DEANA CASTO,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
WASHINGTON COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 99-8

OPINION

This is an appeal of the termination of a non-certificated secretary from Boonsboro High School in Washington County for inappropriate conduct in the presence of students as well as violations of local board policies related to alcohol and drugs and the general health and safety of students. Appellant asserts that the board's decision to dismiss her from her position was arbitrary, unreasonable and illegal.

BACKGROUND

Appellant had been employed by the Washington County Public School System since 1993. She began her work in the school system as a substitute calling clerk, and was later transferred to Boonsboro High School where she served as a secretary in the guidance department for half of the day and as a secretary in the principal's office for the other half of the day.

In the beginning of school year 1997-98, Appellant became acquainted with Ms. Brenda Hargett, an instructional assistant at Boonsboro High School. The two became friends and often went to high school sports events together. On February 6, 1998, the two women went in Hargett's car to a basketball game at the school. On the way to the game, Ms. Hargett stopped at a liquor store and purchased orange juice and champagne. Appellant did not object to the purchase. They also purchased food at McDonalds which they ate in the car. Ms. Hargett made mixed alcoholic beverages for the two women to drink in the car. Prior to arriving at the game, Appellant drank about half of her beverage which was in a tupperware container. (Tr. at 29.)[1] She left the container with its remaining contents on the console of Ms. Hargett's car. Ms. Hargett consumed her entire drink. The women parked in the parking lot at the school and attended the game. (Tr. At 30.)

[1]The transcript of the hearing on August 10, 1998 is referenced as Tr.

At half time, the two women went back to Ms. Hargett's car where they had left their purses. Ms. Hargett's car was parked on school property. Appellant testified at the hearing before the local board that Ms. Hargett proceeded to snort white powder that Appellant thought could have been cocaine. Ms. Hargett offered some for Appellant to try, but Appellant declined. (Tr. at 34.) The two woman went back to the school for the second half of the game. Appellant did not notify anyone at the school as to what had just occurred at Ms. Hargett's car because she could not prove that it was cocaine and did not think that anyone would believe her (Tr. at 35.)

After the game, Ms. Hargett offered two students an invitation to ride in her car to see if Appellant's husband had arrived at a tavern where they were to meet after the game. The boys agreed and got into Ms. Hargett's car. One student got into the front seat of the car while the other student and Appellant got into the back seat. The student in front asked Ms. Hargett what was in the container on the console. Ms. Hargett indicated that it was champagne and orange juice and permitted the student to try the contents of the container. Appellant testified that she "knew it was wrong, but like we were in the car, I didn't feel like I had any control over the situation." (Tr. at 32.) After checking to see if Appellant's husband's car was at the tavern, Ms. Hargett drove back to the school and dropped the students off at their vehicle.

As the two women developed a closer relationship in early 1988, Ms. Hargett began making various comments to Appellant regarding male students. Detective Peter Lazich, who later conducted an investigation of incidents involving Ms. Hargett's inappropriate behavior with male students at the school, spoke with Appellant who apprised him of the following information:[2]

> During the first part of January 1998, Casto stated Hargett began talking about one of the tenth grade male students. Casto stated Hargett often talked about Student No. 2 and told her about incidents which occurred between the two of them while in school. Casto stated Hargett told her that Student No. 2 had on occasion "snapped" her bra and on another occasion, tried to spread her legs apart.
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> As the year went on, Casto stated it seemed like Hargett began to talk more about Student No. 2. During one conversation with Hargett, she told Deanna that she "felt obligated to have sex with Student No. 2."
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> On March 19th, 1998, the day after Student No. 2's 16th birthday, Hargett told Casto that she kissed Student No. 2 while in the cafeteria. She also told Casto Student No. 2 was a good kisser.

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[2]This information is contained in the Statement of Charges against Ms. Hargett. Appellant also testified to these incidents during her hearing before the local board.

