

SHERIFAT KOMOLAFE,

Appellant

v.

BOARD OF EDUCATION OF
PRINCE GEORGE'S COUNTY,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-47

OPINION

INTRODUCTION

Sherifat Komolafe (Appellant) appeals the decision of the Board of Education for Prince George's County (local board) terminating her from her position as a school nurse on the grounds of incompetence and unsatisfactory performance and conduct. The local board submitted a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded to the motion and the local board replied.

FACTUAL BACKGROUND

Appellant has been a registered nurse licensed in the District of Columbia, Maryland, and Virginia, since 1985. Appellant began working for Prince George's County Public Schools (PGCPS) in 2006. She was transferred to Greenbelt Middle School ("Greenbelt") at the beginning of the 2011-2012 school year.¹ Appellant was the only nurse at the school. The local board's termination decision was based on Appellant's performance at Greenbelt between October 2011 and January 2012. (T. 15, 91, 219, 221).

On October 18, 2011, Appellant received a letter from Principal Warren Tweedy regarding a complaint from a grandparent. The grandparent complained that Appellant refused to address her concerns and was rude, obnoxious, and hung up on her. (J12). Principal Tweedy informed Appellant that failure to adhere to school procedures and policies would be seen as an act of insubordination and further disciplinary action could be taken. (J1). Appellant denied hanging up on the grandparent or being rude. (J14; T. 253).

On October 25, 2011, Nurse Manager Merry Chandler, Appellant's supervisor, reviewed Appellant's medication administration logbook and discovered that the log did not have a required second signature. PGCPS policy requires that all controlled substances must be counted twice a day and the school nurse and a witness must both sign the medication logbook. After Appellant stated that she was unable to find a witness to sign with her, Ms. Chandler arranged for an employee in the front office to assist Appellant with the medication counts and act as a witness. Ms. Chandler later learned that Appellant told the employee to backdate and sign past

¹ Between 2006 and 2011, Appellant was transferred several times. Two of those transfers related in part to concerns about Appellant's communication skills. (T. 196-97).

logbook entries, even though the employee had not counted the medication with Appellant on those dates. Appellant denied telling the employee to backdate and sign the logbook, but she acknowledged that she did not stop the employee from doing so because she assumed her supervisor must have approved of the practice. (J1, J11, J14; T. 246-48).

On October 27, 2011, Assistant Principal Raquel Talley participated in a conference between a parent and Appellant. The parent requested Ms. Talley's presence because a prior call between the parent and Appellant became "heated and intense." During the meeting, Appellant and the parent began arguing over how many times Appellant called the parent in reference to immunization records. Ms. Talley stated that Appellant instigated a verbal altercation with the parent in which Ms. Talley had to intervene. She described Appellant as being "abrupt and argumentative." Following the incident, the parent lodged a verbal complaint against Appellant with Principal Tweedy. (S1; J 13; T. 27-29; 35). Appellant denied being rude during the conversation and explained that she was merely defending her actions and explaining school policy to the parent. (J 14).

On November 29, 2011, a student came to Appellant complaining of chest pain and Appellant called 911. Principal Tweedy stated that he was not notified of the incident and first learned about it when he saw an ambulance outside of the school. Principal Tweedy explained that he needed to be informed about the ambulance because school procedures require an adult, other than the school nurse, to accompany students to the hospital and that he needed to arrange for that to happen. After the ambulance arrived, Principal Tweedy stated the Appellant raised her voice and was "very nasty" towards the student because the student did not follow a paramedic's instructions. (S3; T. 99-102, 141-42).

Before calling 911, Appellant stated that she attempted to contact the student's parents but was unsuccessful. Appellant stated she also attempted to contact the front office via walkie talkie, but the battery was dead. Principal Tweedy explained that Appellant had a charging station for the walkie talkie in her office and was responsible for keeping it working.² Shortly after the 911 incident, Principal Tweedy sent a memo to Appellant summarizing the above events and stating that he had requested a new nurse for Greenbelt.³ (T. 137-38, 163; S3).

