

CAROL KOZORA,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-13

OPINION

This is an appeal of the termination of a non-certificated employee for misconduct in shredding official student record documents. Appellant argues that the superintendent's decision to terminate her from her position as instructional assistant in the guidance/registrar's office of Bowie High School was arbitrary, unreasonable and illegal. The local school system has filed a Motion for Summary Affirmance maintaining that the superintendent's decision should be upheld. Appellant has filed an opposition to the motion.

BACKGROUND

Carol Kozora was an employee of the Board of Education of Prince George's County for seven years. In her last year and one-half of employment, she served as an instructional assistant in the guidance/registrar's office of Bowie High School. Her job duties included filing documents, answering phones, performing miscellaneous errands, and shredding certain documents previously approved by the school registrar. She worked primarily for Ms. Linda Dowell, the Registrar, and Ms. Sarah Green, Chairperson of the Guidance Department. Ms. Dowell was her only supervisor who had the authority to order that documents be shredded (Tr. 20) and Ms. Kozora testified that Ms. Dowell often asked her to shred documents. (Tr. 29-30).

In February 1999, Ms. Kozora went to Ms. Green to relate her concerns that another employee was intimidating and harassing her. (Tr. 48). Appellant requested Ms. Green's help in obtaining a transfer to another school. She also informed Ms. Green that she was extremely distressed about this situation and was taking Valium to relieve the stress. (Tr. 49-50, 54). At that time, Ms. Kozora also filed a complaint with the Equal Employment Opportunity Commission ("EEOC"). The EEOC did not find that the alleged conduct violated any statute.

The transfer request was not granted and Ms. Kozora returned in the fall of 1999 to Bowie High School. On the morning of October 19, 1999, Ms. Kozora testified that upon her arrival at school, the employee who had intimidated and harassed her approached her. He allegedly threatened her to "watch her back" as he had heard that she had complained to the principal about his actions. (Tr. 43-44).

Appellant testified that although she was upset, she proceeded to her work area. The

previous day, two piles of documents had been left for Ms. Kozora to take care of: one group of documents was to be filed and one was to be shredded. (Tr. 58). Ms. Kozora testified that she accidentally placed the documents that were meant to be filed in the paper shredder. As soon as she realized that the wrong documents were in the shredder, she attempted to pull them out, causing the machine to jam. (Tr. 44-45). At that moment, Ms. Green entered the room and attempted to help Ms. Kozora retrieve the papers. Ms. Green then realized that the documents in the shredder were student disciplinary referrals.¹ When Ms. Kozora confirmed that they were student disciplinary referrals, Ms. Green called Mr. L.C. Martin, Dean of Academic and Student Affairs, since the principal of Bowie High School was not at school at that time. Ms. Kozora was instructed to go home for the rest of the day. (Tr. 30).

Mr. Martin later reported the incident to the principal, Ms. Brooks. Based upon Mr. Martin's appraisal, Ms. Brooks issued a written reprimand to Ms. Kozora. *See* Letter of Reprimand, October 21, 1999. This reprimand indicated that further disciplinary action might be taken against Ms. Kozora.

By letter dated November 30, 1999, Ms. Kozora was notified that her employment with the Board of Education of Prince George's County was terminated on the basis of "Misconduct in Office (by shredding official student documents)." *See* Letter of Termination, November 30, 1999.

Pursuant to the County's Regulations for Supporting Personnel, Appellant timely filed an appeal to the Superintendent of the Prince George's County Public Schools. On February 9, 2000, a hearing was held before Ms. Dorothy B. Stubbs, the Superintendent's Designee and Hearing Officer. At the hearing, the Board of Education argued that Ms. Kozora had intentionally shredded the documents and that such willful misconduct warranted her termination. (Tr. 4-5). Ms. Kozora argued that although she had shredded the documents, the action was accidental. She acknowledged that she had made a mistake and argued that progressive discipline should have been followed, with a disciplinary sanction imposed short of termination. (Tr. 7-8).

On March 29, 2000, Ms. Stubbs issued her Findings of Fact and Conclusions, recommending that the termination be upheld. On March 27, 2000, the Superintendent concurred with the recommendation, thereby upholding the termination.

On April 5, 2000, Ms. Kozora appealed the Superintendent's decision to the Board of Education and requested oral argument on the matter. Having received no response from the Board, on June 19, 2000, Appellant again requested oral argument.

On August 29, 2000, counsel for Appellant submitted a brief in support of Appellant to the Board. On September 8, 2000, counsel for the Superintendent submitted an opposition to

¹The student referrals were on forms that were pink in color.

appellant's brief. Oral arguments were presented to the Board of Education on September 14, 2000. In ruling on the matter, four Board members voted to overturn the decision of the Superintendent, two voted not to overturn the Superintendent and three members were absent. Because fewer than a majority of five members voted to overturn the Superintendent, the Superintendent's decision remained in place. *See* Order of Local Board, p.1.

