

JACQUELINE DENNARD-STOUTE,

Appellant

v.

BALTIMORE CITY BOARD OF SCHOOL
COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-32

OPINION

Appellant, a tenured special education teacher with the Baltimore City Public School System (“BCPSS”), contests her termination from employment with BCPSS for misconduct in office and willful neglect of duty based on her absences from work, failure to perform classroom duties, bizarre behavior, and failure to comply with Employee Assistance Program treatment requirements including failure to obtain clearance from a board certified physician of fitness to return to duty. Following a full evidentiary hearing, the local board adopted the hearing examiner’s findings and conclusions and upheld the termination. A copy of the local hearing examiner’s decision is attached as Exhibit 1.

Appellant appealed the local board’s decision to the State Board and the matter was transferred to the Office of Administrative Hearings where a hearing was conducted by an administrative law judge (ALJ).¹ Without referencing the local hearing examiner’s findings of fact and conclusions, the ALJ recommended that the local board’s decision terminating Appellant for misconduct in office or willful neglect of duty be reversed. Specifically, the ALJ concluded that “the reason Appellant has not performed classroom teacher duties since November 10, 1999 is because BCPSS prevented her from doing so” and “Appellant made a good faith effort to comply with vague, inconsistent and conflicting instructions from BCPSS regarding the requirements for her to be medically cleared to resume her classroom teacher duties.”

The local board has submitted objections to the ALJ’s proposed decision maintaining that the ALJ erred in concluding that Appellant’s failure to adhere to the prescribed guidelines and specific instructions of BCPSS did not constitute misconduct in office or willful neglect of duty. Appellant requested adoption of the ALJ’s recommendation. The parties presented oral argument to the State Board on January 29, 2002.

BACKGROUND

Appellant was a special education teacher and had been employed for 23 years in BCPSS.

¹The parties agreed that consistent with State Board regulations at COMAR 13A.01.01.03D & .03E(3), the hearing would be a *de novo* review of the record before the hearing examiner, with supplemental testimony from Appellant and argument from both parties.

At Steuart Hill Elementary School she was assigned to first, second, and third grade students. Her general duties included instruction, class preparation, and discipline. The principal testified that Appellant initially was an excellent teacher, but beginning in 1999 the principal observed Appellant exhibit several episodes of unusual behavior. At the local level hearing, the principal described Appellant's erratic behavior which triggered the referral of Appellant to the Employee Assistance Program (EAP):

The witness [principal] stated that she often observed Respondent walking back and forth, pacing the halls, in the office and on the school loading dock. At these times, Respondent's students were left unattended. Frequently, Respondent would be observed with one child, identified as Tanisha, while the other students were left unsupervised. Graves talked with Respondent and asked her about her behavior. She recalled Respondent saying that the students could take care of themselves. Graves also observed Respondent at school with her undergarments on top of her clothing. Again, she was very concerned about this unusual display and felt that Respondent was experiencing something out of the ordinary. Thereupon, Graves contacted her superior Irby Miller, Interim Southwest Area Executive Officer, around September 20, 1999. Shortly after this, Graves assigned a para-professional and a parent to assist in Respondent's classroom. Graves testified that after her early contacts with Miller, she felt that Respondent's unusual behaviors were becoming more frequent. Parents reported to her that Respondent cursed at them. Respondent was reported to have thrown a chair. Graves also had a parent conference at which Respondent was present. She noted that Respondent was agitated, making unresponsive comments and restless throughout the conference.

(Local hearing examiner's report, p. 2).

ANALYSIS

In her decision, the local level hearing examiner found that:

Respondent engaged in misconduct by failing to follow the directives of BCPSS as they related to the specific guidelines for her medical treatment and regimen.² These guidelines and

²The guidelines from the Baltimore City Employee Assistance Program stated:

1. You must be engaged in an outpatient treatment program.
2. You must provide documentation to show your compliance with your treatment recommendations.

conditions, followed a medical examination by a Board Certified physician of the Office of Occupational Medicine, who found Respondent medically unfit to teach. The guidelines for monitoring and review by EAP, were terms, conditions and prerequisites issued to Respondent preliminary to EAP and the Office of Occupational Medicine ultimately determining whether she could be returned to duty. Unless and until she had satisfied these requirements, BCPSS could do nothing in regard to processing her return to duty, since this return was conditioned upon a medical decision that only the Office of Occupational Medicine could make. . . .

