HARI PRASAD,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-15

OPINION

INTRODUCTION

This case involves an appeal of the decision of the Prince George's County Board of Education (local board) terminating Appellant from his teaching position based on his receipt of unsatisfactory evaluation ratings for two years.

We referred this case to the Office of Administrative Hearings (OAH) as required by COMAR 13A.01.05.07A(2). The Administrative Law Judge (ALJ) issued a proposed decision concluding that the Appellant was incompetent and willfully neglected his teaching duties, and recommending that the State Board uphold the local board's termination decision.

Appellant filed exceptions to the ALJ's Proposed Decision and the local board responded.

FACTUAL BACKGROUND

Appellant is a certified chemistry teacher. He began his employment with the Prince George's County Public Schools beginning with the 2006-2007 school year, during which he taught physics and biology at Fairmont Heights High School. In March 2007, Appellant substituted for a teacher who taught physics to special education students. During the 2008-2009 school year, Appellant taught several courses that were outside of his certification area to special education students.

Ms. Nakia Nicholson became the new principal of Fairmont Heights at the start of the 2009-2010 school year. During that year, Appellant co-taught two English classes with a teacher who was certified in English and he taught a Chemistry (Intensive) class for special education students.[1]

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[1] Ms. Nicholson testified that the chemistry (intensive) class has the same content as a general education chemistry class, but the teacher uses specific accommodations to meet the needs of the smaller special education classroom environment. (Local Bd. T.83 – transcript of hearing before Robert Troll, 2/8/12, hereinafter cited as "LB T").

On September 18, 2009, Ms. Nicholson conducted a formal observation of Appellant's chemistry class. (Supt. Ex. 1). The observation was prompted by several student and parent complaints about Appellant's teaching methods and by prior informal classroom visits in which it was clear classroom management was an issue. (LB T.12). Ms. Nicholson reported that Appellant's lesson plan failed to include a guided activity, collaborative work or an assessment. She found that Appellant did not communicate the learning objectives to the students nor probed or asked questions to engage the students or assess their understanding of the material. (Supt. Ex. 1).

Ms. Nicholson placed the Appellant on an Action Plan, effective September 29, 2009, to help Appellant develop effective lesson plans, learn how to better use accommodations and modifications for students with special needs, and to improve the learning climate in the classroom. The Action Plan included opportunities for the Appellant to observe experienced peer teachers from the Special Education Department and to work one-on-one with an instructional program coordinator. *Id.*

On December 3, 2009, Ms. Nicholson and Michael Austin, Assistant Principal, conducted a formal observation of the Appellant's chemistry class.[2] (Supt. Ex. 2). They observed that various students were disruptive during the lesson, students were out of their seats at various times, one student had his head down on his desk for most of the class, only some students were given lesson materials, Appellant did not review or explain the warm-up activity, Appellant did not provide an objective for the lesson, and Appellant did not give an assessment. *Id.* They found no evidence that the Appellant had implemented any of the classroom management or content-related suggestions made in the Action Plan. (LB T.17).

Ms. Nicholson placed the Appellant on another Action Plan effective December 19, 2009, which included recommendations to assist Appellant with lesson preparation and classroom management. (Supt. Ex. 3). In particular, Ms. Nicholson wanted the Appellant to have close collaboration with the chair of the Science Department. *Id.* Despite all of this, however, Appellant received an Interim Evaluation on January 15, 2010 in which he was rated "unsatisfactory" overall. (Supt. Ex. 4).

In the middle of March 2010, Michele McKoy, Special Education Instructional Assistant, met with the Appellant to discuss teaching concerns and to offer suggestions to the Appellant. (LB T.96-97). Later that same day, Ms. McKoy observed Appellant sleeping in the corner of the classroom where he was co-teaching a general education course. *Id.*

On March 19, 2010, Theresa Hall, Administrator in Sciences and English, conducted a formal observation of Appellant's Chemistry class. (Supt. Ex. 5a). Ms. Hall identified that Appellant was deficient in classroom management, lesson planning and execution. (LB T.25). Ms. Hall prepared an Action Plan with constructive suggestions for Appellant to make improvements in the identified areas. (Supt. Ex. 5b).

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[2] Mr. Austin also provides support for the Special Education Department.

On March 22, 2010, Ms. McKoy conducted a formal observation of Appellant's chemistry (intensive) class which consisted of 6 students. (Supt. Ex. 30; LB T.94-95). Appellant was late for class. Two students had on earphones attached to playing iPods, one student walked out of the classroom, a student from another classroom entered the room and had conversations with students and left, students were having inappropriate side conversations throughout the class, a male student changed his clothes in the room, a student texted on a cell phone, and another student put on make-up. Other than asking one student to turn off her electronics, the Appellant took no action with regard to these matters. *Id.* In addition, the Appellant's lesson had no content. (LB T.97). Ms. McKoy also confirmed that she had provided the Appellant with ongoing professional development opportunities for use in instructing special needs students. (Supt. Ex. 45). The record also contains evidence that throughout Appellant's time at Fairmont Heights, Mr. Austin and Ms. Bush, Special Education Department Chair, had conversations with the Appellant about how to more effectively teach special education students. (LB T.110-111).

On April 20, 2010, Robert Papineau, High School Consortium Instructional Specialist,[3] conducted an observation of the Appellant's chemistry class. (Supt. Ex. 6). Mr. Papineau reported a high degree of classroom management issues, lesson planning issues, and overall ineffectiveness of the lesson being taught. (LB T.30). Some of his observations are as follows:

> The observer saw no connection between when the warm-up ended and the next part of the lesson began. The teacher did not review the warm-up vocabulary words and instead went directly to the worksheet sections on "suspensions" and "colloids." At one point the teacher did check a student vocabulary-but this was done in isolation. It appeared that the warm-up and the class work were being completed simultaneously. Two young ladies who were working quietly had ear phones on and were given little or no attention by the teacher. One slept during the lesson and the other continued to text message without any comment from the teacher. Another young lady texted behind her textbook placed so as to "hide" the device. Then another young lady began reading her text message out loud without any consequence. Students pay little, if any, attention to the teacher. Two young ladies left the classroom without permission to go to the rest room-against the teacher's admonitions. Then a young man began shouting through the window to someone outside. The teacher told the student to sit in his seat and the student ignored the teacher.