Around this same time, Casto stated Hargett sent a note down to her office requesting she sign a hall pass and give it to Student No. 5 to bring back to her. Casto advised that she did not give Hargett the signed pass. On the phone that evening, Hargett told Casto she wanted the note to get Student No. 2 out of class.

The next day in class, Hargett sent a written note to Casto via Student No. 5. The note stated, "I need to do it." Deanna wrote back, "What," Hargett responded back, "You know what I mean, with Student No. 2." Deanna wrote back, "Please call me tonight, we will talk."[3]

During her conversation on the phone that evening, Hargett told Casto that, according to Student No. 2, "He has a condom in his wallet which he was going to use on her." Hargett again told Casto, she felt it was her "obligation to have sex with Student No. 2."

On March 19th, 1998, Casto stated Michelle Bonbright, a teacher at Boonsboro High School, moved Student No. 2 away from Hargett. According to Bonbright, Student No. 2 wasn't able to concentrate in class because he was paying too much attention to Hargett.

Dr. Becker confirmed Bonbright moved Student No. 2 for this reason. Dr. Becker also stated she had a discussion with Hargett and told her to quit giving Student No. 2 so much attention.

On Sunday, March 22nd, 1998, Casto stated the grandparents of [another student] were having a birthday party for him at the Pizza Hut on the Dual Highway. Hargett, who was invited to the party by [the student's] grandmother, stated she was going to go. Casto stated [the student] also gave her an invitation to go, but declined the invitation.

Casto stated Hargett attempted to talk her into going to the party with her and furthermore stated, they could go out with a couple of the boys after the party, but Casto refused to go.

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[3]Appellant testified that the note incident occurred approximately one week before she informed the guidance counselor chairperson on March 30, 1998 of Ms. Hargett's behavior. (Tr. at 80.)

> On Wednesday, March 23rd, 1998, Casto asked Hargett, "What happened after the party?" Casto stated Hargett just smiled and stated, "I can't tell."
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> Later that evening on the phone, Hargett told Casto she had sexual intercourse with both Student No. 4 (11th grade student) and Student No. 2. Hargett said, "One got in the car and the other out and vice-versa."
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> Hargett also told Casto she met with Student No. 4 on Thursday evening (03/26/98) and they had sex again. She also stated she performed oral sex on Student No. 4.

After informing another school secretary on Friday, March 27, 1998, of the events that had transpired concerning Ms. Hargett, Appellant was finally convinced to inform the school administration. On Monday, March 30, 1998, Appellant informed the guidance counselor chairperson, Ms. Lloyd, who then informed the vice-principal, Mr. Beard. Appellant claims that she did not report these revelations to school authorities sooner because she was not certain that Ms. Hargett was being truthful. It was only in March that she felt sure that there was some merit to the statements made by Hargett.

On May 1, 1998, Appellant was suspended with pay from her position as secretary for reasons discussed in a meeting she had with Dr. Becker, principal of Boonsboro High School, and Mr. Phillip E. Ray, Director of Human Resources. On May 7, 1998, Appellant was informed that she was terminated effective May 1, 1998 based on her "inappropriate conduct in the presence of students and disregard of Board of Education policy."

ANALYSIS

In *Livers v. Charles County Board of Education*, 6 Op. MSBE 407 (1992), *aff'd* 101 Md. App. 160, *cert. denied*, 336 Md. 594 (1994), the State Board held that a non-certificated employee is entitled to administrative review of a termination pursuant to § 4-205(c)(4) of the Education Article. The standard of review that the State Board applies to such a termination is that the local board's decision is prima facie correct and the State Board will not substitute its judgment for that of the local board unless its decision is arbitrary, unreasonable or illegal. *See* COMAR 13A.01.01.03E(1). For the following reasons, we find that Appellant has not met her burden of proving that the local board acted arbitrarily, unreasonably or illegally in this matter.