Hearing Examiner Decision at 16-17.

As previously noted, the ALJ disagrees with the assessment of the local hearing examiner and finds that BCPSS gave vague, inconsistent, and conflicting instructions. Having reviewed the record including the transcript of the testimony before the local hearing examiner, we find that the ALJ has ignored certain significant pieces of evidence:

- At the meeting between the Appellant and EAP counselor on November 11, 1999, Appellant admitted that she was having problems that affected her job performance and agreed to undergo a fitness for duty medical examination that was scheduled for the following Thursday, November 18, 1999.
- Appellant did not appear for the November 18 scheduled examination which was rescheduled for Wednesday, December 15, 1999. Appellant appeared at the December 15th appointment but refused to submit to the examination. The examination was rescheduled for February 9, 2000. Appellant appeared and was examined by a board certified physician who determined that Appellant was not fit for duty. In the confidential letter to case manager Sheila Snell dated February 9, 2000, EAP counselor James R. Thomas noted:

Minimally, the examining physician indicates, Ms. Stoute must be engaged in an out patient treatment program to return to work. This program will monitor her compliance with the treatment recommendation.

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3. The program will be monitored by Baltimore City Employee Assistance Program.
 4. Failure to adhere to these guidelines will result in your not being allowed to work.

The letter advising Appellant of these guidelines told Appellant to contact Sheila Snell “to coordinate documentation and follow-up”. See letter of 2/24/00 from Kuyawa to Appellant.

- On May 5, 2000, Mr. Kuyawa, Director of Employment and Placement, sent a letter by certified mail and regular mail to Appellant reminding her that a release from the Pathfinder Health Services was not sufficient for her to return to work. He reiterated the conditions that were initially set forth by him in his February 24, 2000 letter that was also sent by certified and regular mail to Appellant. In both letters Appellant was requested to contact Sheila Snell within 10 business days to coordinate documentation and follow-up.
- By letter dated September 25, 2000, EAP counselor James Thomas wrote to Ms. Snell that Appellant:

is currently noncompliant with the treatment recommendations of the Baltimore City Employee Assistance Program. Her infrequent contacts with this agency have been both sporadic and self-serving. Apparently, Ms. Stoute's last visit to this office on Thursday, August 31, 2000, I suspect was prompted by a letter she received from Donald Rainey of your office of Labor Relations.

Ms. Stoute has never complied with the examining physician's recommendation that she seek and engage meaningful treatment, therefore, she has not complied with any treatment recommendations.

Since Ms. Stoute's absence from work exceeds 21 days, I suggest strongly that you invoke the provisions of AM-204-14 of Baltimore City's Department of Personnel's Administrative Manual. A copy of that rule is attached.

On the one hand the ALJ found that BCPSS failed to give Appellant clear instructions regarding the requirements for her return to work and that Appellant reasonably believed that she was complying with those directions. From the ALJ's perspective, under the circumstances as he understood them, the Appellant's conduct and actions did not constitute misconduct in office or willful neglect of duty. On the other hand the ALJ states in footnote 2:

This decision makes no findings of fact or conclusion of law as to whether the Appellant is medically capable of performing duties as a classroom teacher. Rather, it is a finding that the Board has failed to prove by a preponderance of evidence that the Appellant is subject to dismissal for misconduct in office and/or willful neglect.

Based upon our review of the record and transcripts of testimony, we believe that the local hearing examiner analyzed the evidence more carefully. In her mind, Appellant engaged in misconduct by failing to follow the directives of BCPSS as they related to the specific guidelines

for her medical treatment and regimen. As the local hearing examiner explained:

Respondent [Appellant] did seek medical intervention, including hospitalization and clinical appointments with Pathfinder Health Services. It is true that she was released by these facilities to return to duty. However, it was the responsibility of the Office of Occupational Medicine and EAP to review the treatment protocols and regimen, monitor them and to ultimately certify compliance with its guidelines. Thus although Respondent did maintain clinical appointments and received releases from the treating physician, these did not mitigate the requirements of EAP, the Office of Occupational Medicine and the BCPSS.