(Supt. Ex. 6). Mr. Papineau found no evidence that the Appellant had satisfied the measures set forth in the Action Plan. *Id.*

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[3] The High School Consortium is staffed by experienced teachers from the central office who work with underperforming teachers to support and improve their teaching.

Ms. Nicholson conducted a formal observation of the Appellant's chemistry class on April 30, 2010. (Supt. Ex. 7). There were only four or five students in the classroom. She observed issues with Appellant's teaching and with classroom management. One student sat and looked at the ceiling during class without redirection from Appellant. *Id.* During the follow up conference, Appellant offered no suggestions on how he could improve his performance. (LB T.41-42).

By letter dated May 7, 2010, Appellant requested that Ms. Nicholson reassign him so that he would not be teaching special education students because his certification is in chemistry. (Supt. Ex. 8). He stated that, based on the Prince George's County Educator's Association (PGCEA) Negotiated Agreement, he was only supposed to be assigned to teach classes out of his certification area for up to one year.[4] *Id.* Although Appellant maintains that he handed the letter to Ms. Nicholson in May, Ms. Nicholson testified that she did not receive the letter until the beginning of July, 2010. (LB T.86-87, 151). Appellant also maintains that they had a discussion about the issue that same day, which prompted him to write the letter. (LB T.150-151). It was Appellant's understanding that Ms. Nicholson was going to give him a satisfactory evaluation because of the class assignment issue so that he could transfer to another school. *Id.* No such transfer took place.

Appellant received an unsatisfactory rating on his 2009-2010 end of year evaluation. (Supt. Ex. 9). The comments stated that the Appellant should reflect on the school year and attend professional development workshops in special education or chemistry to improve his "instructional practices and effectiveness and to ensure that student outcomes are maximized." *Id.* The Appellant's certification status was changed to "second class" as a result of his unsatisfactory evaluation. (Supt. Ex. 34).

By letter dated July 6, 2010, Appellant wrote to Dr. William Hite, the then Superintendent, to present his "grievances" about his teaching assignment at Fairmont Heights and the reclassification of his teaching certificate based on his unsatisfactory evaluation. (Prasad Letter, 7/6/10). Appellant did not receive a response. (LB T.157).

By letter dated August 4, 2010, Appellant requested that Ms. Nicholson reassign him to classes within his area of certification. (Prasad Letter, 8/4/10). He stated that he had been working with the Special Education Department since August 2007, and wanted to be reassigned to the Science Department or transferred to another school if no such position was available. *Id.*

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[4] Section 4.06 of the agreement states:

> Secondary teachers will be assigned to their major or minor field of certification and should not be assigned more than three different subject preparations. In the event that scheduling necessitates a variation, the Principal shall give the reason in writing to the teacher. A teacher will not be assigned out of area of certification for a period of more than two consecutive semesters unless the teacher agrees in writing to a continuance of the out-of-certification-area assignment. (Supt. Ex. 8).

For the 2010-2011 school year, Appellant remained at Fairmont Heights and taught an integrated math class, an academic resource class for special education students (like a study hall), a biology class and two chemistry (intensive) classes.

On September 20, 2010, Ms. Nicholson conducted an informal observation of Appellant's math class. (Supt. Ex. 11). She noted that Appellant had worked towards implementing some classroom management practices but still needed to make improvements in terms of his actual instructional delivery. (LB T.47-48). On September 23, 2010, Ms. Daniel, the Assistant Principal, conducted an informal observation of Appellant's chemistry class. (Supt. Ex. 12). She observed deficiencies in classroom management, noting a chaotic environment with students out of their seats, having side conversations, and cursing, all without redirection. (LB T.49).

On October 11, 2010, Ms. Nicholson conducted an informal observation of Appellant's math class. (Supt. Ex. 13). She observed that students were disengaged and not on task, and that there were other problems with lesson planning and delivery of instruction. (LB T.50-51). Ms. Nicholson was receiving complaints from parents that the classroom was out of control, that students were not learning anything, and that there was an overall feeling of frustration with the teacher. *Id.* She advised Appellant to see Mr. Austin for assistance with aligning his lessons to the school-wide initiatives and for strategies to improve his class goals and objectives.

Mr. Papineau conducted an informal observation of Appellant's math class on November 3, 2010. (Supt. Ex. 14). He reported that the classroom environment was adversely impacted by students being off task without any redirection from the Appellant. Students were engaged in side conversations. Appellant did not probe or question students to engage them in the lesson or assess their understanding of the material. (LB T.52).

On November 4, 2010, Ms. Nicholson conducted a formal observation of Appellant's chemistry class. (Supt. Ex. 15). There continued to be deficiencies in terms of planning, preparation, execution and delivery. Students did not use the lab even though it was a chemistry class. They used some materials in class, but without proper safety gear. (LB T.54-55). Appellant did not attempt to tailor his lesson plans to the needs of the students. (LB T.56-57). During the follow-up conference, Appellant blamed the deficiencies on the fact that the students are special education students, maintaining that they are slow and it is difficult for them to grasp the concepts. (LB T.55-56). Appellant even stated that he "should call the parents to let them know that [the students] will fail" and then "maybe [the students] will do some work." *Id.* Ms. Nicholson implemented an Action Plan. (Supt. Ex. 16).

On November 15, 2010, Appellant received an overall unsatisfactory rating on his Interim Teacher Evaluation. (Supt. Ex. 17a & 17b). Ms. Nicholson instructed him to follow the Action Plan to improve the instructional outcomes for his students. *Id.*

On November 18, 2010, Mr. Austin conducted an informal observation of Appellant's chemistry class. (Supt. Ex. 32). He noted deficiencies in all of the evaluation categories,

including curriculum planning, instructional delivery, motivation, special education, and classroom management/environment. *Id.*

On November 22, 2010, Appellant again wrote to Dr. Hite, alleging that the PGCEA Negotiated Agreement had been violated by his assignment to the special education department. He requested that he be transferred back to the Science Department and that action be taken against Ms. Nicholson. (Supt. Ex. 35). By letter dated December 6, 2010, Dr. Hite responded that Appellant's assignment was consistent with the Negotiated Agreement in that he is teaching in his area of certification, which is chemistry. (Supt. Ex. 36). He stated that it is at the discretion of the principal as to which department a teacher is assigned, as long as the teacher is teaching within the subject area in which they are certified. With regard to the integrated math class, Dr. Hite explained that it is permissible for a teacher to teach a course out of their certification area for up to a year. He further indicated that, due to Appellant's second class status, he could not be transferred to another school. He directed Appellant to contact James Whattam, Director of Employee and Labor Relations, with any further inquiries about his teaching assignment. *Id.*