(1) Due Process Issues

Appellant argues that her due process rights were violated because she was not advised of the specific reasons for her termination and was not informed until the day of the hearing before the local board that her dismissal was also based on her failure to report matters involving Ms. Hargett in a timely manner.

The record demonstrates that Ms. Casto was apprised of the reasons for her termination and was given anopportunity to rebut the allegations against her during a meeting with the superintendent.[4] At the hearing before the local board, the superintendent testified that he provided Ms. Casto with "clear information about the violations that had occurred" and that "the Director of Human Resources and Dr. Becker provided her with clear evidence of violations of the policies." (Tr. at 137.) He stated that Appellant was given "a hearing where she was allowed to discuss and talk about any issue that she would like to discuss and talk about" and respond to the charges against her. (Tr. at 137.) The superintendent further stated that during his meeting with Ms. Casto, a question arose concerning her error in not reporting the information she had learned in a more timely manner and Ms. Casto "talked about it at length in that meeting." (Tr. at 138.)

Appellant also testified during her hearing before the local board that she met with Dr. Helen Becker, the principal of Boonsboro High School, who told Appellant that she was being terminated for "disregard for telling someone about drugs being on school property and not reporting it", for "consumption of alcohol before a basketball game," and for "having alcohol in the car on school premises." (Tr. at 69.) Appellant could not specifically recall if Dr. Becker said anything about not reporting Ms. Hargett's intentions towards any students in a more timely manner. Appellant stated that "she might have, but honestly, I'm being real - - I mean, I can't remember." (Tr. at 70.) Clearly, the record disclosed that Appellant was fully informed of the reasons for her termination in the meeting with the principal.

Even if Appellant were not fully aware of the extent of the violations which served as the basis for her termination when she met with the principal and then with the superintendent, she was certainly fully aware of the reasons for the decision at the time of her full evidentiary hearing before the local board. At that hearing Appellant, represented by counsel, testified on her behalf, presented evidence on her behalf, and examined witnesses. At no time did Appellant request a postponement in order to prepare for allegedly newly discovered reasons for her termination.

Appellant also contends that Washington County Board Policy JHF did not sufficiently place her on notice that her failure to more timely report Ms. Hargett's inappropriate conduct could result in her termination. Policy JHF states:

> The Board of Education of Washington County recognizes that a safe and healthful environment is a prerequisite for teaching and learning. The Board agrees to provide and maintain a safe and healthful environment as is in its authority to control. Employees, students, and parents are expected to assist and cooperate with the Board in fulfilling this responsibility.

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[4]A letter from Appellant's counsel appears to waive a meeting with the superintendent. A handwritten note by the superintendent on that same letter indicates his desire to give Ms. Casto the opportunity to be heard. (Letter dated May 7, 1998).

First, Appellant was charged with violating another, very precise board policy which alone substantiates her termination. Second, we find that policy JHF would place a reasonable individual on notice that he or she should promptly notify appropriate school officials of suspected inappropriate sexual behavior by a school employee towards a student. *See Couzantino v. Prince George's County Board of Education*, 4 Op. MSBE 446 (1986) (acknowledging that "catch-all" provisions are not impermissibly vague because they require a person to conform conduct to an imprecise but comprehensible normative standard). Information suggesting a pattern of conduct that exceeds the bounds of professional and appropriate contact between a school employee and students is related to the provision of a "safe and healthful environment for teaching and learning" because such contact can seriously and detrimentally affect the physical and psychological welfare of a student across all aspects of the student's life.

(2) Sufficiency of Evidence

Beginning as early as January 1998, Appellant possessed knowledge, which if true, indicated improper sexual behavior between Ms. Hargett and male students at the school. Even if the conduct did not occur on school grounds or during school hours, this improper behavior had potential detrimental impact on the welfare of the students involved. The most simple example of the effect of Ms. Hargett's behavior on one of the students was the fact that the student had to be physically moved away from Ms. Hargett during class so that he would not be distracted by her. Again, there are other more disturbing consequences which can result from the type of behavior exhibited by Ms. Hargett, and Appellant could have prevented the behavior, as well as its consequences, before it ever escalated to the level of sexual intercourse with students.

