

BARBARA WEEKS,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-16

OPINION

In this appeal, Appellant contests the local board's decision affirming the unsatisfactory interim evaluation Appellant received on November 6, 1998, and the unsatisfactory annual evaluation she received on May 28, 1999. Appellant argues that the decision of the local board was arbitrary, unreasonable, contrary to sound educational policy, or in violation of the board's evaluation guidelines. The local board has filed a Motion to Dismiss, or alternatively, Motion for Summary Affirmance, maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

Appellant is a special education resource teacher at John Bayne Elementary School in Prince George's County. She has been employed by the school system since August, 1970. She received a satisfactory annual performance evaluation for each year from the 1970-1971 school year to the 1998-1999 school year. She also received a certificate of appreciation from the school for the year 1996-1997. (Exhibit 1 to Weeks affidavit).

Mr. Cash, the principal of John Bayne Elementary, stated that he first discussed his concerns with Ms. Weeks' performance at the end of the 1997-1998 school year, although she received an overall satisfactory evaluation for that year. (Cash affidavit, p. 1). Cash stated that Appellant had problems with preparation for special education Multi-Disciplinary Team ("MDT") meetings, had left those meetings emotionally distraught, and that she was having great difficulty getting along with other staff members. Ms. Weeks acknowledges that she had left an MDT meeting in February, 1998 in tears (Weeks affidavit, p. 4) and ended up crying during a meeting in April, 1998. (Weeks affidavit, p. 4). Ms. Weeks states that the difficulties she was having with staff members were the result of those staff members treating her meanly or unfairly and because she is "an older white woman." (Weeks affidavit, p. 9). However, she also alleges that Mr. Cash never spoke to her about his concerns at her 1997-1998 school year evaluation conference. (Weeks affidavit, p. 8).

At her interim evaluation conference on November 6, 1998, Mr. Cash informed Ms. Weeks that the same behavior problems were continuing to occur in the current school year. He noted that other staff members were complaining about her performance, behavior and demeanor

and that she had failed to carry out her responsibilities as a special education resource teacher. (Cash affidavit, p. 1 and exhibits 1-5 attached thereto). He also discussed her leaving another MDT meeting in tears on October 28, 1998. Mr. Cash gave Ms. Weeks an overall unsatisfactory interim rating, based on her inability to relate positively to staff members and to work cooperatively as an effective team member. (Cash affidavit, p. 1 and exhibit 1 attached thereto). Ms. Weeks acknowledges that she did leave the October 28th meeting, but states that the action of other staff members upset her. (Weeks affidavit, p. 8). She also asserts that Mr. Cash and other staff members may be racist. (Weeks affidavit, pp. 5, 7, 8, 9,10).

Mr. Cash put Ms. Weeks on a performance improvement plan and instructed Carol A. Holland, her supervisor, to do a classroom observation. (Weeks affidavit, p. 9). After doing so, Ms. Holland recommended some intervention strategies. She instructed Ms. Weeks “to develop a communication system with the general education staff and to implement a more collaborative instructional delivery system.” Ms. Holland also arranged for a substitute for Ms. Weeks so that Ms. Weeks might observe another teacher who was successful in these matters. (Cash affidavit, exhibit 2, memorandum from Ms. Holland to Mr. Cash, attached thereto).

However, Ms. Weeks’ performance did not improve and on May 28,1999, she received an overall unsatisfactory on her annual evaluation. (Cash affidavit, p. 2 and Evaluation form, exhibit 2 to Weeks affidavit). The reasons for the unsatisfactory rating were the same reasons as for the interim evaluation. Because of the year-end unsatisfactory evaluation, Ms. Weeks was placed on a second class certificate by the local superintendent on June 23, 1999. That action resulted in Ms. Weeks being ineligible for any salary increment as long as she remained on second class certificate status. (Letter from Jerome Clark, dated June 23, 1999, exhibit 3 to Weeks affidavit).

By letter dated June 29, 1999 Ms. Weeks appealed her evaluation to the Superintendent requesting that her evaluation be revised to satisfactory and that she be transferred to another school. In that appeal, Ms. Weeks claimed that she had no follow up between the interim and final evaluation, that there were procedural defects in the evaluation process, that the unsatisfactory evaluation was in retaliation for Ms. Weeks consulting with her union representative, and that she was discriminated against because she is white and over 50. (Letter to Jerome Clark, dated June 29, 1999, exhibit 4 to Weeks affidavit, pp 1-2).