Meanwhile, on December 1, 2010, Mr. Jerome Shelton, Assistant Principal, conducted an observation of the Appellant's chemistry class. (Supt. Ex. 18). There were four students in the class: one was wearing earphones, one was sitting with his arms folded not doing any work, and another was checking his or her fingernails. *Id.*

On December 3, 2010, Michelle Gilmore, from the High School Consortium, conducted an informal observation of Appellant's chemistry class. (Supt. Ex. 19). She noted deficiencies in classroom management, classroom climate/environment, planning and preparation, and instruction. *Id.*

On December 9, 2010, Ms. Daniel, Assistant Principal, conducted an informal observation of Appellant's chemistry class. (Supt. Ex. 20). When Ms. Daniel arrived, the Appellant was sitting by the door and was not delivering instruction. Appellant then got up and started moving around the students. *Id.*

On January 12, 2011, Appellant inquired if Ms. Nicholson would be reassigning him to teach a general education chemistry class for the second semester instead of the chemistry (intensive) classes which are special education classes. She responded that he would remain in his current assignment for the remainder of the school year. (Emails, 1/12/11).

On January 19, 2011, William Barnes, Director of the High School Consortium, held an interim evaluation conference with the Appellant and Ms. Nicholson. (Supt. Ex. 21). Mr. Barnes directed the Appellant to construct an action plan for improvement in each of the marked areas and have it signed by Ms. Nicholson.

By letter dated January 20, 2011, Appellant wrote to Ms. Nicholson requesting that he be reassigned from his chemistry (intensive) classes to chemistry (general education) classes for the second semester. (Supt. Ex. 22). It is clear from the letter that he believed that Ms. Nicholson was going to try to reassign him to general education chemistry classes. *Id.* According to Ms.

Nicholson, however, Appellant was incorrect in his understanding of their prior discussions. (LB T.68-69).

Appellant wrote to Mr. Whattam on February 7, 2011 regarding his teaching assignment and the alleged violation of the Negotiated Agreement. Mr. Whattam responded that the school system was still looking into the issues raised in his letter. (Email, 3/1/11). As late as April 18, 2011, Mr. Whattam advised Appellant that he could not respond because he was still waiting for information relevant to Appellant's request.

On March 9, 2011, Ms. Nicholson conducted a formal observation of Appellant's chemistry class. (Supt. Ex. 23). Students ran in and out of the classroom and cursed without redirection from Appellant. Appellant did not have a written lesson plan. *Id.*

Mr. Austin conducted another informal observation of Appellant's chemistry class on March 18, 2011. (Supt. Ex. 33). He noted deficiencies in every single category and area. *Id.*

Mr. Papineau conducted a formal observation of Appellant's chemistry class on March 24, 2011. (Supt. Ex. 24). The Appellant failed to explain the objective to his students and his lesson structure was incoherent. Students were off-task and responded rudely to Appellant. Students also entered and left the classroom without any questioning by the Appellant. *Id.* Mr. Papineau commented, in part, as follows:

> Clearly, management issues continue to plague you. There is a lack of a climate of high expectations that should be in evidence. Students respond rudely to you. Off task behaviors seem to dominate instructional time. Electronic devices should not be permitted. Your students need more structure with step-by-step directions for completing learning activities. Copying work from the book or board is not an appropriate instructional strategy, this is busywork.

Id. He further stated that the classroom management issues continue to interfere with instruction, learning and student achievement. *Id.*

On April 14, 2011, the Chair of the Special Education Department advised Appellant that he had failed to complete his individual education plans (IEPs) for his student caseload. (Supt. Ex. 26). Rather, he merely copied the old IEPs without making any changes. *Id.* Ms. Nicholson had to reassign Appellant's caseload to the Department Chair to make sure the school was in compliance with the legal requirements. (LB T.74-75).

On May 9, 2011, Ms. Nicholson went to conduct an informal observation of the Appellant's academic resource class. (Supt. Ex. 27). When she arrived, Appellant was asleep at his desk and students were listening to their electronic devices and playing cards. *Id.* She conducted another informal observation on May 27, 2011. (Supt. Ex. 29). Students sat idly and did nothing without any redirection by the Appellant. Other students stood up at the windows and made off-task remarks without any redirection from Appellant. *Id.*

On May 18, 2011, Appellant met with Mr. Whattam to discuss his teaching assignments in light of the PGCEA Negotiated Agreement. Mr. Whattam explained that he would look into it with regard to assignments for the following year, depending on what happened at the end of the 2010-2011 school year with respect to Appellant's performance rating and any action that might come from that. (LB T.118-119).

Appellant received an overall rating of unsatisfactory on his year end evaluation for the 2010-2011 school year. (Supt. Ex. 29). The comment states: "Despite the school's efforts in providing you with support within the areas of planning and preparation, learning climate, instruction, and professionalism you have shown minimal progress." *Id.*

On July 20, 2011, Appellant wrote to Mr. Whattam to appeal his unsatisfactory performance ratings. In his letter, Appellant again raised the issue of the violation of the Negotiated Agreement. (Supt. Ex. 37). Mr. Whattam held a conference, at which Appellant's union representative was present, to discuss Appellant's employment with the school system as a result of his unsatisfactory ratings for two consecutive years. (Supt. Ex. 39). By letter dated August 15, 2011, Dr. Hite advised Appellant that he was recommending his termination to the local board for incompetence and willful neglect of duty. *Id.*

Appellant appealed the termination recommendation to the local board, arguing that his unsatisfactory evaluations were not justified because he was teaching classes outside of his certification area in violation of the PGCEA Negotiated Agreement. The local board referred the matter to a hearing examiner for review. Hearing Examiner Robert Troll conducted a hearing and issued a decision in the case. He recommended that the local board uphold the Appellant's termination recommendation. (Troll Decision). The local board accepted the recommendation and terminated the Appellant from his position. (Local Bd. Order).

