AARON DAVIS, SR.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
NEW BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS,	OF EDUCATION
Appellee	Opinion No. 01-18

OPINION

In this appeal, a teacher contends that his due process rights were violated when the local board terminated him from his position for willful neglect of duty without a hearing. Specifically, Appellant claims that the local board violated the notice requirements of the Baltimore City Public School System Policy for Disciplinary Actions as well as section 6-202 of the Education Article, Annotated Code of Maryland. The local board has submitted a motion for summary affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the motion.

FACTUAL BACKGROUND

Appellant, a teacher with the Baltimore City Public School System ("BCPSS"), was assigned to Thurgood Marshall Middle School, No. 171. On March 27, 2000, Charlene Cooper-Boston, the Area Executive Officer, recommended that Appellant be dismissed from his position as a science teacher. Dr. Cooper indicated that the principal of Thurgood Marshall had unsuccessfully attempted to contact Appellant for several months and that Appellant had submitted no documentation legitimizing his absence.[1] *See* 3/27/00 memo from Cooper-Boston. The recommendation was approved by Robert Booker, the Chief Executive Officer at that time.

On April 17, 2000, the local board executive sent Appellant a statement of charges recommending his immediate dismissal for willful neglect of duty. The statement of charges indicates that:

- Mr. Davis has not had any contact with his school since December 1999, nor has the school received any documentation for his absences.

- On March 9, 2000, a certified letter was sent to Mr. Davis' last known address. It was returned several days later and

[1]Appellant indicates that he moved in June 1999, resulting in a change of his address. *See* Affidavit of Aaron Davis, Sr.

marked 'Address Unknown.'

- The principal, Dr. George Rutherford, and the Area Executive Officer, Dr. Charlene Cooper-Boston, believe that Mr. Davis has abandoned his job.

Appellant claims that he never received the statement of charges and therefore did not request a hearing. Having received no request for a hearing from Appellant, on July 11, 2000, the local board affirmed the CEO's decision to dismiss Appellant for willful neglect of duty. A final order was issued on December 27, 2000.

ANALYSIS

Appellant raises two threshold procedural issues in this case. Appellant argues that the local board failed to notify him of the statement of charges for his dismissal in violation of section 6-202 of the Education Article. Additionally, Appellant argues that a copy of the statement of charges was not sent to his bargaining unit, the Baltimore Teachers' Union, in violation of BCPSS policy.[2] Appellant maintains that had he received proper notice of the charges against him, he would have requested a hearing.

With regard to Appellant's claim that the local board failed to notify the Baltimore Teachers' Union of the statement of charges, Appellant refers to a provision in the Baltimore City Public School System Policy for Disciplinary Actions, Circular No. 22, Series 1999-2000. That policy states the following, in pertinent part:

> The statement of charges will be sent by the Board Executive to the affected employee via certified mail with **a copy of said notice to the employee's bargaining unit**. The letter will indicate that the employee has ten (10) days from the date of receipt in which to indicate their desire for a Board hearing. The Board Executive will assign a case number to each statement of charges regardless of the employee's request for hearing. (Emphasis added).

See Policy at page 1, paragraph A.4. [3] In opposition, the local board responds that section 6-202

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[2]This same issue is raised in *James B. Johnston v. New Baltimore City Board of School Commissioners*. It is noteworthy that Robert Booker was the CEO for BCPSS at the time the statement of charges was issued in this case. In *Johnston*, Carmen Russo was the CEO for BCPSS at the time the second statement of charges was issued against Mr. Johnston.

[3]The BCPSS Policy for Disciplinary Actions was reissued in January 2000. See 1/5/2000 Memorandum from Booker. It is our understanding that this was the policy in effect at the time the statement of charges was issued in this matter. Moreover, the local board has presented

of the Education Article does not require a copy of the statement of charges to be sent to the Appellant's union representative.[4] Rather, section 6-202 only requires that the local board send Appellant a copy of the charges against him. Unfortunately, the local board does not acknowledge or address the provision in the BCPSS Policy for Disciplinary Actions requiring that notice also be sent to the union representative.