Respondent was advised of this orally, and she was advised in writing with the warning that her failure to comply would result in her not being permitted to return to duty. It is this Hearing Examiner's belief that Respondent sufficiently understood these directives. While it was suggested by her counsel that information given Respondent was contradictory and confusing to her, when viewing all of the evidence, it appears that Respondent did have sufficient facility to find the EAP office and the Office of Occupational Medicine, go to the Interim Area Executive's office, go to the office where she was scheduled for medical examination, go to the hospital and keep appointments with Pathfinder. Had Respondent actually been confused about the guidelines given her, she could have requested further clarification and sought assistance from resources outside of BCPSS, including outside professionals, her union and her treating physician. There is no evidence that she did this.

On August 31, 2000, Respondent went to EAP and met with James Thomas, her assigned EAP counselor. Based upon the testimony of Respondent, other testimony and documents in evidence, this was the first time since February or March, 2000 that Respondent returned to EAP. Her visit to EAP on August 31, 2000, followed the interaction she had with Sandra Graves, Principal at School #004 on August 28th, and followed a letter she received from Donald Rainey dated August 23, 2000. There is no evidence in the record that when she went to EAP August 31, 2000, she was there for the purpose of following the guidelines given her. There is no evidence of any discussion between Respondent and her assigned EAP counselor of her treatment or anything else relating to the guidelines that had been given her. Thus, Thomas followed up with correspondence stating that Respondent continued to be out of compliance with the guidelines of the examining physician and

with treatment recommendations. It was following this that the charges against Respondent were prepared by the CEO.

Local hearing examiner's report, pp. 15-16.

CONCLUSION

For these reasons, we reject the proposed decision of the administrative law judge and adopt the findings and conclusions of the local hearing examiner as set forth in Exhibit 1. We therefore affirm the termination decision of the Baltimore City Board of School Commissioners.

Marilyn D. Maultsby
President

JoAnn T. Bell

Philip S. Benzil

Dunbar Brooks

Reginald L. Dunn

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

evidence: Sandra Graves, Principal, School #004, BCPSS, Kenneth Kuyawa, Director, Employment and Placement, BCPSS, Donald Rainey, Director, Office of Labor Relations, BCPSS and Jacqueline Dennard-Stoute, Respondent. Also present as observers at the hearing were Lottie Dennard and Sean Stoute, Respondent's mother and son. Counsel on behalf of each of the parties made opening statements and closing arguments.

Evidence

Sandra Graves, called to testify on behalf of the CEO, stated that she is Principal of School #004, and in the second year of that assignment. She has been employed with BCPSS for 27 years. Respondent was assigned to School #004 and was a primary Special Education Teacher, assigned 1st, 2nd and 3rd grade students. Respondent's general duties included instruction, class preparation and discipline. The witness stated that initially Respondent was an excellent teacher. Beginning in September, 1999, the witness observed Respondent exhibit several episodes of unusual behavior. She also received reports from parents concerning Respondent's behavior. Her own observations coupled with the parent reports, caused the witness to be concerned for the safety and welfare of the students and Respondent.

The witness stated that she often observed Respondent walking back and forth, pacing the halls, in the office and on the school loading dock. At these times, Respondent's students were left unattended. Frequently, Respondent would be observed with one child, identified as Tanisha, while the other students were left unsupervised. Graves talked with Respondent and asked her about her behavior. She recalled Respondent saying that the students could take care of themselves. Graves also observed Respondent at school with her undergarments on top of her clothing. Again, she was very concerned about this unusual display and felt that Respondent was experiencing something out of the ordinary. Thereupon, Graves contacted her superior Irby Miller, Interim Southwest Area Executive Officer, around September 20, 1999. Shortly after this, Graves assigned a para-professional and a parent to assist in Respondent's classroom. Graves testified that after her early contacts with Miller, she felt that Respondent's unusual behaviors were becoming more frequent. Parents reported to her that Respondent cursed at them. Respondent was reported to have thrown a chair. Graves also had a parent conference at which Respondent was present. She noted that Respondent was agitated, making unresponsive comments and restless throughout the conference. Thereupon, Graves prepared a memo,

documenting her concerns to Irby Miller, **CEO-X-4**. She also advised Respondent orally and in writing that she was to meet with Mr. Miller, the Area Executive Officer, **CEO-X-2**.