Appellant appealed the case to the State Board and we referred the matter to OAH in accordance with our regulations. The ALJ recommended that the State Board uphold the termination. He pointed out that all of Appellant's formal classroom observations were in his chemistry classes and that they demonstrated two years of problems for which Appellant showed no improvement despite supports and interventions provided by the school. The ALJ noted that Appellant's difficulties were with the most basic elements of teaching, which apply whether the teacher is teaching general education or special education students. Specifically, Appellant had very poor classroom management skills with no control over his students, resulting in a chaotic environment not conducive to learning. Appellant also had problems with lesson planning and basic instructional skills and delivery. The ALJ pointed out that observers repeatedly noted that Appellant did not communicate the objective of the lesson, was spending too much time on "warm up" activities, did not provide assessments to determine if students were learning the material, and did not appropriately use labs with the lessons. On one occasion, Appellant did not have a lesson plan even though he knew he was being subjected to a classroom observation that day. In addition, Appellant was caught sleeping in his classroom by two different observers on two separate days. Another observer caught Appellant sitting by the door not delivering instruction until the observer arrived. The ALJ also indicated that all teachers are expected to be

able to teach special education students and that Appellant never formally grieved his class assignments as violating the collective bargaining agreement.

The Appellant filed exceptions to the ALJ's proposed decision. On February 25, 2014, we heard oral argument on the exceptions from legal counsel for the local board and Mr. Prasad.

STANDARD OF REVIEW

The standard of review the State Board applies to the termination of a certificated employee pursuant to §6-202 of the Education Article is that the State Board exercises its independent judgment on the record before it in determining whether to sustain the termination. COMAR 13A.01.05.05F(1) and F(3).

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

The standard of review that the State Board applies to matters arising under §4-205 of the Education Article is that the local board's decision is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless its decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

As stated above, the ALJ found that there was sufficient evidence in the record to conclude that the Appellant's termination for incompetency and willful neglect of duty should be upheld. The Appellant has filed several exceptions to the ALJ's Proposed Decision. We address them below.

Termination Claims

The Appellant takes exception to the ALJ's determination that he was sleeping during class, claiming that both Ms. McKoy and Ms. Nicholson were untruthful in their testimony. The ALJ specifically noted that the local Hearing Examiner had the opportunity to observe the witnesses and evaluate their credibility. The ALJ found no reason to reverse the findings made by the Hearing Examiner on this issue. We note that the testimony of Ms. McKoy and Ms. Nicholson is supported by the evaluation comments that were entered into evidence. We agree with the ALJ that there is no evidence to support Appellant's claim other than his own statements.

Appellant alleges that Ms. Nicholson was not testifying truthfully and the ALJ erred in finding her testimony to be credible with regard to (1) her statement that she did not receive Appellant's May 7, 2010 letter until July; (2) her statement that the prior principal made the 2009-2010 class assignments; and (3) her statement that Appellant did not complete his IEPs on time so she assigned the task to other teachers. Again, other than his own statements, Appellant has not provided any independent basis to disregard Ms. Nicholson's testimony. In addition, whether Ms. Nicholson received the letter in May or July is of no consequence. As for the 2009-2010 class assignments, the assignments were what they were regardless of who was responsible for the schedule. Neither of those two facts is material to the final decision in this case.

Appellant takes issue with the ALJ's statement that he never complained about his class assignment before getting an unsatisfactory rating in the 2009-2010 school year. (ALJ Proposed Decision, p.12). In fact, Appellant's own testimony bears out that he did not request to have his classes changed until he received an unsatisfactory rating in the 2009-2010 school year. (LB T.145-146).

Appellant argues that Ms. Nicholson's lack of administrative experience was the reason for his unsatisfactory evaluations, stating that "[e]xperienced principals do not give unsatisfactory ratings to teachers who volunteer to teach substantially outside their area of certification." Appellant does not point to any evidence in the record to support this position.

We find Appellant's exceptions to be without merit. Moreover, our review of the record supports the local board's termination decision. Appellant had a substantial number of classroom observations documenting his serious performance deficiencies over a period of two years. We note that all of Appellant's formal observations took place in his chemistry class, and almost all of his informal observations took place in chemistry class as well. Appellant had major problems with classroom management, planning and preparation, and instructional delivery. Over that two year period, Ms. Nicholson and other instructional leaders made recommendations and suggestions to the Appellant in an effort to assist him and to improve his performance. All of those efforts failed as the Appellant exhibited no measurable improvement. Appellant's classroom was so chaotic that it was not conducive to learning. The Appellant was also observed sleeping in class on two occasions. The ALJ even expressed concerns about whether or not the Appellant was attempting to teach at times when he was not being observed, referencing specific comments made by students to the Appellant during observations. He stated:

> For example, on March 22, 2010, when Ms. McKoy was observing the class, the Appellant walked around the room while the students were doing their "warm up" activity. As he approached two of the students, they stated to the Appellant: '"Leave me alone! When did you start checking up on me?"' (Superintendent's Ex. 30, p1). During the next school year, in an observation that occurred on September 21, 2010, the students questioned whether they would be assigned textbooks or if they would be doing any lab work. (Superintendent's Ex. 31, p3). One would expect that a month after school has started students would know about the basic procedures of their class such as whether they would be assigned a

> textbook and whether their chemistry class would incorporate lab work.

(ALJ Proposed Decision at 14). We find more than ample evidence in the record to support his termination for incompetence and willful neglect of duty.

Alleged Violation of Negotiated Agreement

Appellant's primary exception is that the school system violated section 4.06 of the PGCEA Negotiated Agreement by assigning him to classes outside of his content area for more than two consecutive semesters. This is a grieveable matter under the PGCEA Negotiated Agreement. The applicable grievance procedures set forth an expedited time frame for resolving disputes quickly. (PGCEA Negotiated Agreement §4.02). For example, step one requires the employee to informally discuss the grievance with the immediate supervisor within eight days of the alleged wrong. Step two requires the employee to submit a formal grievance in writing on a specified form within ten days of the informal conference with the immediate supervisor. Within 10 days of submission of the form, the immediate supervisor must provide a written response. The employee has ten days from the written decision to initiate step three. The tight time frames continue through step four which is binding arbitration. *Id.* Although Appellant sent letters and complained about the class assignment issue, he chose not to file a formal grievance of the class assignment issue.