As a result of the previous incidents, Appellant received two letters of warning dated November 30, 2011. The first letter summarized three complaints against Appellant: the October 18 grandparent complaint; the October 27 parent meeting witnessed by Ms. Talley; and an incident in which the Appellant demanded a doctor's note in order to grant a request for a religious waiver to immunization requirements, contrary to PGCPs policy. (J10). The second letter informed Appellant that backdating the medical administration logbook constituted the falsification of medical records. (J11). Both letters warned Appellant that if she did not correct her behavior, it could result in her termination.

² Appellant maintains that she called the front office to alert them about the ambulance after she realized that her walkie talkie was not working and that an office employee lied about not receiving her phone call. (J14; T. 244-45).

³ Two additional incidents occurred in November that were not among the hearing officer's findings of fact, but were included in the record. On November 15, 2011, a parent sent an email to Principal Tweedy complaining that Appellant was rude to her daughter. On November 28, 2011, the Greenbelt officer manager complained that Appellant was not keeping track of students who needed immunizations. (J13, S3).

On December 2, 2011, a parent emailed Principal Tweedy to complain that Appellant waited roughly four hours before calling her about her son's fever. The parent stated that her son went to the health room at 11:39 a.m. complaining of a headache and was found to have a temperature of 102 degrees. Appellant gave him a cold compress and allowed him to leave the health room when his temperature dropped to 99 degrees. Appellant called the student's mother at 3:17 p.m. when the student returned to the health room with a temperature of 102.4 degrees. Appellant maintained that she tried to call the mother earlier in the day, but that no one answered the phone until after 3 p.m. (S3; J14).

On December 5, 2011, Appellant received a Health Services Performance Observation Tool form, a memorandum from her supervisor that documented substantial concerns regarding her performance. Appellant was rated below standard in 25 of 46 areas listed in the evaluation. The form warned Appellant that it was essential to show "immediate improvement in those areas of deficiency to prevent further corrective action." (J2, J13). On the same day, Appellant reportedly told Greenbelt's office manager that she was sending a student to the front office because she did not know what to do and wanted to "cover herself." The office manager instructed Appellant that she needed to be the one to provide treatment to the student.⁴ (J13, S3).

On December 19, 2011, a student came to the Appellant's office for medical assistance after her teacher observed her looking "very pale and weak." The student apparently was reluctant to go to Appellant's office because of prior negative experiences with Appellant. After the student arrived in the nurse's office, Appellant decided the student was unruly and called for school security. School security told the Appellant to immediately contact the student's parents, who arrived shortly thereafter to pick up the student. The parents took the student to the hospital, where she had a temperature of 103 degrees and was diagnosed with pneumonia. The student's parents complained to Principal Tweedy about the lack of treatment for their daughter. (S3). Appellant accused Principal Tweedy of "theatrical embellishment" but did not otherwise deny the incident occurred. (J14).

On January 5, 2012, Karen Bates, the supervisor of health services, notified Appellant that she was being recommended for termination. The letter stated that the recommendation was based on deficits in "professional standards of care, professional conduct, ethics, and falsification of controlled medication record[s]." (J12). The letter was accompanied by a four-page memorandum that laid out the history of complaints against Appellant. (J13). Appellant appealed the decision and denied the allegations against her. (J14).

On February 1, 2012, Roslyn Hawkins, an employee labor relations specialist, held a due process hearing on the recommended termination. Appellant participated in the conference with a union representative. (T. 63-66). On April 26, 2012, Synthia Shilling, chief human resources officer, terminated Appellant's employment as a school nurse based on "a pattern of below

⁴ At some point during the school year, Principal Tweedy relocated Appellant closer to the main office in order to be able to more directly monitor her actions. (T. 151-52). Towards the end of Appellant's tenure as school nurse, Principal Tweedy at times would have sick students call their parents from the main office rather than having them first report to Appellant for care. (T. 109-110).

standard performance” and “numerous complaints from parents and school administration regarding your communication skills and poor nursing judgment.” She stated that Appellant had violated the PGCPs Regulations for Supporting Personnel, Sections A (incompetence or other unsatisfactory performance) and K (any conduct which reflects unfavorably on PGCPs as an employer). (Appeal, Ex. C).