On cross examination, Graves was questioned about whether a report was made to the Department of Social Services in regard to the Respondent throwing a chair in the classroom. Graves admitted in response to a question posed by Respondent's counsel that she is required to make a report if she suspects a child is in danger. However, Graves stated that DSS was not called, nor was a report made to DSS. Graves explained that in her judgment, no one was struck and Graves made sure that no child was in immediate danger because she was closely monitoring the situation and had parents in the classroom with Respondent. The testimony also indicated that shortly after this incident was reported to Graves, Respondent was administratively removed from her daily teaching duties.

The next witness called on behalf of the CEO was Kenneth Kuyawa, Director of Employment and Placement, Human Resources Division. Kuyawa stated that he had been employed with BCPSS for 27 years. The witness testified that his knowledge of Respondent was in the context of his Division facilitating and monitoring Respondent's fitness for duty. He stated that Respondent had been referred to the Baltimore City Employee Assistance Program, hereafter EAP. Following an initial assessment by EAP on November 11, 1999, during which Respondent admitted that she was having problems that impacted her job performance, Respondent was recommended for a medical evaluation. The first examination was scheduled on November 18, 1999, and the witness learned that Respondent had not submitted for the examination. The second examination was scheduled for December 15, 1999; the witness learned that Respondent refused to agree to be examined. On February 9, 2000, Respondent did appear and submit for a medical examination by a board certified physician, and she was determined to be "not fit for duty". Thereafter, Respondent was required to participate in an outpatient program and to be monitored by EAP. This information was contained in a memo to Sheila Snell, a Case Manager, assigned by Kuyawa to Respondent's case, from James Thomas, M.A., EAP Counselor **CEO-X-6**. Kuyawa notified Respondent of these required conditions per memo, dated February 24, 2000, **CEO-X-5**.

Subsequent to this, Respondent brought a letter to Kuyawa indicating that she had been participating in an outpatient program at Pathfinder Health Services. The contents of the letter

stated that Respondent was fit to return to duty. Kuyawa told Respondent that the Pathfinder release could not be the basis for her return to duty. Kuyawa concluded that Respondent was not compliant with his letter to her, dated February 24, 2000, **CEO-X-5**. Respondent had failed to permit EAP to monitor her treatment regimen. Thereafter, on May 5, 2000, Kuyawa sent a certified letter to Respondent. In that letter, Respondent was advised that she was required to coordinate her treatment regimen and all treatment and release recommendations with EAP, that EAP would monitor her progress and should she fail to adhere to these guidelines, she would not be allowed to return to work. Respondent was directed to contact Sheila Snell within ten days; Snell would then assist Respondent with coordinating the Pathfinder documentation, **CEO-X-7**. Kuyawa stated that to his knowledge, Respondent never complied with the guidelines set forth in the letters of February 24, 2000 or May 5, 2000.

On cross examination, the witness stated that he never saw a physician's report from EAP, nor did he speak with a physician. He could not provide any specific details describing EAP compliance procedures. He did recall Respondent coming into his office and meeting with himself and Sheila Snell. He could not recall the exact date of the meeting; however, he recalled that Respondent was upset, agitated and demanded to be cleared to return to work, based upon the release from Pathfinder that she was fit for duty. She was not happy when told that EAP would have to assess the documentation from Pathfinder. He also explained that Snell is the liaison between BCPSS and the City of Baltimore, Office of Occupational Medicine & Safety.