It appears that in Prince George's County, an employee covered by the PGCEA Negotiated Agreement may elect to file a grievance or may pursue the matter through the local appeal procedures set forth in §4-205 of the Education Article. *See* PGCEA Negotiated Agreement §4.02. While Appellant did not file a formal grievance of the matter, he did raise the issue in two letters to Dr. William Hite, the then Superintendent. In a December 6, 2010 letter, Dr. Hite responded that he believed the Appellant's assignment was consistent with the Negotiated Agreement. Pursuant to §4-205 of the Education Article, a local superintendent has the authority to decide all disputes involving the rules and regulations of the county board, and the proper administration of the school system. A superintendent's decision on such matters is appealable to the local board within 30 days. *Id.* The Appellant did not appeal the Superintendent's decision to the local board.

Instead of timely appealing the Superintendent's decision, Appellant raised the issue of the Negotiated Agreement violation as part of his appeal of his termination. For two reasons, Appellant's argument regarding the alleged violation of the Negotiated Agreement cannot be bundled into this termination case. First, it is our view that the Appellant should have timely appealed Dr. Hite's 2010 decision. He did not. The time has long passed to raise the issue here.

Second, even if this issue were properly raised in this termination case, and even if we concluded that Appellant's assignment to courses outside of his content area for more than two consecutive semesters was a violation of the Negotiated Agreement and, therefore, illegal, there is no effective remedy to be granted. The appropriate remedy in response to a complaint about improper class assignments is to have those class assignments changed. That is not a remedy that the State Board can grant at this juncture because the Appellant has been terminated. Had

the Appellant utilized the grievance process or timely appealed the Superintendent's decision, the matter could have been swiftly resolved and, had a violation been found, the school system could have reassigned Appellant to different classes. Instead, Appellant sat on his rights and the claim is now moot. *See In Re Michael B.*, 345 Md. 232, 234 (1997) (A question is moot when "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide."). Although the Appellant would like his termination rescinded, we do not find that to be an effective or appropriate remedy in this case. The termination was based on observations of Appellant's performance in his content area of chemistry, Appellant's failure to improve that performance over a two year period, and on the fact that Appellant was sleeping in class when he should have been teaching.

CONCLUSION

For the reasons stated above, we adopt the ALJ's decision and uphold Appellant's termination from his teaching position. As to Appellant's argument regarding the violation of the Negotiated Agreement, we dismiss his claims as moot because there is no effective remedy that this Board can provide.

Recused
Charlene M. Dukes
President

Mary Kay Finan
Mary Kay Finan
Vice President

James H. DeGraffenreidt, Jr.

Linda Eberhart
Linda Eberhart

Absent
S. James Gates, Jr.

Absent
Larry Giammo

Absent
Luisa Montero-Diaz

Absent
Sayed M. Naved

Madhu Sidhu

Donna Hill Staton

Guffrie M. Smith, Jr.

March 25, 2014

HARI PRASAD	*	**BEFORE ANN C. KEHINDE,**
APPELLANT	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE**
PRINCE GEORGE'S COUNTY	*	**OF ADMINISTRATIVE HEARINGS**
BOARD OF EDUCATION	*	**OAH NO.: MSDE-BE-01-12-47276**

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PROPOSED DECISION

STATEMENT OF THE CASE

On August 15, 2011, the Prince George's County Public Schools (PGCPS) Superintendent recommended that the Appellant's employment be terminated based on his receipt of unsatisfactory evaluation ratings for two years. On August 18, 2011, the Appellant filed an appeal. On February 8, 2012, Hearing Examiner F. Robert Troll, Jr., conducted an evidentiary hearing, and on June 27, 2012, he recommended that the Prince George's County Board of Education (PG Co. Board) affirm the termination.

On October 31, 2012, the PG Co. Board issued an Order terminating the Appellant and on November 29, 2012, the Appellant appealed. On December 6, 2012, the Maryland State Board of Education (State Board) forwarded the case to the Office of Administrative Hearings (OAH) to conduct a hearing in accordance with section 6-202 of the Education Article of the

Maryland Annotated Code. On December 14, 2012, the OAH sent the parties a Notice of Telephone Prehearing Conference (Conference) to be held on February 4, 2013.

On February 4, 2013, I held the Conference in this case with Abbey G. Hairston, Esquire, counsel for the PG Co. Board, and the Appellant participating. On February 7, 2012, I issued a Prehearing Conference Report and Scheduling Order (Scheduling Order). On February 13, 2013, the OAH issued a Notice of Hearing informing the parties that the hearing would held on March 5, 2013.

In the Scheduling Order, I noted that the PG Co. Board did not intend to elicit any further testimony but to rely instead on the record of the witnesses who testified on February 8, 2012.[1] However, the Appellant stated that he wanted to elicit testimony from Ms. Nicholson because there were questions that he wanted his attorney to ask below that were not asked. The Scheduling Order provided that the Appellant submit his questions by email no later than Monday, February 11, 2013. The Scheduling Order further provided that by February 19, 2013, I would review the Appellant's questions to ascertain whether they were asked and answered below and issue an amendment to the Scheduling Order, advising the parties as to whether a subpoena would be issued for Ms. Nicholson to testify in this matter.

On February 26, 2013, I became aware that the Appellant sent an email with his proposed questions but I did not receive it because he misspelled my email address. On February 27, 2013, I informed the parties that I would permit the subpoena to be issued for Ms. Nicholson.

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[1] The witnesses who testified on February 8, 2012 were: Nakia Nicholson, Principal, Fairmont Heights; Michelle McKoy, Special Education Instructional Specialist, PGCPS; Monica Goldson, Director of High School Consortium, PGCPS; James Whattam, Director of Employee Labor Relations, PGCPS; and, Michael Austin, Assistant Principal, Fairmont Heights.

On March 4, 2013, the PG Co. Board requested a postponement of the hearing because Ms. Nicholson, who was served with a subpoena on that same date, was unavailable for the hearing due to a previously scheduled non-work appointment. Therefore, the hearing was postponed to April 3, 2013, which was the earliest date counsel for the PG Co. Board and the Appellant were available. On April 3, 2013, I conducted the hearing at the offices of the PG Co. Board. Shani Whisonant, Esquire, represented the PG Co. Board and the Appellant represented himself.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board, and the OAH's Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012); Code of Maryland Regulations (COMAR) 13A.01.05; COMAR 28.02.01.