On October 4, 1999, Dr. Iris Metts, successor to Dr. Clark, reviewed the circumstances surrounding the evaluation and found that Mr. Cash had discussed performance problems with Ms. Weeks in the spring of 1998, and that the problems continued in the fall of 1999, resulting in the unsatisfactory interim evaluation. Dr. Metts also found that Ms. Weeks did receive assistance with intervention strategies. Dr. Metts did not find any evidence of bias or discrimination. As requested by Appellant, Dr. Metts forwarded the letter as an appeal to the local board for its consideration. (Letter of Iris Metts, dated October 4, 1999, exhibit 5 to the Weeks affidavit).

The local board received and considered affidavits from both Ms. Weeks and officials of the school system and heard oral argument on the matter on November 16, 2000.¹ The local board upheld the superintendent's decision by a vote of 5 to 2 on December 4, 2000, and ordered that the evaluations remain in Ms. Weeks' personnel file. However, the local board also voted to restore Ms. Weeks' teaching certificate to first class as of that date.² (Order of Local Board, exhibit 2 to Appellant's Notice and Appeal). Ms. Weeks filed a Notice of Appeal to the State Board on December 23, 2000.

ANALYSIS

Because this case involves a local policy or dispute regarding the rules and regulations of a local board, the State Board may not substitute its judgment for that of the local board unless the local board decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.01.03E(1)(a). At the outset, we note that the primary issues in this appeal are whether the unsatisfactory evaluations of Appellant on November 6, 1998 and May 8, 1999 by the principal were based on retaliatory and/or racist motives, and were procedurally defective.

With respect to the first claim, Appellant states that at the mid-year evaluation, the principal:

asked her if she had called her central office superior about her problems in the school. The Appellant replied in the affirmative and the principal immediately in her presence filled out the mid-year evaluation which rated her unsatisfactory in two areas of performance. On May 28, the principal asked the Appellant if she had called the union about her concerns over what her evaluation was going to be like. She again replied in the affirmative and the principal immediately in her presence filled out her annual performance evaluation which is the subject of this appeal.

(Response of Ms. Weeks, p. 2). Appellant states that these two questions from the principal demonstrate a retaliatory motive. Similarly, several times in her affidavit, Appellant states she was being discriminated against based upon her race. (Weeks affidavit, pp. 5, 7, 8, 9,10).

_____ However, Mr. Cash in his affidavit, describes the basis for the unsatisfactory evaluations:

¹The affidavits submitted to the local board are the same affidavits submitted with the pleadings to the State Board.

²Dr. Metts had already restored Ms. Weeks' certificate to first class status as of August 24, 2000 upon her own review. (Motion to Dismiss, p. 2).

My concerns about Barbara Weeks were initially addressed with her at the end of the 1997-98 school year. At the conference I held with her at that time, I discussed with her my concerns regarding preparations for special education Multi-Disciplinary Team meetings. Those concerns included reports from others that she had twice left those meetings being emotionally distraught, that she was unprepared for those meetings, that she did not organize properly for those meetings, and that she had great difficulties relating in a positive manner with staff members at those meetings. She disputed my evaluation of her performance and refused to acknowledge any difficulties. In addition, she began her continuing theme that I was discriminating against her based on age, gender and race. Additionally, she argued that I had no right to evaluate her performance.

The same problems that were brought to my attention during the 1997-98 school year arose again during the fall of the 1998-99 school year. Other staff members at the school, who complained of Ms. Weeks' performance, behavior, and demeanor, brought these problems to my attention. On November 6, 1998, I gave Ms. Weeks an interim unsatisfactory evaluation, in which I indicated that she needed to improve in the areas of "works cooperatively as an effective team member to achieve school goals and objectives" and "relates without difficulty to staff members and parents." (Cash Affidavit, Exhibit 1). Additionally, on the Evaluation, I commented that on two recent ARD meeting dates, Ms. Weeks failed to carry out her responsibilities as special education resource teacher and that she had difficulty relating to staff members. On that same date, I held a conference with her and discussed the same concerns I had had at the end of the 1997-98 school year. She again denied any difficulties, accused me of discrimination, and argued that I had no right to evaluate her performance. In addition, she blamed others for her difficulties in staff relations.

(Cash affidavit, ¶¶ 3-4).