Moreover, State law requires all adults "who have reason to believe" that a child has been subjected to child abuse, including sexual abuse, to notify the local department of social services or law enforcement officials. *See* Md. Code Ann. Fam. Law § 5-705. Certainty is not a prerequisite for making the report due to the serious nature of the offense and the ultimate harm that can result to the child. Appellant possessed information concerning Ms. Hargett's activities and intentions towards male students several months before she actually reported Ms. Hargett to school officials. At a minimum, this information would reasonably lead an individual to believe that Ms. Hargett could potentially engage in sexually abusive behavior with a minor. Appellant's decision to wait until she was "sure" that the sexual acts had occurred before reporting to school administrators is unreasonable here, especially in light of the fact that the child abuse law does not require absolute certainty for the report required by social services.

Additionally, Appellant violated policy JHF when she failed to report the incidents that occurred on the evening of February 6, 1998, when she witnessed at least one under-age student consume an alcoholic beverage on or near school property. Appellant's judgment in failing to promptly report all of these incidents was seriously flawed.

Appellant was also discharged based on her violation of Washington County Board Policy JFCH on the "Use of Alcoholic Beverages and Drugs." That policy states:

> The possession, use and distribution of alcoholic beverages, illegal drugs, or other intoxicants on school premises, including Board of Education operated vehicle, or while in attendance at any Board of Education sponsored and supervised activity, creates a reasonable likelihood of interference with the instructional process and/or constitutes a reasonable danger to persons or property.
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> The possession, use, distribution, or conspiracy to distribute alcoholic beverages or illegal drugs in any quantity is prohibited on property owned by the Board of Education, on school buses, or at off-site school sponsored activities.
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> "Use" as cited above is not limited to on-site consumption, but includes the presence of alcohol and drug affected behavior.

Appellant claims that she did not violate the above policy because she did not consume alcohol while on school premises. The policy, however, goes beyond consumption and refers to "use" which is not limited to on-site consumption and includes the presence of alcohol. Thus, while Appellant may have actually consumed the alcohol just prior to entering school property, she still had alcohol present in her blood stream while she was on school grounds attending a school sponsored sports event. There was also alcohol present in the car in which she was riding.

Furthermore, Appellant was indeed in actual possession of alcohol while on school grounds. Although Ms. Hargett purchased the alcohol, Appellant was an active participant in consuming it. It is irrelevant that the tupperware container from which Appellant was drinking was owned by Ms. Hargett. Appellant exercised control over her beverage while in the car, drinking from a container which was separate from the container used by Ms. Hargett. Appellant failed to dispose of the contents of her container prior to entering onto school property.[5] In fact, the student who later consumed alcohol while in Ms. Hargett's car, drank from the container that had been used by Appellant.

(3) Whistleblower Violation

Although Appellant contends that the decision to terminate her violates the Maryland Whistleblower Law, Appellant does not elaborate on this claim in her appeal to the State Board. Because this law applies to employees within the Executive Branch of State Government and is not applicable to an employee of a local school system, Appellant's "Whistleblower" claim has no merit. *See* Md. Code Ann. State Pers. & Pens. § 5-301 *et seq*. More importantly, however, Appellant was terminated for her inappropriate conduct in the presence of students as well as her violations of local board policies set forth above.

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[5]Md. Code Ann. Educ. § 26-103 prohibits a person from possessing any alcoholic beverage on the premises of any school.

CONCLUSION

For these reasons, we find that the local board's decision to discharge Appellant from her position as secretary is reasonable and not otherwise illegal. Accordingly, we affirm the decision of the Board of Education of Washington County.

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February 23, 1999