

GRACE RICHARDSON,

Appellant

v.

NEW BOARD OF SCHOOL
COMMISSIONERS OF BALTIMORE CITY,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-20

OPINION

This is an appeal of the termination of a tenured teacher from the Baltimore City Public School System effective July 30, 1997. In accordance with COMAR 13A.01.01.03(D) & (E)(3), a hearing was conducted at the State Office of Administrative Hearings on October 26, 1998. The Administrative Law Judge issued a proposed decision on December 11, 1998, a copy of which is attached as Exhibit 1. Final oral argument before the State Board of Education occurred on February 23, 1999.

Having reviewed the record and considered the arguments of the parties, we adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge as set forth in Exhibit 1. We therefore affirm the decision of the New Board of School Commissioners of Baltimore City to terminate Appellant from employment with the Baltimore City Public School System.

Walter Sondheim, Jr.
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Edward Andrews
Vice President

Raymond V. Bartlett

JoAnn T. Bell

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George W. Fisher, Sr.

Morris Jones

Marilyn D. Maultsby

Judith McHale

Adrienne L. Ottaviani

John Wishoff

March 30, 1999

EXHIBIT I

GRACE RICHARDSON * BEFORE BRUCE T. COOPER,
APPELLANT * ADMINISTRATIVE LAW JUDGE,
v. * MARYLAND OFFICE OF
NEW BOARD OF COMMISSIONERS * ADMINISTRATIVE HEARINGS
FOR BALTIMORE CITY * CASE NO. 98-MSDE-BE-01-279
* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On or about October 1, 1997, Grace Richardson ("Appellant"), a teacher employed by Baltimore City Public Schools ("BCPS") received notification from Robert E. Schiller, Interim Chief Executive Officer ("CEO"), recommending termination. Appellant, appealed the recommendation to the New Board of Commissioners for Baltimore City ("Board"). Robert J. Kessler, Esquire, a Hearing Examiner of the Board ("Hearing Examiner"), conducted a hearing on March 28, 1998, pursuant to Md. Code Ann., Educ. § 6-202 (Supp. 1997). The Hearing Examiner upheld the CEO's recommendation to terminate the Appellant's employment as a teacher. The Appellant filed exceptions to the Hearing Examiner's recommendation to the Board. After reviewing the written exceptions, the Hearing Examiner's recommendation, and the record compiled by the Hearing Examiner, the Board, on July 30, 1997, adopted the Hearing Examiner's decision and ordered the

Appellant's termination from employment. The Board found that the Appellant:

- (a) knowingly violated the Edmondson-Westside Senior High School Number 400 ("Edmondson" or "School"), general accounting procedures and regulations for conducting a school fund-raising event, resulting in financial loss to the School;
- (b) mishandled fund-raising funds, records and supplies;
- (c) executed a contract with a candy supplier in the School's name without authorization;
- (d) mishandled fund-raising funds by not depositing all the money she collected in a school-based checking account; and
- (e) failed to appropriately account for missing candy sale proceeds.

Pursuant to Md. Code Ann., Educ. § 6-202(4) (Supp. 1997), the Appellant filed an appeal of the Board's order to the Maryland State Board of Education ("MSBE") and the matter was scheduled before the Office of Administrative Hearings. In accordance with the Code of Maryland Regulations ("COMAR") 13A.01.01.03P(1), a hearing was conducted on October 26, 1998, before Bruce T. Cooper, Administrative Law Judge ("ALJ"), at 11 101 Gilroy Road, Hunt Valley, Maryland. The Appellant was represented by John G. Koenig, Jr., Esquire. Jerome A. Nicholas, Jr., Assistant City Solicitor, represented the Board.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1995 & Supp. 1997) and the Rules of Procedure of the Office of Administrative Hearings, COMAR 28.02.01.

ISSUE

The issue on appeal is whether the Appellant's termination, pursuant to Md. Code Ann., Educ. § 6-202(a) (Supp. 1997), for willful neglect of duty and misconduct in office was proper.