We concur with the local board that section 6-202 does not require that a copy of the statement of charges be sent to Appellant's union representative. However, the plain language of the BCPSS Policy for Disciplinary Actions in effect at the time the statement of charges was issued clearly requires the board executive to send a copy of the statement of charges to the employee's bargaining unit. The board executive did not do so in this case. Therefore, we find that the local board violated BCPSS policy.

We concur with Appellant that the *Accardi* doctrine applies in this case. That doctrine mandates that "[a]n agency of the government must scrupulously observe rules, regulations, or procedures which it has established." *See Bd. of Ed. of A.A. Cty. v. Barbano*, 45 Md. App. 27, 41 (1980). When an agency fails to do so, its action cannot stand. *Id.* "This principle applies to regulations that are intended to confer important procedural benefits upon an individual as opposed to regulations adopted to ensure the orderly transaction of business before the agency." *Singletary v. Maryland State Dept. of Public Safety and Correctional Services*, 87 Md. App. 405, 418-19 (1991). We believe that the requirement to notify the union representative of the statement of charges provides a safeguard should the employee, for whatever reason, not receive notice of the adverse employment action. The failure to provide notice to the Baltimore Teachers Union is therefore a violation of the *Accardi* principle. Thus, Appellant's dismissal without proper notice and an opportunity to defend himself constitutes a due process violation.

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nothing to controvert this.

[4]Section 6-202 of the Education Article governs the suspension and dismissal of teachers, principals, and other professional personnel. In the event of a suspension or termination, the provision requires that an individual receive notice of the charges against him and the opportunity to be heard. As stated in section 6-202(a)(2) and (3):

> (2) **Before removing an individual, the county board shall send the individual a copy of the charges against him** and give him an opportunity within 10 days to request a hearing.
> (3) If the individual requests a hearing within the 10-day period:
> (i) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; and
> (ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing. (Emphasis added).

Resolution of Appellant's other claim that the local board failed to send him a copy of the charges against him depends on whether Appellant properly advised his employer of his change of address. The local board maintains that Appellant never notified his employer of a change in address;[5] that the statement of charges was sent by certified mail to Appellant on April 7, 2000 at his last known address and was returned undelivered several days later. *See* certified mail receipt and envelope.

In response, Appellant in his affidavit states that he "notified" his assistant principal, Zory Kennon, of his new address on June 16, 1999. Although the local board has not addressed Appellant's assertions contained in his affidavit, we note that in the usual course of business one would generally advise an employer of an address change by notifying the personnel office in writing. Additionally, the statement of charges indicates that Appellant had no contact with his school as of December 1999, that a March 9, 2000 certified letter was sent to his last known address and returned marked "address unknown," and that the school principal and Area Executive Officer were of the belief that Appellant had abandoned his job. On the other hand, the local board subsequently learned of Appellant's change of address as evidenced by correspondence dated December 29, 2000, that was sent to Appellant at a new location. The local board has not explained how it became aware of the new address.

In summary, we believe the failure to send a copy of the statement of charges to the employee's bargaining unit in violation of the BCPSS Policy for Disciplinary Actions in effect at the time the charges were filed as well as the confusion concerning the school system's knowledge of Appellant's change of address raise due process concerns of inadequate notice.

CONCLUSION

For these reasons, we are remanding this appeal to the New Baltimore City Board of School Commissioners for the scheduling of a hearing on the dismissal charges.[6]

Philip S. Benzil
President

Marilyn D. Maultsby
Vice President

Raymond V. Bartlett

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[5]The local board has not submitted an affidavit to support its position.

[6]The State Board is taking this action solely because of due process concerns. The State Board has taken no position on the substantive merits of this appeal.

JoAnn T. Bell

Reginald L. Dunn

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May 23, 2001