During the course of the cross examination, the witness was shown several documents by Respondent's counsel, on which the witness had been copied. The first, a letter dated December 21, 1999, from Irby Miller to Respondent, notifying her that she was not fit for duty and that she must submit medical documentation to Miller within 48 hours, **S-X-3**. The second from Miller to Michael Mayer, Labor Relations, dated January 3, 2000, with an attached letter from Respondent's physician, **S-X-4**. The third was a letter from Miller to Dr. Joyce Howard, Chief Physician, Office of Occupational Medicine, dated January 7, 2000, requesting that Respondent be given a fitness for duty examination and psychiatric examination; it contained a recap of events preceding the referral, **S-X-5**. The fourth letter was from Donald Rainey, Director of Labor Relations, to Respondent, dated August 23, 2000. In that letter, she was advised that she had not reported to work or provided proper documentation of her absence. She was directed to

provide information documenting her absence to the Southwest Area Executive Officer no later than August 31, 2000, **S-X-6**. The last letter shown the witness was a letter from Rainey to Charlene Cooper-Boston, Southwest Area Executive Officer, recommending that Respondent be dismissed from her teaching position, for failure to provide legal documentation supporting her absence from work and for failure to comply with the fitness for duty guidelines in Kuyawa letters, dated February 24, 2000, and May 5, 2000. In answer to questions from Respondent's counsel, the witness stated that he had no specific recall of these documents.

In response to questions on re-direct, the witness stated that it was the sole responsibility of the City's Chief Physician to determine whether a classroom teacher may resume the teaching duties following an absence for illness. His office facilitates and coordinates information between the Office of Occupational Medicine and the affected employee. Once the employee completes the course of examinations, directed by the Chief Physician, his office is informed of the decision. His office would not be privy to the medical reports. His office acts upon the medical decision of the Chief Physician. It was his understanding that because Respondent had not complied with the directives of the Chief Physician, her case with that office was closed for non-compliance. The witness also identified a memo that he received from Irby Miller, Interim Area Executive Officer, dated June 6, 2000, **CEO-X-8**. That memo requested that Respondent be processed for dismissal because as of that date she had failed to "submit for a fitness for duty examination and to be monitored by a physician with appropriate documentation submitted." This was followed with a letter, dated June 13, 2000, from Donald Rainey to Alan Harris, recommending the preparation of a Statement of Charges against Respondent based upon her non-compliance with EAP, **CEO-X-9**. Following that was a September 25, 2000 letter from James Thomas, EAP, Counselor, to Sheila Snell, Case Manager in Kuyawa's office advising her that Respondent was non-compliant with the treatment recommendations of EAP, **CEO-X-10**.

The last witness called on behalf of the CEO was Donald Rainey, Director of the Office of Labor Relations. He testified that he sent a letter to Respondent, dated August 23, 2000, when he was informed that she had been absent since November 11, 1999 and had failed to submit proper documentation before August 31, 2000. Respondent was also advised that her failure to comply would result in termination, **S-X-6**.

When questioned on cross examination, the witness could not recall whether Respondent

had previously been sent notice requesting documentation to support her absence. He also agreed that the letter he wrote stated “abandonment of position” would be grounds for termination. He could not recall whether Respondent had been assigned a position for the 2000-2001 school year.

The witness was then asked about Baltimore City Public Schools **Attendance Reliability and Analysis Program**, S-X-8. The witness agreed that an absence of one or five days could be one period of absence. He also understood what progressive discipline meant and was under the impression that Respondent had been absent continuously since November, 1999.

At the conclusion of the CEO’s case in chief, Respondent was called to testify in her own behalf. Respondent has been a BCPSS, Special Education Teacher for 23 years. She is the mother of three children and one foster child. She explained that DSS undertakes regular monthly assessments of her in connection with her fitness to be a foster parent. She provided no details concerning these assessments.

Respondent recalled meeting with Irby Miller in November, 1999. She remembered that when she met with Miller, she did not know why she had been referred to him. She denied that she had ever thrown a chair, but recalled a chair coming apart. The witness also stated that she never refused to submit to a fitness examination. In fact, she maintained she agreed to be examined on November 11, 1999, the date of her meeting with Miller. The witness was then shown a letter, dated November 11, 1999, from Miller directing her to report to EAP and indicating the location, S-X-10. The witness agreed that the letter did not provide the name of a person to report to or an appointment time.