SUMMARY OF THE EVIDENCE

A. Exhibits

The parties agreed to incorporate the entire record of the Hearing Examiner's proceeding as a joint exhibit. Besides the transcript of the proceeding, the documents included the following: Mr. Schiller's Statement of Charges; Rule 201.07 of the Board; the School's General Accounting Procedures; the School's Faculty Meeting Agenda for September 9, 1997; a copy of BCPS' Performance Review Rating Form, Classroom Observation Report and Annual Evaluation Report; Memoranda, dated September 8, 1997, August 26, 1996, and September 11, 1995, regarding procedures for reimbursement and purchasing items under the School's name; Syllabus for Bio-Nutrition/Nutrition Technology class; Memorandum, dated August 28, 1996, concerning the "New Approval Process Form for Fund Raiser Activities" with the Authorization Form attached; Memorandum, dated September 12, 1994, entitled "Approval Process for Fund Raiser Activities," with a Request for Permission for Fundraising Activity form attached; A Kathryn Beich Inc. Fundraising Agreement, dated September 25, 1996; A June 4, 1997, letter from Irby L. Miller, Principal, to the Appellant, detailing their meeting of May 29, 1997; Invoices for candy from Kathryn Beich, Inc., dated October 3 and 25, and November 8, 1996; A copy of check no. 1203 from the School to Kathryn Beich, Inc., dated November 1, 1996; Treasurer's Receipt, dated October 14, 1996; Profit statement prepared by Mr. Miller, undated (admitted solely for assistance in math calculations); Projected profit statement on fundraiser prepared by Kathryn Beich, Inc., undated; Appellant's Final Evaluation, dated June 30, 1997, with Conference Report Form and Evaluation

Form attached; and, memorandum from B. Donaldson to Mr. Miller, dated May 28, 1997, regarding the reimbursement of funds to the Appellant

Additionally, the parties requested all documents pertaining to this case be incorporated into the record. These documents included: the Hearing Examiner's decision; Exceptions, dated June 10, 1998, filed with the Board by the Appellant's representative; Response to the exceptions, dated June 15, 1998, filed by Mr. Nicholas; ORDER, dated July 30, 1998, from the Board's action of July 21, 1998; Appellant's request for an appeal, dated July 22, 1998; Memorandum, dated July 30, 1998, from MSBE acknowledging receipt of the Appellant's appeal; Response to appeal, dated August 5, 1998, from Mr. Nicholas; Notice of Pre-Hearing Conference, dated September 2, 1998; Pre-Hearing Statement from the Appellant, dated September 9, 1998; Pre-Hearing Order, dated September 10, 1998; and, Notice of Hearing, dated September 1, 1998.

B. Testimony

No additional witnesses were presented and the parties relied on the testimony from the Hearing Examiner's proceeding. The witnesses who appeared in that proceeding were Irby L. Miller, School Principal, and Kurt Schneidereth, Sales Consultant with Kathryn Beich, Inc., on behalf of the Board, and the Appellant, who testified in her own behalf. The Appellant did not offer the testimony of other witnesses.

FINDINGS OF FACT

After a careful review of the record, I find, by a preponderance of the evidence the following facts¹:

¹The Hearing Examiner's Findings of Fact are hereby adopted, but are modified in accordance with my findings.

1. The Appellant, Grace Richardson, has been a teacher with BCPS for 24 years. She is tenured and is the Department Head of Cosmetology and Barbering at Edmondson-Westside Senior High School (“Edmondson” or “School”). Her teacher evaluations during her career have been satisfactory, and there is no prior disciplinary action on her record.
2. On June 30, 1997, her evaluation for the 1996-97 school year was overall “Good” with two categories “satisfactory,” ten categories “good,” and two categories “superior.” She was graded as “good” in the category of “makes recommendations and carries out responsibilities consistent with system policy.”
3. The Appellant became involved with the Vocational Clubs of America (“VICA”) in 1979 and was a teacher adviser for the 1996-97 School Year. VICA is the national organization for students attending career technology schools. Edmondson is a career technology school.
4. In August 1996, the Appellant considered planning a candy sale to benefit Edmondson’s VICA chapter and help pay the cost for students to attend the Fall conference in Hagerstown.
5. Edmondson maintains about 30 school-based accounts for organizations, such as VICA, to engage in fund raising activities. Edmondson advances “seed” money to the student organizations, and VICA received approximately \$700.00 “seed” money from Edmondson for the 1996-97 school year.
6. Edmondson instituted General Accounting Procedures to ensure the accurate accounting and disbursement of funds. Some of these procedures include: maintaining appropriate receipt books and records provided by the Treasurer’s office; not leaving monies in desk drawers, classrooms, lockers, etc.; depositing funds in the main office within 24 hours of receipt; paying vendors with school checks and depositing all funds collected; receiving approval of the Principal or the Principal’s designee for all fund raising activities; using the Official Authorization Form; and, having only the Principal sign any school related contracts.
7. On or about August 28, 1996, the Appellant was sent a memorandum concerning the approval process for fund raising activities. Also, at the faculty meeting to begin the 1996-97 school year, Principal Miller discussed the procedures for reimbursement and engaging in the purchase of items under the school’s name.
8. Without receiving prior approval from the Principal or his designee, or filling out an authorization form for a fund raising event, the Appellant embarked on implementing a candy sale to raise funds for VICA.
9. On September 25, 1996, the Appellant executed a contract with the Kathryn Beich, Inc., a candy supplier, to engage in a fund raiser in which candy orders would be taken and monies collected by students and faculty with candy being shipped by the supplier. The Appellant, without authorization, signed the contract on behalf of Edmondson.