Appellant noted a timely appeal of her termination to the CEO and an evidentiary hearing took place on March 13, 2013. On September 20, 2013, a hearing officer issued proposed findings of fact and conclusions of law, recommending that Appellant’s termination be upheld. On September 25, 2013, Dr. Kevin Maxwell, CEO of PGCPs, adopted the hearing officer’s recommendations.

Appellant timely appealed to the local board. The local board heard oral arguments on April 14, 2014, and issued a decision on April 28, 2014, affirming the termination. The local board stated that Appellant had been counseled about her “poor communications with parents and students,” her “failure to properly log in medication,” and “unprofessional communications and other performance issues,” but was incapable or unwilling to improve. The local board found no merit to her argument that she was not given sufficient time to modify her behavior. (Motion, Ex. C).

This appeal to the State Board followed.

STANDARD OF REVIEW

A non-certificated employee is entitled to administrative review of a termination pursuant to § 4-205(c) of the Education Article. *See Brown v. Queen Anne’s County Bd. of Educ.*, MSBE Op. No. 13-37 (2013). The decision of the local board is presumed to be *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

Appellant challenges the decision of the local board to terminate her on several grounds: the delay in providing her a hearing and time to correct her performance deficiencies violated her due process rights; the local board failed to consider the evidence she presented; the evidence was insufficient to support her termination; and termination was too harsh of a sanction.

Delay in holding the hearing

Appellant appealed her termination to the CEO on April 27, 2012. Under the local board’s policy, Appellant was entitled to a hearing within 30 days of filing that request. *See* PGCPs Regulations For Supporting Personnel, at 7 (The CEO “shall arrange for a hearing to be held not less than five (5) or more than thirty (30) working days after the receipt of the request”). Appellant received an evidentiary hearing on March 13, 2013. Appellant argues that this delay of approximately ten and a half months violated her right to due process.

We note initially that on February 1, 2012, the Appellant received a pre-termination *Loudermill* due process hearing at which the Appellant had union representation. As to the post-termination hearing, there was a significant delay. The Appellant did not raise that issue in her appeal to the local board.

The State Board has long held that it will not review matters that were not initially considered by the local board. See *Wilkins v. Prince George's County Bd. of Educ.*, MSBE Op. No. 14-09 (2014); *Paul and Ety E. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-05 (2012). Although Appellant argues that she could raise the issue of whether the local board properly followed its procedures at any time, she does not cite any authority for this proposition. We are aware of no reason why a procedural challenge, as opposed to any other type of legal argument, should not be raised first before the local board. Accordingly, Appellant has waived her argument concerning the delay in holding a hearing by not raising it before the local board.

Inadequate time to remedy performance

Appellant argues that her right to due process was violated because she received only one written warning prior to being terminated. She argues that she should have been allowed additional time to remedy any performance issues prior to being terminated. Appellant cites no legal authority for the proposition that failing to provide time to correct deficiencies is a violation of due process. She also fails to cite to any PGCPs regulations that require a specified period of time to elapse between a warning and termination.

PGCPs Regulations state that “[w]hen the duty performance of a permanent employee is considered to be unsatisfactory he/she will be notified of his/her deficiencies in writing and warned that failure to correct these deficiencies and improve his/her performance of duty may result in termination or other disciplinary action.” PGCPs Regulations for Supporting Personnel, at 7. If “an employee does not take immediate action to remedy his/her deficiencies and improve his/her performance of duty, he/she may be terminated.” *Id.* Termination is “the most severe of penalties and shall be based on grave or repeated offenses.” *Id.*

Appellant received two letters of warning dated November 30, 2011. Both letters warned that additional instances of unprofessional behavior “could result in further disciplinary action leading up to and including termination.” These warnings were consistent with PGCPs regulations and put Appellant on notice that she needed to immediately improve her performance. A little more than a month passed between the time Appellant was warned about her conduct on November 30, 2011, and the time she was recommended for termination on January 5, 2012. Between those dates, the school received three additional complaints about Appellant (on December 2, 5, and 19, 2011). In our view, a month provided Appellant with ample time to correct her deficiencies. PGCPs had the authority to seek Appellant’s immediate termination for “grave or repeated offenses” and did not violate its regulations in terminating Appellant when it did.