The witness then stated that in December, 1999, she was admitted to the hospital because she was stressed. A document substantiating Respondent’s hospitalization at Sinai Hospital of Baltimore from December 12 to 21, 1999 was admitted, S-X-11.

Respondent recalled going to EAP in November 1999; however, she could not remember if a physician had evaluated her. She stated that upon her release from the hospital, she was cleared to return to work. S-X-11, dated December 21, 1999 states in pertinent part “patient is medically capable of returning to work on December 22, 1999”; it was signed R. Korman, M.D.

Respondent stated that she repeatedly went to the Area Office to ask when she could return to her classroom. In fact, she went to the Southwest Office every day, beginning

November 11, 1999. Following her hospitalization, she went to the Southwest Office each day from January 5 through 15, 2000. Then, Irby Miller told her not to return. She could not recall the specifics of the conversation with Miller when she was told not to return, and she could not recall whether he discussed with her the fitness for duty examination.

Respondent recalled receiving a letter from Kenneth Kuyawa, dated February 4, 2000, advising that an appointment had been made for her at EAP on February 9, 2000, **S-X-12**. She recalled keeping the appointment and meeting with Counselor Thomas and talking with a woman physician or psychiatrist for ten to fifteen minutes. She also recalled receiving **CEO-X-5**, a letter from Kuyawa. That letter stated that following the fitness for duty examination, she was determined not fit for duty. Thus, she was required to engage in an outpatient program, document compliance with the treatment recommendations, and told the program would be monitored by EAP. She was advised that should she fail to adhere to these guidelines, she would not be permitted to work. Thereafter, she enrolled in an outpatient program through Pathfinder Health Services. Documents were admitted indicating monthly appointments with a physician at Pathfinder. The physician's name on the documents was Dr. R. S. Ashai; the documents indicated that Respondent attended clinic appointments on April 24, May 19, June 16, September 14, October 16 and November 27, 2000, **S-X-13**. These physician's certificates indicated that Respondent was keeping her appointments for the months noted, that she was taking prescribed medication and that she was "clinically stable" and able to return to work.

Respondent testified that she was never told how EAP would monitor her compliance. She stated she provided the Pathfinder documents to Sheila Snell, Case Manager in Kuyawa's office. Respondent stated that she began treatment with Dr. Ashai, at Pathfinder in March, 2000 and she continues to be treated and to take prescribed medications.

Respondent testified that she repeatedly called Mr. Thomas, the EAP Counselor, to determine when she would be permitted to return to work. She stated that she left messages for Thomas; however, he never returned any of her calls. Respondent also testified that she received a letter, dated June 16, 2000, notifying her to report to her previous position at School #004 on August 28, 2000, **S-X-14**. She inferred from this that she had been cleared to return to work. She reported for duty on August 28th as directed by the letter. When she arrived, she was escorted out of the building by Mrs. Graves, the Principal. She was then taken to the Southwest

Office by one of the teachers. She still could not understand why she was not allowed to work, after her doctor had said she was released to return to duty. Respondent maintained that no one asked her to document her absences after being directed not to return to work by Irby Miller, Area Executive Officer.

Respondent provided testimony concerning her evaluations for the years 1995-1998, **S-X-15 a, b, c. S-X-15**. Her evaluation for the period ending June, 1998 indicated that she met expectations for all areas, with the exception of her contributions to the school program; she had 59 days of absence for the school year. The evaluation for the year 1996-1997 indicated that she met expectations for all areas except “classroom management skills and discipline procedures”; she was absent 32 days. For the year 1995-1996, she met expectations in all areas and was absent 31 days (11 occasions).

In response to questions on cross examination, Respondent agreed that Irby Miller, Area Executive Officer, had requested her to take a fitness for duty examination. She recalled going to the EAP offices on November 11, 1999. She could not recall if she had been found not fit for duty on that date. The witness was then shown a document from the EAP, dated November 11, 1999, which notes an arrival time of 10:23 and a departure time of 11:25 and notes: “Should not be allowed to return to work until the employee is willing to submit to a fitness for duty examination”. The document, signed by James R. Thomas, Counselor Psychology, contained Respondent’s name and Department, **CEO-X-11**. The witness was of the opinion the document did not say that she was unfit for duty.