10. Under the fund raising agreement, proceeds from the candy sale would be split equally between Kathryn Beich, Inc., and VICA, exclusive of any tax owed the supplier.
11. On or about October 3, 1996, the Appellant placed an order for \$585.00 worth of candy from Kathryn Beich, Inc. An invoice was issued with the candy supplied to the Appellant and the bill was due on November 2, 1996. The total bill was \$614.25 (\$585.00 + \$29.25 (tax)).
12. On or about October 25, 1996, the Appellant placed a second order with Kathryn Beich, Inc., for candy valued at \$774.00. An invoice was issued with the candy supplied to the Appellant and the bill was due on November 24, 1996. The total bill was \$812.70 (\$774.00 + \$38.70 (tax)).
13. Sales from the October 3 and 25, 1996, candy orders were successful. The projected proceeds from these orders totaled \$2,718.00, with Kathryn Beich, Inc., receiving \$1,426.95 and VICA receiving \$1,218.05.
14. The Appellant was responsible for depositing the proceeds of the candy sale into VICA's account. The Appellant did not deposit all of the monies she received from the candy sale into the account. The Appellant deposited \$924.00 into the account instead of \$2,718.00.
15. On or about November 1, 1996, Edmondson remitted a check in the sum of \$812.70 to Kathryn Beich, Inc., for the October 25, 1996, candy order.
16. On or about November 8, 1996, the Appellant placed a third order for candy with Kathryn Beich, Inc. The candy ordered was valued at \$1,155.00. An invoice was issued when the candy was delivered to the Appellant and the bill was due on December 8, 1996. The total bill was \$1,212.75 (\$1,155.00 + \$57.75 (tax)). The projected proceeds from this order were \$2,310.00, with Kathryn Beich, Inc., receiving \$1,212.75, and VICA receiving \$1,097.25.
17. The Appellant was responsible for depositing the proceeds of the third candy order into the VICA account. The total deposits from the entire candy sale amounted to \$924.00.
18. In the middle of December 1996, the Appellant did not report to the Administration or the police that candy had been stolen from a storeroom.
19. The Appellant was not in possession of a receipt book and records for the candy sale.
20. By February 1, 1997, the October 3 and November 8, 1996, invoices had not been paid and representatives from Kathryn Beich, Inc., contacted the Appellant and the administration at Edmondson.
21. Based on these candy orders, the total amount collected for deposit into the VICA account

should have been \$5,028.00, with VICA retaining \$2,388.30 and remitting \$2,639.70 to Kathryn Beich, Inc.

22. On or about March 27, 1997, by personal check, the Appellant paid \$1,212.75 to the Kathryn Beich, Inc., to cover the November 8, 1996, invoice.
23. Subsequent to March 1997, Edmondson, using general funds and the remainder of the VICA account, paid \$614.25 to satisfy the October 3, 1996, invoice. \$502.95 is the amount of general funds expended by Edmondson to pay this bill.
24. On or about May 28, 1997, Assistant Principal Donaldson requested reimbursement of \$200.00 to the Appellant for monies she paid for a hotel room at the VICA Fall Conference. Ms. Donaldson suggested that the reimbursed money could be used as part of the total due to the candy supplier.
25. On or about May 29, 1997, the Appellant met with Principal Miller and agreed to pay restitution to Edmondson for the monies used to pay Kathryn Beich, Inc., from the general fund. The Appellant reneged on this agreement and refused to reimburse Edmondson any monies.