Since this matter was submitted to the local board on affidavits, the local board essentially had to decide who were the more credible witnesses: Mr. Cash and the other teachers or Ms. Weeks.³ Determinations concerning witness credibility are within the province of the local board

³Ms. Weeks attached letters from teachers which she proffered as character references. However, as noted in two letters attached to Mr. Cash's affidavit, it is clear that these teachers believed that they were providing letters of reference for employment of Ms. Weeks, not

as trier of fact. *See, e.g., Board of Trustees v. Novik*, 87 Md. App. 308, 312 (1991), *aff'd*, 326 Md. 450 (1992) (“It is within the Examiner’s province to resolve conflicting evidence. Where conflicting inferences can be drawn from the same evidence, it is for the Examiner to draw the inferences.”); *Board of Education v. Paynter*, 303 Md. 22, 36 (1985.) The State Board may not substitute its judgment for that of the local board unless there is independent evidence in the record to support the reversal of a credibility decision. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994); *Kaleisha Scheper v. Baltimore County Board of Education*, 7 Op. MSBE 1122 (1998); *Corey Williamson v. Board of Education of Anne Arundel County*, 7 Op. MSBE 649 (1997); *Mecca Warren v. Board of Education of Baltimore County*, 7 Op. MSBE 328 (1996).

Based upon our review of the record, we find sufficient evidence for the local board to have found that Ms. Weeks’ evaluations were based upon her performance and not on the remarks allegedly made at the time the evaluation was completed or because of her race. Indeed, Ms. Weeks’ own affidavit notes a conversation with Mr. Cash in which he noted her inability to get along with both black and white teachers. (Weeks affidavit, p. 9).

Moreover, Mr. Cash’s affidavit and documentation of the complaints from other teachers concerning Ms. Weeks fully substantiate his unsatisfactory report. Thus, even if Appellant had been successful in creating an inference of retaliatory motive or racism, any inference is rebutted by the legitimate and non-retaliatory reasons provided in the evaluation. The fact that Appellant received prior good evaluations throughout her career does not preclude the possibility that she could receive an unsatisfactory review at some point in the future. Given the record in this case, we believe that Appellant has failed to meet her burden of proving that the unsatisfactory evaluations were motivated by retaliation for her calling the central office or consulting with her union or due to racism.

On the second issue, Ms. Weeks also claims that Mr. Cash:

violated the County Board’s evaluation guidelines when it [sic] completed her 1998-1999 annual performance evaluation; specifically the guidelines require that the evaluation “be completed at the time you discuss the evaluation with the teacher”. In this case, the record reveals that the principal had already completed the evaluation prior to the evaluation even beginning, thereby indicating a predetermination as to the outcome of the evaluation.

(Response of Ms. Weeks, p. 1). However, as quoted above, in the same document Ms. Weeks also claims that Mr. Cash filled out the evaluation “in her presence” and in her affidavit she states that “prior to the conference he had not completed my evaluation form.” (Weeks affidavit, p. 17).

character references. Both teachers state that Ms. Weeks obtained the references under false pretenses. *See* 5/9/00 letter from Jane Herring-Choate and 5/26/00 letter from Jan M. Johnson.

We believe the record reflects that the Board's Guidelines were not violated. Moreover, as pointed out in the Local Board's Motion for Summary Affirmance, even had the guidelines been violated, the purpose of the guidelines is to ensure that children are taught by competent teachers, not to give procedural benefits to incompetent teachers. *Board of Education of Anne Arundel County v. Barbano*, 45 Md. App. 27 (1980).

In a reply memorandum, counsel for Appellant also asserts that "the principal did not provide any level of mentoring or other assistance after the Appellant's mid-year evaluation. In his affidavit, the principal, however, describes the interventions that were offered:

Subsequent to our November 6, 1998 conference, Ms. Weeks met with Carol A. Holland, Instructional Supervisor for Special Education, who recommended some intervention strategies. In addition Ms. Weeks began working with Barbara VanDyke, Community Special Education Specialist, to assist her. Despite interventions from Ms. Holland and Ms. VanDyke, Ms. Weeks continued to exhibit difficulties in relating to staff members and problems in special education meetings for the rest of the school year. As a result, in her final teacher evaluation for the 1998-99 school year, I rated her as unsatisfactory in the same two areas and commented that she continues to have problems relating without difficulty to staff members and that she continues to have problems carrying out her responsibilities as an MDT member.

(Cash affidavit, ¶ 5; Exhibit 2 - 2/1/99 memo from Holland to Cash).

In summary, the local board considered the entire record in making its decision. Part of the board's deliberative process included making credibility decisions concerning the witnesses and their affidavit testimony. As stated above, the decision of the local board is considered prima facie correct. Appellant must demonstrate that the board acted arbitrarily, unreasonably, or illegally. From our review of the record, we believe that there is sufficient evidence to support the conclusion that the unsatisfactory evaluations were not motivated by retaliation or racism. *See Thelma Smith v. Carroll County Board of Education*, Op. 99-13 (2/13/93) (Insufficient evidence of discriminatory evaluation). We also believe that the evidence does not support the allegation of procedural violations.

CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Prince George's County.

Philip S. Benzil
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April 24, 2001