ISSUE

The issue is whether the Appellant's termination was proper.

SUMMARY OF THE EVIDENCE

Exhibits

The parties did not introduce any exhibits into evidence but instead relied on the exhibits that were introduced at the February 8, 2012 hearing. A transcript of the February 8, 2012 hearing and the Hearing Examiners' Findings of Fact, Conclusions of Law and Recommendation, dated June 27, 2012, is also part of the record.

Testimony

The Appellant called Nakia Nicholson, Principal, Fairmont Heights High School, PGCPS, to testify.

The PG Co. Board did not elicit testimony from any other witnesses.

FINDINGS OF FACT

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

1. The Appellant is a certified chemistry teacher. He became employed by the PG Co. Board in the 2006-2007 school year when he taught physics and biology at Fairmont Heights High School in Prince George's County. In March 2007, the Appellant substituted for a teacher who was assigned to teach physics to students with special education needs. In the 2008-2009 school year, the Appellant continued to teach several courses to students with special education needs that were outside his certification as a chemistry teacher. The Appellant did not file a complaint that he was teaching outside of his certification as a chemistry teacher.
2. During the 2009-2010 school year, the Appellant co-taught two English classes with a teacher who was certified in English and he taught one Chemistry Intensive class. A Chemistry Intensive class is for students who need special accommodations and modifications in order to access the general curriculum. The Appellant did not file a complaint that he was teaching outside of his certification as a chemistry teacher.
3. Ms. Nicholson became the principal at Fairmont Heights High School in the school year 2009-2010. Ms. Nicholson did not assign the Appellant his classes for the 2009-2010 school year; they were assigned by the previous principal.
4. During the 2010-2011 school year, the Appellant was assigned to teach a math class, an academic resource class (a class for students with special education needs who need extra assistance to complete their work in various courses) and two chemistry classes.
5. During the school year 2009-2010, Ms. Nicholson, Mr. Michael Austin, Ms. Theresa Hall, Ms. Michele McKoy and Dr. Robert Papineau observed the Appellant teaching.

6. All of the formal observations of the Appellant's teaching were announced to the Appellant one to two days prior to the observation and took place in his chemistry classes.
7. On September 18, 2009, Ms. Nicholson observed the Appellant's teaching. The Appellant's lesson plan did not include a guided activity, collaborative work or an assessment. The activities did not support the learning objectives. The Appellant did not communicate the learning objectives to the students and did not probe or ask questions to engage the students or assess their understanding of the material. The Appellant did not attempt to redirect profane and disrespectful language by the students.
8. An Action Plan was developed for the Appellant, effective September 29, 2009, to develop effective lessons, and to learn how to use accommodations and modifications for students who had special education needs. The Action Plan also focused on improving the learning climate by developing individual learning logs for students as well as providing opportunities for the Appellant to observe experienced peer teachers.
9. As of December 2009, the Appellant had not implemented any of the classroom management or content-related suggestions made in the Action Plan.
10. On December 14 or 19, 2009, Ms. Nicholson and Mr. Michael Austin, administrator of the Special Education department at Fairmont Heights High School, developed another Action Plan for the Appellant.
11. Ms. Hall, an administrator in Sciences and English, observed the Appellant teaching on March 19, 2010. The Appellant had problems in the area of classroom management, lesson planning and execution.

12. Approximately one week prior to March 22, 2010, Ms. Michele McKoy, Special Education Instructional Specialist, met with the Appellant to discuss the concerns with the Appellant's teaching and offer him suggestions.

13. Ms. McKoy observed the Appellant later the same day in a general education class that he was co-teaching. The Appellant was in the corner of the room, asleep.

14. On March 22, 2010, Ms. McKoy conducted a formal observation of the Appellant's teaching. The Appellant arrived late for the class. Two students had earphones in their ears attached to playing iPods. PGCPS has a policy forbidding students to use personal electronic devices in the classroom. The Appellant did not take any action. Three students in the back of the room were engaged in personal conversations that made it difficult to hear the Appellant. The Appellant did not take any action. One student walked out of the classroom without any action taken by the Appellant. A male student changed his clothes while another student texted on a cell phone and a third student put on make-up; the Appellant did not redirect any of the students.

15. Dr. Papineau, an Instructional Specialist with the High School Consortium, observed the Appellant teaching on April 20, 2010. The High School Consortium is staffed by experienced teachers from the PGCPS central office to work with underperforming teachers to support and improve their teaching.

16. On April 20, 2010, students in the Appellant's classroom were texting on their cell phones, two girls were using their earphones and one student was observed sleeping. The Appellant did not intervene or otherwise correct any of the misconduct. Two students left the Appellant's classroom without permission. One student began shouting out and the Appellant told him to sit in his seat but the student ignored the Appellant. Students cursed in

the Appellant's classroom and had conversations across the room while the Appellant wrote on the front chalkboard.

17. The Appellant's lesson plan was unclear and the "warm up" assigned by the Appellant had nothing to do with the lesson for the day. The Appellant did not tell the students what the objective of the lesson was or review content vocabulary with them. The Appellant did not conduct any form of assessment with the students to determine if they learned anything from the lesson.

18. Ms. Nicholson conducted a formal observation of the Appellant on April 30, 2010. There were only four or five students in the classroom; one student stared idly at the ceiling and the Appellant did not redirect the student.

19. In the meeting with Ms. Nicholson after his formal observation, the Appellant had no suggestions as to how he could improve his teaching.

20. The Appellant's evaluation for the 2009-2010 school year was unsatisfactory. He received a rating of unsatisfactory in nine of eleven categories. The Appellant's certification status was changed to "second class" as a result of his unsatisfactory evaluation.

21. In August 2010, the Appellant wrote to Ms. Nicholson requesting that he be re-assigned from the special education department.

22. All teachers in PGCPS are trained and expected to teach all students, including those students receiving special education services.

23. During the school year 2009-2010, Ms. Nicholson, Ms. Daniel, Dr. Papineau, Mr. Shelton and Ms. Gilmore observed the Appellant teaching.