DISCUSSION

Pursuant to Md. Code Ann., Educ. § 6-202(a) (ii) and (iv)(Supp. 1997), the Appellant was dismissed for “misconduct in office” and “willful neglect of duty” for violating accounting procedures, mishandling fund-raising funds and records, executing a contract on behalf of the School, and failing to account for proceeds from a candy sale. Upon a review of the entire record, the Hearing Examiner’s recommendation is supported by the evidence, and for the following reasons, I find no basis, either legal, procedural or factual, to modify the Appellant’s termination from employment.

The Hearing Examiner’s assessment of credibility of the Appellant only skims the surface. The Hearing Examiner found that the explanations of the Appellant that candy was stolen, that candy was not paid for, and that she slid unaccounted deposits under the Treasurer’s door to be implausible and unpersuasive. The Hearing Examiner believed some independent evidence supporting her explanations should have been offered. However, a detailed evaluation of the Appellant’s testimony demonstrates

how incredible it actually is.

The Appellant agreed that she did not fill out an authorization form for the fund raiser, that she executed a contract on behalf of the School, that she failed to follow proper accounting procedures for deposits, and that she could not account for the proceeds of the candy sale. The Appellant testified that other factors impacted her ability to account for the proceeds from the candy sale. She also claimed that an Assistant Principal in a telephone conversation with another Assistant Principal gave her verbal approval to conduct the fund-raiser for VICA. Principal Miller, however, specifically inquired about this approval, and the Assistant Principal denied granting approval for the fund-raiser.

After the Appellant placed two candy orders, the total proceeds in VICA's account should have been \$2,718.00. Instead, there was only \$924.00 in the account, since \$700.00 came to VICA from Edmondson as "seed" money. The Appellant, to account for the missing funds, stated that she left deposits under the Treasurer's door that were never placed in the account. Essentially, she accused the School Treasurer of causing money to disappear. She further claimed that teachers and staff, including Assistant Principal Donaldson and Major Byrd, a Baltimore City School Police Officer, failed to pay for candy. Both Assistant Principal Donaldson and Major Byrd were involved in the investigation of the Appellant. The Appellant, however, never disclosed to Principal Miller the names of the persons who failed to pay for candy.

The Appellant could not support her accusations because she asserted that all of her records from the sale were stolen from a notebook that she kept on her desk with her other notebooks. She testified that she did not realize that these records were missing until February 1997, when the School began its investigation. However, she never reported this theft to the police and no other items were

missing from the area where she kept her notebooks. Apparently, she contends that some unknown individual went to her desk area and took nothing else but all of the records pertaining to the fund-raiser. The disappearance of the records for the fund-raiser, supposedly maintained by the Appellant, is simply a convenient way to cover up her mishandling of funds and make unfounded accusations against other members of the School's staff. The Appellant also, for some unknown reason, accused her co-adviser of VICA of taking \$15.00 from the money authorized to pay a bus driver.

The Appellant further tried to account for the lost money by claiming that the third order of candy was stolen from the storeroom in her department. She complained that the School did not provide her with a location in which to store the candy. However, the candy sale involved in this fund-raiser was premised upon pre-sold candy. Thus, there was no requirement for the Appellant to store candy for a long duration. The invoice for the third shipment is dated November 8, 1996, with a due date of December 8, 1996. The Appellant testified that the candy was stolen in the middle of December 1996. The Appellant never explained why pre-sold candy remained in a storeroom for more than a month after the invoice date, and a week or more after the invoice was due. Moreover, the Appellant never notified the police or the administration about the theft of the candy when it allegedly occurred in December 1996. In February 1997, after being contacted by a representative of Kathryn Beich, Inc., and Assistant Principal Donaldson about the outstanding invoices from the fund-raiser, the Appellant, for the first time, mentioned the theft. Based on this testimony, she seems to allege that the School administration is responsible for the loss of the candy and money by not providing an adequate place for her to store the candy. The Appellant's elaborate story is simply unbelievable and lacks any probative value.

The Appellant blamed the loss of money on everyone except herself. She also stated that she paid \$1,212.75, because she thought that the representative from Kathryn Beich, Inc., would be personally responsible for the money, that she was a nice person, and that it was the right thing to do. She never acknowledged that it was her responsibility to pay the invoice. Moreover, the Appellant reneged on an agreement she made with Principal Miller to pay the School back for monies it expended from the general fund to pay for the first candy order. She has never accepted any responsibility for the loss of approximately \$4,104.00 in proceeds from the candy sale.

