's assertions were not factually accurate or credible when the Appellant's emails proved that no confusion existed with regard to her supervisor's request and her disregard of the request. *Id.*


There is no dispute of material fact as to whether the Appellant actually smoked marijuana. Appellant claims, in his Notice of Appeal, that one of his friends blew smoke in his face at the party and adamantly denies smoking marijuana. *Record 2*. However, Mr. Lessard, in

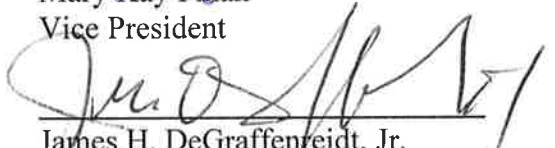
his termination letter to the Appellant, noted that the Appellant confessed to actually smoking at the party. *Appellant Exhibit 1*. Moreover, the Appellant explicitly said that “[w]hen confronted by Mr. Lessard and Mr. Pinder, [I] admitted to having smoked marijuana at a party.” *Appellant’s Exhibit 2*. During his appeal to the local board Appellant attempted to create a dispute of fact by denying that he actually smoked marijuana, but rather had marijuana smoke blown in his face. That assertion is just not credible. It is not supported by any witness affidavits. Moreover, the Appellant provides no medical or scientific support that having marijuana smoke blown in your face can lead to a positive urine analysis. That assertion is just not sufficient to create a dispute of material fact.

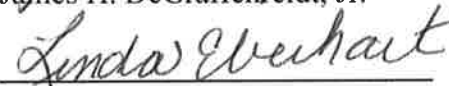
CONCLUSION

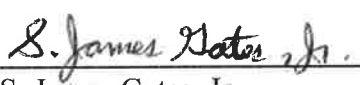
For the foregoing reasons, we do not find the local board’s decision to be arbitrary, unreasonable, or illegal. Thus, we affirm the local board’s denial of the Appellant’s appeal for a rehearing.

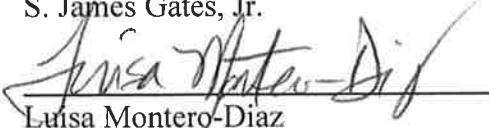

Charlene M. Dukes
President

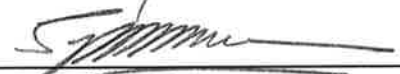

Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.



Linda Eberhart


S. James Gates, Jr.

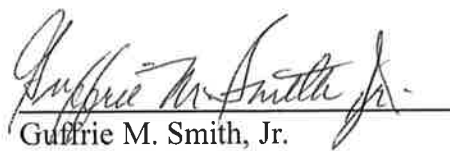

Luisa Montero-Diaz


Sayed M. Naved


Madhu Sidhu


Donna Hill Staton

July 23, 2013


Guffrie M. Smith, Jr.