DIANA LYNNE WARD,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
NEW BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS,	OF EDUCATION
Appellee	Opinion No. 01-22

OPINION

This is an appeal of the dismissal of a paraprofessional based on her failure to report for work for more than 30 days without authorization. Appellant claims that her termination was based on retaliation for her advocacy on behalf of special education students, including her own children. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has filed a reply opposing the motion.

FACTUAL BACKGROUND

Appellant began working for the Baltimore City Public School System ("BCPSS") as a contractual employee in the late 1980's. In 1995, she became a permanent employee with the school system and was given a 10 month position as an educational assistant at Patterson High School.[1] Tr. 77. On December 10, 1998, Appellant was transferred to an educational assistant position at Claremont Elementary School.[2] The position at Claremont was a 12 month assignment working with severely and profoundly disabled students who received special education services. Appellant claims that she had no experience with and received no training from her employer for dealing with the special education students who ranged in age from 13 to 20. Tr. 93-95.

December 14, 1998 was Appellant's first day of work at Claremont. On the following day, Appellant failed to report to work, indicating that she was ill and would not return until after the winter break. Thereafter, on January 4, 1999, Appellant again failed to report to work. On January 12, Appellant provided medical documentation dated January 8, 1999, stating,

> Diana Ward has been under my care since 12/8/98. She is able to return to work at any time with the exception of her current job and school which have caused her great stress and anxiety, and has

---

[1]Appellant's position at Patterson involved mostly administrative duties including counseling and attendance monitoring of students. Tr. 77-80.

[2]Appellant claims that she requested the transfer from Patterson because of a conflict between her and the principal related to Appellant's special needs children.

> contributed to the development of hypertension (high blood pressure).

Based on the medical documentation,[3] Appellant was transferred to a position as an educational assistant at Venable Senior High School effective February 5, 1999. Appellant was advised of this placement by letter dated February 1, 1999.

Appellant testified that in response to the new placement, she contacted the assigned personnel specialist who referred her to the principal of Venable. Appellant claims that she contacted the school and left a message for the school principal which was never returned, and spoke with the school secretary who advised her that Appellant's position entailed working with severely and profoundly disabled students. Tr. 136-37. In a letter to Reginald Robinson, Interim Director of Special Education, Appellant raised concerns regarding her assignment at Venable, indicating her belief that the placement was inappropriate and that the assignment was in retaliation for her special education advocacy.[4] *See* letter of February 4, 1999. Appellant did not report to her assignment at Venable.[5]

By letter dated July 29, 1999, Appellant was advised of a pre-termination conference with the Southeast Area Executive Officer ("AEO"), Dr. Patricia E. Abernethy, scheduled for August 12, 1999, due to Appellant's extended absence from work without permission in excess of thirty days.[6] The letter indicated that Appellant's abandonment of her position with the school system would be discussed at the conference. The letter further advised Appellant that failure to appear at the pre-termination conference would result in termination of employment with the school system.

Appellant contacted Dr. Abernethy on August 11, 1999, one day prior to the scheduled pre-termination conference, and advised Dr. Abernethy that she would not be attending the conference which she viewed as "irrelevant" and "improper." Tr. 21, 139. Appellant did not

---

[3]At some point, Appellant submitted medical documentation for the time that she was on leave from December 7, 1998 through January 12, 1999.

[4]Appellant did not receive any written response to this communication.

[5]Appellant testified that she began receiving unemployment compensation starting in January 1999 and received it through June 1999. Appellant indicated on her unemployment application that the reason for her unemployment was that she was waiting for reassignment. Tr. 132-33.

[6]Dr. Abernethy is the AEO for the Southeast area. Venable is in the Northern area. Dr. Abernethy testified that although Venable was not in her area, she initiated pre-termination proceedings because she was the AEO for the area where Appellant last appeared for work, and because the Northern AEO had retired on June 30, 1999. Tr. 20, 64-65.

attend the pre-termination conference on August 12.[7] Thereafter, Dr. Abernethy recommended Appellant's dismissal. The CEO accepted the recommendation and terminated Appellant from her position. Appellant was advised of this decision by letter dated September 27, 1999.

Appellant appealed her termination to the local board. The matter went before a hearing examiner who conducted a full evidentiary hearing where Appellant had the opportunity to present and cross examine witnesses and to submit evidence.[8] During the hearing, Appellant testified that her son, who is now deceased, was an original Plaintiff in the *Vaughn G.* special education lawsuit. Her other two children who also have special needs, have received or are receiving special education services from BCPSS. Tr. 75. Appellant claimed that her termination was retaliation by the school system for her staunch advocacy on behalf of special education children in Baltimore City Public Schools, including her own children, and complaints about the school system to the Special Master assigned to the *Vaughn G.* case.

The hearing examiner recommended that the decision of the CEO to dismiss Appellant be upheld. The local board accepted the recommendation of the hearing examiner and affirmed the CEO's termination decision.

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 support 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).

Based upon our review of the record in this matter, we find that Appellant violated the BCPSS attendance policy. Section C, subsection 5 of the disciplinary policy states:

> Non-certified employees who are absent without pay and/or approval for a period or periods in excess of thirty (30) days in a calendar year without the prior approval of their supervisor shall be in violation of the BCPSS attendance policies and subject to possible termination.

---

[7]Appellant testified that it was her understanding that Dr. Abernethy would get back to her with another pre-termination conference date. Tr. 140.

[8]Appellant was represented by counsel at the hearing.

Here, Appellant failed to report for work without authorization from February 5, 1999 forward.[9] Appellant provided no authorization, medical or otherwise, to substantiate the basis for her continued absence.

Despite Appellant's concerns about her assignment at Venable, her failure to report to work was inappropriate. Appellant has presented no evidence that she was advised by any school system official not to report for work while her concerns were being addressed. Although Appellant's remedy was through the grievance process, she did not use the existing procedures to resolve the matter. Instead, she just decided not to report to work.

While Appellant alleges retaliation for her special education advocacy, the record in this case does not support her claims. Rather, the record discloses that Appellant was terminated for rational and legitimate reasons. Moreover, we do not find any due process violations or other illegalities in the proceedings.[10]

CONCLUSION

For these reasons, we believe that the local board did not act arbitrarily, unreasonably, or illegally in terminating Appellant from employment. We therefore affirm the decision of the New Baltimore City Board of School Commissioners.

Philip S. Benzil
President

Marilyn D. Maultsby
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Reginald L. Dunn

---

[9]Appellant presented medical authorization substantiating her absences in December, 1998 through January 12, 1999. Her medical authorization dated January 8 indicated that she could not return to her position at Claremont. Appellant's transfer to Venable was not effective until February 5, 1999.

[10]Appellant's claim that she believed that Dr. Abernethy would get back to her with a new pre-termination conference date lacks credibility given Appellant's response that she would not attend the scheduled conference because she viewed it as "irrelevant" and "improper." Tr. 21, 139.

George W. Fisher, Sr.

Walter S. Levin, Esquire

Judith A. McHale

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

June 20, 2001