Respondent was questioned about **CEO-X-5**, the letter sent to her by Kuyawa, February 24, 2000, stating guidelines for her to follow in preparation for her return to work. She stated that her interpretation of Kuyawa’s letter was that the documentation regarding the (outpatient) program in which she enrolled would be monitored, not the program. She then acknowledged that the letter stated that EAP was to monitor the program. The witness was then shown **CEO-X-6**, dated February 9, 2000, this document states the witness had been examined on that date by a board certified physician and found to be “NOT FIT FOR DUTY.” Additionally, the document stated “Minimally, the examining physician indicates, Ms. Stoute must be engaged in an outpatient treatment program to return to work. This program will monitor her compliance with treatment recommendations”, the document was from James Thomas, EAP counselor to Sheila

Snell, Case Manager, Department of Education. Respondent admitted this document stated the requirement that EAP would monitor her outpatient program. Respondent was also shown **CEO-X-7**; she agreed that it stated that a release to return to duty by Pathfinder Health Services was not sufficient to permit her to resume her teaching duties. That document was dated dated May 5, 2000. The witness also stated that she was comfortable going to Pathfinder and continued to do so; that it was her choice. She tried to contact EAP; however, when she was unable to contact Counselor Thomas, she did not complain to anyone regarding her inability to have him respond to her.

Respondent was then shown, **CEO-X-10**, a letter from Thomas of EAP to Snell of BCPSS, dated September 25, 2000. She was asked whether she had gone to EAP on August 31, 2000. Respondent stated that she did go to EAP on August 31, 2000. She provided the following background. Respondent stated that she had made no attempt to see Thomas of EAP before August 31, 2000 because she had concluded that the letter in June, 2000 from BCPSS stating her assignment at School #004 was effectively a clearance to return to duty. When she reported to work on the 28th of August, as the letter directed, Principal Graves told her to leave. She was not permitted to remain at School #004 on that date, so she went to EAP after she was not permitted to remain at school and after she received the letter giving her a deadline to submit the proper documentation by September 25, 2000, **S-X-6**. She stated that she had sent documentation to everyone, including Snell, Thomas of EAP and Mr. Horsey. Respondent subsequently admitted that the letter she received in June, 2000, **S-X-14**, notifying her of assignment to School #004, was a standard, form assignment letter sent to teachers each year and, in fact, her school assignment had not changed.

On re-direct the witness was shown a document, dated November 11, 1999, **S-X-16**, which indicates that following meetings with Irby Miller and James Thomas, EAP, her signature on the form indicated her willingness to consent to a "Fit For Duty Examination". The witness was shown another document, dated December 21, 1999, **S-X-3**. That document, a letter to Respondent, documents that due to Respondent's failure to report or refusal to submit, psychiatric examinations that had been scheduled had not occurred as scheduled. Her behavior on the second of the two dates caused the psychiatrist to conclude that Respondent was not fit for duty. Respondent was therein notified that she had 48 hours to submit to an examination with a

physician of her choice and to submit evidence of her fitness for duty. This letter was signed by Irby Miller. She stated that she submitted the required documentation, referring to the letter from Sinai Hospital **S-X-11**. She also stated she chose a physician referring to Dr. Ashai of Pathfinder. She also indicated that no one ever advised her of how the monitoring of the outpatient program would occur, nor was she told which programs are acceptable to EAP and which are not approved.

Summation by Parties

CEO

Counsel on behalf of the CEO argued that he was confident that the record supported Respondent's misconduct and wilful neglect of duties. He cited that the testimony and documentary evidence supported this conclusion. He stated that in November, 1999 Respondent failed to agree to be examined by EAP. Then, in December, 1999 her behavior at EAP, prior to the examination, was of such nature that she was found to be not fit for duty. Following this, Respondent apparently had three hospitalizations before January 7, 2000. In January, 2000, Irby Miller observed her, and he continued to feel that she was exhibiting unusual behaviors. He wrote a letter to the City's Chief Physician asking that Respondent be evaluated to determine her fitness for duty, **S-X-5**.