Failure to consider evidence

Appellant argues that her termination was arbitrary and unreasonable because the hearing

officer failed to consider evidence she submitted and the local board did not review the evidence presented to the hearing officer. “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.” *Diana Williams v. Baltimore County Bd. of Educ.*, MSBE Op. No. 13-20 (2013). A Hearing Examiner is “not obligated to rely upon information provided by the Appellant if the [Hearing Examiner] did not find it to be relevant or credible.” *Id.* The decisions of the hearing officer and the local board both summarized Appellant’s arguments before concluding that those arguments were meritless. (Appeal, Ex. A at 3; Motion, Ex. C at 3). Failing to credit Appellant’s version of events does not mean that the local board failed to consider the evidence she presented.

Lack of evidence to support termination

Appellant maintains that the termination decision was unreasonable because “a reasoning mind could not have reasonably reached the conclusion reached by the local board” based on the totality of the evidence presented, Appellant’s prior work history, and her lack of previous discipline. In our view, the evidence in the record is more than sufficient to support Appellant’s termination for incompetence and unprofessional conduct. Interacting with students and their parents is an important part of a school’s nurse job. The fact that numerous parents complained about Appellant’s rude and dismissive behavior toward their children indicates that Appellant had difficulty interacting and working with her patients. Several of the incidents involved delays in treating students or in informing parents about the students’ conditions. These complaints were corroborated on two occasions by school administrators who witnessed Appellant’s rude behavior. In addition, Appellant instructed a staff member to backdate a medication logbook and failed to quickly alert her superiors when she called 911 for an ambulance. These are all serious failings such that a reasoning mind could conclude that termination was appropriate.

Appellant also asserts that the hearing officer and local board failed to articulate specific reasons for upholding her termination. Contrary to Appellant’s assertion, the decisions of the hearing officer and local board reference the reasons for Appellant’s termination and they are supported by documents and testimony in the record. Those facts asserted were specific enough so that Appellant could respond to them and so that we could properly review the basis for the local board’s decision.

Severity of termination

Appellant argues that termination is too severe of a sanction and violated the local board’s policy of matching disciplinary action to the gravity of the offense and an employee’s past work history and length of service. We disagree. PGCPs could terminate Appellant at any time for “grave or repeated offenses” without first imposing lesser sanctions. During an approximately three-month span, numerous students, parents, and administrators complained about Appellant’s rude behavior and lack of professional judgment. The pattern of incidents taken together provided the local board with ample evidence of incompetence and unprofessional behavior.

CONCLUSION

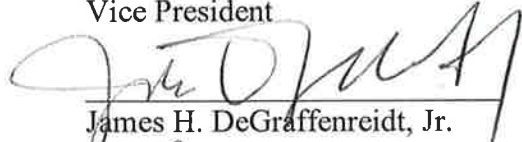
For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.



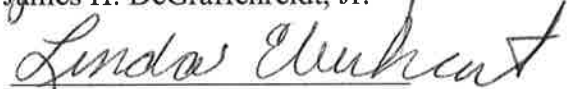
Charlene M. Dukes
President

Absent

Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.



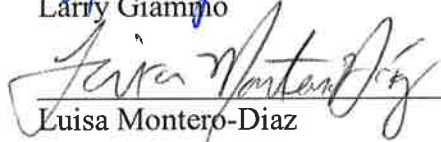
Linda Eberhart

Absent

S. James Gates, Jr.



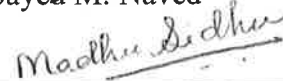
Larry Giammo



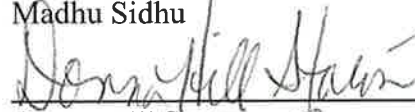
Luisa Montero-Diaz



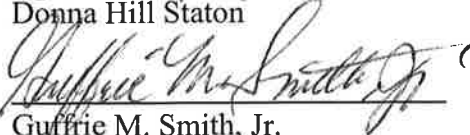
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffrie M. Smith, Jr.

August 26, 2014