24. On September 20, 2010, Ms. Nicholson conducted an informal observation of the Appellant's teaching. The Appellant exhibited improved classroom management practices

and more effort in lesson planning. The curriculum objectives were not aligned to the High School Assessments (HSAs).

25. On September 23, 2010, the Assistant Principal, Ms. Daniel, observed the Appellant's classroom. Students in the Appellant's classroom were out of their seats and having conversations that were not related to what the Appellant was teaching.

26. On October 11, 2010, Ms. Nicholson observed the Appellant's classroom. The students were not on task and the Appellant's data log has not been updated. The Appellant did not probe or ask the students questions to gauge their understanding. Ms. Nicholson instructed the Appellant to see Mr. Austin immediately for assistance with aligning his lessons to the school-wide initiatives and for strategies to improve his class goals and objectives.

27. On November 3, 2010, Dr. Papineau conducted an informal observation of the Appellant's teaching. The students were not on task and the Appellant did not redirect them at any time. The Appellant did not probe or question the students to gauge their understanding of the material.

28. On November 4, 2010, Ms. Nicholson conducted a formal observation of the Appellant's teaching. The Appellant did not have clear outcomes for the lesson or an assessment tool to measure the student's learning. The students were not working in a lab although it was a chemistry class. The students did use some materials in the class without the proper safety gear.

29. On November 15, 2010, the Appellant received an overall rating of "unsatisfactory" on an Interim Teacher Evaluation. The Appellant was instructed to follow the Action Plan in order to improve the instructional outcomes for his students.

30. On December 1, 2010, Mr. Jerome Shelton, Assistant Principal, conducted an observation of the Appellant's teaching. There were four students in the Appellant's class; one student had earphones on (from an electronic device), another student sat with his arms folded and not working while another student checked his or her fingernails.

31. On December 3, 2010, Ms. Gilmore, Instructional Specialist, conducted an informal observation of the Appellant's teaching. One student was using her cell phone without redirection from the Appellant. There was no updated student work posted in the classroom.

32. On December 9, 2010, Ms. Daniel, Assistant Principal, conducted an informal observation of the Appellant's teaching. When Ms. Daniel arrived, the Appellant was sitting at the door and was not delivering any instruction. The Appellant got up and started moving around the students after Ms. Daniel entered the classroom. There were no objectives or lessons that were related to HSA review.

33. On January 19, 2011, Mr. William Barnes, Director, High School Consortium, held an interim evaluation conference with the Appellant and Ms. Nicholson. Mr. Barnes directed the Appellant to develop an Action Plan to address the areas in his interim evaluation that needed improvement. Mr. Barnes directed the Appellant to submit the plan by February 3, 2011.

34. On January 20, 2011, the Appellant requested Ms. Nicholson change his chemistry teaching assignments for the second semester.

35. On March 9, 2011, Ms. Nicholson observed the Appellant's teaching. The Appellant did not have a prepared lesson plan. The Appellant did not give Ms. Nicholson any reason why he did not have a written lesson plan. Students ran in and out of the Appellant's classroom and cursed without any redirection from the Appellant.

36. On March 24, 2011, Dr. Papineau observed the Appellant's teaching. The Appellant did not explain the lesson's objectives to the students and his lesson structure was incoherent. Students were off-task and responded rudely to the Appellant. Students came and left the classroom without any questioning from the Appellant.

37. In April 2011, the special education students who were assigned to the Appellant as a special education case manager had to be re-assigned because the Appellant failed to complete the paperwork necessary to update their Individualized Education Programs (IEPs). The case manager is primarily responsible for collecting data from other teachers and making sure the IEPs are up to date. The Appellant received training and assistance in completing the duties of a special education case manager. The Appellant did not update the students' IEPs but copied old IEPs; as a result, at least one student's IEP was out of compliance with federal and State law.

38. On May 9, 2011, Ms. Nicholson went to the Appellant's classroom to observe his teaching. The Appellant was asleep at his desk. Students listened to their electronic devices and played cards.

39. On May 27, 2011, Ms. Nicholson observed the Appellant's teaching. Students sat idly and did nothing without any redirection from the Appellant. Other students stood up at the windows and made remarks that were off-task with no redirection from the Appellant.

40. On May 27, 2011, the Appellant received an overall rating of unsatisfactory.

41. On July 20, 2011, a conference was held with the Appellant to address the unsatisfactory evaluation ratings for two years.

DISCUSSION

Section 6-202 of the Education Article of the Maryland Annotated Code provides that "[o]n the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant" for reasons including "incompetency" and "willful neglect of duty." Md. Code Ann., Educ. § 6-202(a)(1)(iv) and (v). (2008). The law further states that the individual "may appeal from the decision of the county board to the State Board." Md. Code Ann., Educ. § 6-202(a)(4). Under COMAR 13A.01.05.07A, the State Board "shall transfer an appeal to the [OAH] for review by an administrative law judge" under circumstances including an "appeal of a certificated employee suspension or dismissal" pursuant to section 6-202 of the Education Article. Under COMAR 13A.01.05.05F(1), the standard of review for dismissal actions involving certificated employees is described as "*de novo*." The next subsection provides: "[t]he State Board shall exercise its independent judgment on the record before it in determining whether to sustain the . . . dismissal of a certificated employee." COMAR 13A.01.05.05F(2). I read that to mean that I am to make a new decision, that is, a *de novo* determination based primarily upon the record created before the matter came to me. I do not read it to mean that I am to conduct an entirely *de novo* hearing, starting everything anew. Although an entirely *de novo* hearing is not contemplated by the regulation, COMAR 13A.01.05.04C provides that an appellant may present additional evidence if it is shown that the evidence is material and that there were good reasons for the failure to offer the evidence in the proceeding before the local board. Even in such a case, however, COMAR 13A.01.05.07C(1) allows for the exclusion of additional evidence that is "unduly repetitious of that already contained in the record." The local board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05F.

Accordingly, I shall exercise my independent judgment based both on the record below and the supplemented testimony from Ms. Nicholson and I shall make a *de novo* decision as to whether the Appellant was incompetent or engaged in the willful neglect of duty. If I find that the Appellant was incompetent or willfully neglected to perform his duties, I will then determine whether dismissal of the Appellant is an appropriate sanction.