Ms. Kozora then timely filed this appeal to the State Board of Education.

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). In reviewing disciplinary actions the State Board may uphold, reverse, or modify the sanction.

Before the local board, the Superintendent argued that "based upon testimony given by Ms. Green and Mrs. Brooks, Appellant was not an employee who was authorized to shred documents. Accordingly, Appellants [sic] conduct in proceeding to attempt to shred any documents, and in particular, student records, was not part of her authorized job responsibilities and was an act of misconduct in office." Response Memorandum at p. 3. It was this act of misconduct that formed the basis of her termination.

Appellant maintains that the Board's decision is arbitrary, unreasonable and illegal because "the Appellant's one act does not constitute misconduct as defined by the State Board of Education." Motion in Opposition to Summary Affirmance, p. 8. In support of that position, Appellant cites *Ford v. Frederick County Board of Education*, 7 Op. MSBE 923, (1997), *Watkins, Jr. v. Anne Arundel County Board of Education*, 6 Op. MSBE 764 (1994) and *Tibbs v. Montgomery County Board of Education*, 6 Op. MSBE 704 (1994). In each of these cases, non-certificated employees were terminated for various reasons, such as misconduct and insubordination. However, in each of these cases, the employee was given one or more warnings in the form of progressive discipline that his or her conduct was inappropriate. The State Board each time found that the local board's termination of the employee was neither arbitrary nor unreasonable because the employee was repeatedly warned of the inappropriate conduct through progressive discipline, e.g., through counseling letters, letters of reprimand, suspensions and finally termination.

Appellant also cites *Resetar v. State Board of Education*, 284 Md. 537 (1979) in which the Court of Appeals quotes definitions of "misconduct" that include "willfulness" and "deliberate" but "not negligence or carelessness" in considering the termination of a teacher. 284

Md. at 561. The Court noted in that case that it was not arbitrary or capricious for the State Board to take prior reprimands of Mr. Resetar into consideration in meting out punishment. 284 Md. at 562. Unlike Mr. Resetar, Ms. Kozora had no prior reprimands on her record before the incident in question.

On the other hand, the board contends that because Appellant was not authorized to shred documents, her conduct was “an egregious and intentional act warranting termination of employment for misconduct in office” Motion for Affirmance, p. 2-3. The local board defends its decision to terminate by citing the seriousness of the incident, in that the destruction of these records could subject the school system to liability. It also claims that “Appellant could not be entrusted with continuing to perform ...future duties.” Motion for Summary Affirmance, p. 6.

However, we note that the Hearing Officer referenced Ms. Kozora’s uncontroverted testimony that she had on occasion been given permission to shred documents.² Findings of Fact, p. 12. In addition, Appellant noted that the shredded documents were duplicates and could be replicated, foreclosing any potential liability to the local school system. (Appellant’s Opposition, p. 7). Appellant also noted that as a support employee, she could be transferred to other support positions that would not involve handling confidential student documents. (Memorandum in Support of Appellant before the Local Board, 8).

Based upon our review of the record in this matter, we find that the shredding of the student disciplinary referrals was an act of misconduct for which the Appellant may be disciplined. However, under the specific circumstances of this case as set forth above including the absence of any prior discipline imposed on the Appellant, we believe that

²In her affidavit, Appellant states:

Linda Dowell, the Registrar, was the only individual that asked me to shred certain documents. Typically, in the course of my filing, if I could not locate a student’s file, I would ask Ms. Dowell for directions with regard to the document. After she reviewed it, she would usually ask me to shred it, unless it was an unusual case. Ms. Dowell was occasionally present in the room when I would shred documents, but I would also shred documents at her direction when she was not present as well.

We note that both Ms. Green and Ms. Brooks testified that they may not have known if Ms. Dowell had requested Ms. Kozora to shred documents. (Tr. 18-19, 34-35). In light of Ms. Kozora’s unrefuted testimony that she was given instruction by Ms. Dowell to shred documents on occasion, the fact that the school system did not call Ms. Dowell to testify otherwise is troubling. Ms. Dowell is the only other person who could have testified as to whether she assigned shredding duties to Ms. Kozora.

termination from employment is too harsh a sanction. We therefore modify the penalty to 30 days suspension without pay. *See, e.g., Bd. of Ed. of Prince George's County v. Waeldner*, 298 Md. 354 (1984) (State Board determined that lengthy suspension, not termination was the appropriate sanction for teacher misconduct involving students); *Patricia Stewart v. Board of School Commissioners of Baltimore City*, 6 Op. MSBE 208 (1991) (State Board determined that a one-year suspension rather than termination was the appropriate sanction for teacher misconduct involving a student).

CONCLUSION

For these reasons, we affirm the local board determination that Appellant was guilty of misconduct, but reverse the penalty of termination and direct the Board of Education of Prince George's County to reinstate Appellant with back pay reduced by a 30-day unpaid suspension.

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March 28, 2001