The Appellant, without prior approval or filling out an authorization form, engaged in a fund-raiser. She improperly executed a contract on behalf of the School. She failed to properly deposit funds from the fund-raiser, and she failed to account for approximately \$4,104.00 in proceeds from the sale of candy. She also failed to properly handle the records of the fund-raiser. She violated the General Accounting Procedures of Edmondson.

The Appellant's representative argues that coordinating a fund-raiser is an extra-curricular activity and does not represent the Appellant's capacity as a teacher. He asserts that her actions in this case cannot constitute "misconduct in office" or "willful neglect of duty." He referred to *Resetar v. State Board of Education*, 284 Md. 537, 399 A.2d 225 (1979), to show that the definition of "misconduct in office" is unclear.

The Court cites the following definitions of misconduct:

58 C.J.S. Misconduct (1948) says of the term used as a noun:

The word is sufficiently comprehensive to include misfeasance as well as malfeasance, and as applied to professional people it includes unprofessional acts even though such acts are not inherently wrongful. Whether a particular course of conduct will be regarded as misconduct is to be determined from the nature of the conduct and not from its consequences. (Id. At 818)

Black's Law Dictionary (4th ed. 1968) says of "misconduct":

A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness. *Mandella v. Mariano*, 61 R.I. 163, 200 A. 478, 479 (Id. At 1150.)

Resetar, 284 Md. at 560-61.

In the instant case, the Appellant manipulated her position as a teacher adviser to engage in an unauthorized fund-raiser. She ignored fundamental rules and regulations established at the School to monitor fund-raising activities. She also ignored the School's General Accounting Procedures, specifically in regard to deposits and record keeping. Her actions do constitute "misconduct in office."

Moreover, as the teacher adviser for VICA, she was responsible for monitoring the collection of funds in the role of a fiduciary. As the person responsible for the candy sale, the Appellant was to ensure that all proceeds were properly accounted and deposited. She failed to satisfy her obligations and responsibilities. At no time prior to February 1997, did the Appellant discuss the problems she was encountering with the fund-raiser. She did not reveal that candy was stolen or that people did not pay for their candy. She is unable to account for \$4,104.00. Her conduct constitutes a "willful neglect of duty."

Mr. Koenig argues that dismissal is unwarranted based on the facts of this case. He points out that the Appellant has been a teacher for 24 years at BCPS and her evaluations have been satisfactory. He commented that she has no prior disciplinary actions and that Principal Miller graded her as "good" in following procedures on her 1996-97 evaluation. The Board's representative, Mr. Nicholas, responded that Principal Miller believed that the Appellant would reimburse the School the

money it paid to the candy supplier and, since the case was still open, he did not use this matter as a basis in grading her evaluation. Mr. Nicholas, as well as Mr. Koenig, argued that the decision of the MSBE in *Turner v. Somerset County Board of Education*, 4 Op. Of MSBE 182 (1985), is applicable to the Appellant's case.

In *Turner*, an employee, who failed to properly remit approximately \$750.00 in adult education registration funds, was determined to have committed "misconduct in office" and "willful neglect of duty." Even though MSBE's Hearing Examiner recommended dismissal, MSBE determined that termination was too harsh a penalty. MSBE considered the following mitigating factors in reducing the termination to a suspension:

- 22 year employee with satisfactory performance
- no evidence of funds missing or misspent
- when asked to return all missing monies, money was returned
- no written policy concerning the handling of funds

In light of the decision in *Turner*, the Appellant's termination from employment should be upheld. The Appellant was unable to account for \$4,104.00 in proceeds from the fund-raiser. These monies are missing. When the Appellant was requested to reimburse the School for the money it expended from its general fund to pay the candy supplier, she initially agreed, but then reneged on this agreement. The Appellant failed to reimburse \$502.95 to the School. She has refused to accept responsibility for any of the monies missing from the fund-raiser. Moreover, the School has specific written policies on how to engage in a fund-raiser, procedures for executing contracts, and how to deposit funds. The Appellant failed to follow these procedures. Even though the Appellant has been a satisfactory teacher for 24 years, the evidence of record supports the Board's decision to terminate her employment.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Appellant's conduct constitutes "misconduct in office" and "willful neglect of duty" under Md. Code Ann., Educ. § 6-202(a) (ii) and (iv)(Supp. 1997).

PROPOSED ORDER

It is proposed that the decision of the New Board of School Commissioners of Baltimore City terminating the Appellant for "misconduct in office" and "willful neglect of duty" be **UPHELD**.

Date: December 11, 1998

Bruce T. Cooper
Administrative Law Judge