The evidence in this case overwhelmingly supports the conclusion that the Appellant was both incompetent and that he willfully neglected the performance of his teaching duties. Throughout his appeal, the Appellant has maintained that the reason he performed poorly was because he was being asked to teach chemistry and other subjects to students who needed special education services. He further argued that the problem was that he was teaching at one of the lowest performing high schools in Prince George's County.

The Appellant's arguments are utterly devoid of any merit. First, there was no evidence to contradict Ms. Nicholson's testimony on both February 8, 2012, and on April 3, 2013, that all teachers are expected to be able to teach their content area to both general education students and to students who need special education services. The record shows that the Appellant was assigned to teach students with special education needs prior to Ms. Nicholson assuming the position of principal at Fairmont Heights High School and that the Appellant did so for three years without complaint. In fact, the Appellant never complained about teaching students with special education needs until after the 2009-2010 school year when he received an unsatisfactory rating.

Further, Ms. Nicholson's testimony was unrefuted that the Appellant was always observed teaching in his certification area, which is Chemistry. Finally, staff from Fairmont Heights High School and from the High School Consortium documented and testified that the

Appellant's difficulties were not limited to his ineffectiveness in teaching students with special education needs. The Appellant exhibited two years of problems with the most basic elements of teaching. He had extremely poor classroom management skills and did not attempt to improve in this area despite repeated suggestions to him by more experienced teachers. Ms. Nicholson testified without contradiction that the students receiving special education services had a range of needs but had all been assessed as being capable of taking chemistry with the appropriate accommodations and modifications of the curriculum. Ms. McKoy, a Special Education Instructional Specialist, was specifically asked whether the Appellant's deficits were limited to his ability to teach students with special education needs:

> Q Were any of your concerns – I know you said you are from the Special Education Department, but really, were your concerns about the Special Education components of [the Appellant's] teaching or the general components of his teaching?
>
> A My main concern was about just the basic instructional delivery and just observing the instruction, just delivering the curriculum; there was no content.

(February 8, 2012 T. p. 97, 13-21).

In addition to the fact that the Appellant's classroom environment was so chaotic that it was not conducive to learning, the Appellant was either unable or unwilling to improve in his ability to deliver an effective lesson. Ms. Nicholson, Ms. McKoy, Mr. Austin, Dr. Papineau and other observers repeatedly noted that he did not communicate the objective of the lesson to the students, repeatedly spent too much of the class time on the "warm up" activity, did not have a coherent, structured lesson, on at least one occasion did not have a written lesson plan despite the fact that he knew he was going to be formally observed, did not ask probing questions of the students to ascertain whether they were learning the material, did not display updated student work in the classroom, did not appropriately use labs or technology within the lessons, and did

not align the work he was giving the students to the HSAs or SATs the students would be expected to take.

Several of the observations included information that led me to question whether the Appellant was making even minimal attempts at instruction when he was not being observed. For example, on March 22, 2010, when Ms. McKoy was observing the class, the Appellant walked around the room while the students were doing their "warm up" activity. As he approached two of the students, they stated to the Appellant: "'Leave me alone! When did you start checking up on me?'" (Superintendent's Ex. 30, p. 1). During the next school year, in an observation that occurred on September 21, 2010, the students questioned whether they would be assigned textbooks or if they would be doing any lab work. (Superintendent's Ex. 31, p. 3 (document is not paginated)). One would expect that a month after school has started students would know about the basic procedures of their class such as whether they would be assigned a textbook and whether their chemistry class would incorporate lab work.

Finally, on two separate occasions, the Appellant was observed sleeping in his classroom when he was supposed to be delivering instruction.[2] I question whether these were the only times the Appellant slept or was not actively teaching. For example, during an observation on March 16, 2011, there was this following exchange between the Appellant and a student:

> T -- okay so -- that the way you solve equations.
> S -- he just told me something that I already know how to do.
> T -- Everyday you bring something here to do. Yeah...
> S -- Everyday?!
> T -- Yeah everyday, you bring Biology or math or something.
> T -- Okay look here you have to find – the effect of.

[2] In the Appellant's appeal to the Maryland State Department of Education, he stated that he vehemently denies sleeping in class. The Hearing Examiner, who had the ability to evaluate the Appellant's credibility as well as the credibility of the two witnesses who accused the Appellant of sleeping in class, found that the Appellant did sleep when he was supposed to be teaching. (Findings of Fact numbers 42 and 44). As the Appellant did not testify at the April 3, 2013 hearing, nor did he offer any other evidence that would refute the accusation that he was observed sleeping by two different witnesses, there is no evidence to support a reversal of the findings made by the Hearing Examiner.

S -- **[Appellant], I have never seen you up this much.**
T -- (Teacher smiles at student).
T -- Okay everybody must pass this class.
S -- I am gonna pass this class.
(Teacher walks out of the room to retrieve rulers – class is left unattended).

(Superintendent's Ex. 23, p. 5 (document not paginated); emphasis added).

There is absolutely no excuse that can justify the Appellant being asleep or failing to deliver instruction when he was supposed to be teaching.

Having found that the Appellant was incompetent as a teacher, and that he willfully neglected his teaching duties by sleeping instead of delivering instruction, I conclude that dismissal of the Appellant is the only appropriate sanction. Ms. Nicholson provided the Appellant with extensive and detailed assistance and guidance from staff at her school and from the High School Consortium. Unfortunately, the Appellant refused to accept any personal accountability for his incompetence as a teacher or his willful neglect of his teaching duties. He has continued to blame all of his problems on the fact that he has had to teach students with special education needs. Two different observers witnessed the Appellant asleep in the classroom on two separate occasions and on a third occasion a different observer noted that the Appellant sat by the door not delivering instruction until the observer arrived. All of the observers noted that the Appellant consistently failed to attempts to enforce the most basic of school rules such as restricting students from coming and leaving his classroom as they pleased.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law that the Appellant is incompetent and willfully neglected his teaching duties, and that the Appellant's dismissal was proper. Md. Code Ann., Educ. § 6-202(a); COMAR 13A.01.05.05F.

PROPOSED ORDER

I **PROPOSE** that the decision of the Prince George's County Board of Education dismissing the Appellant for incompetence and willful neglect of his teaching duties be **UPHELD**.

July 2, 2013
Date Decision Mailed

Ann C. Kehinde
Administrative Law Judge

ACK/rbs
#143541

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.

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