The evaluation of February 9, 2000 concluded that Respondent was not medically fit to resume her teaching duties. Thus, detailed letters were sent to her in February and May, 2000 providing guidelines for her return to duty. She consistently ignored these guidelines intent upon interpreting them her way. Counsel maintained that all of the evidence taken together supports the conclusion that the CEO has supported the charges and that Respondent should be dismissed for willful neglect of duty and misconduct.

Respondent

Counsel on behalf of Respondent maintained that in fact Respondent had responded to the directives given her in regard to preparations necessary to return to duty. First, the information given her for her EAP appointment in November, 1999 was vague. It failed to provide a name, a time or a date to report to EAP. Secondly, Respondent did report to EAP in December, 1999. She was instructed in one correspondence, **S-X-3**, to select a physician of her

choice and supply documentation of her fitness to work. She then admitted herself into Sinai Hospital. Upon her release, her physician signed a statement releasing her to return to duty, which she took to the Area Executive Officer. When she complied with that directive she was again referred to the City's Chief Physician for another fitness evaluation. When she was examined on February 9, 2000 and again determined to be unfit, subsequent compliance guidelines were created. Counsel maintained that these were also contradictory and it was not made clear how her treatment regimen was to be monitored. Of critical importance was whether at this juncture, Respondent did in fact comply. Counsel maintained that she did. She went to a treatment program, kept regular appointments, and produced documentation of these visits. Despite this, she was told that she was not following the procedures and guidelines of EAP. Finally, when she received the letter in June, 2000 notifying her to report to duty in August, she properly inferred that she was being returned to duty. Counsel also noted that neither testimony or documentary evidence in the record clarify what the guidelines actually meant or what it was that Respondent failed to do. The standards were never made clear to her, and she complied with them based upon her interpretation of them.

Counsel then reviewed the specifics of each of the charges and concluded that they had not been sustained by the evidence. He stated that Respondent had been in "out of pay status" since, November, 1999. He asked that Respondent be reinstated to duty.

Findings of Fact

1. Respondent was a BCPSS Special Education Teacher, assigned to School #004, at the time she was recommended for dismissal.
2. Between September and November, 1999, Respondent was observed by her Principal to exhibit behaviors which caused the principal to be concerned for the safety and welfare of the students, assigned to Respondent, and for Respondent.
3. Respondent was referred to EAP on November 11, 1999. Respondent kept this appointment and admitted that she was having problems that affected her job performance.
4. Respondent was referred for two medical evaluations, November 18 and December 15, 1999; she failed to appear at the first and exhibited behaviors on the second date which prevented her from being evaluated. EAP determined that Respondent was not fit to return to her teaching duties.

5. Respondent was admitted to Sinai Hospital, December 17, 1999. Upon her release December 21, 1999, she was given a physician's statement that she was medically capable of returning to work.
6. Beginning in January 5 - 15, 2000, Respondent went to the Area Executive Office each day. The Interim Officer observed her and had continuing concerns about Respondent's stability. He referred her to the City's Chief Physician.
7. On February 9, 2000, Respondent was examined by a Board Certified physician and found to be "not fit for duty." She was given specific treatment recommendations, which included the proviso that she submit her treatment regimen to the EAP for monitoring, that the treatment would be approved by EAP, and be cleared by EAP prior to her return to duty.
8. Respondent kept monthly clinical appointments with Pathfinder Health Services between March and November, 2000. She was given certificates by Dr. R. S. Ashai that stated she was taking medications, "clinically stable" and released to return to duty.
9. Respondent did not submit these forms to the EAP. Respondent did not meet with anyone from EAP or the City's Office of Occupational Medicine regarding her treatment regimen. Thus, after February 9, 2000, Respondent's fitness for duty was never reassessed by the City's Chief Physician or EAP.
10. Letters dated February 24 and May 5, 2000 placed Respondent on notice of the requirement to have EAP review, monitor and approve her continued treatment as terms and conditions of being considered for return to duty.
11. Respondent was accorded procedural due process by BCPSS in connection with the charges filed and the subsequent hearing.

Conclusions of Law and Recommendation

The case of Steadman v. S.E.C., 450 U.S. 91, 101 S. Ct. 999 (1980) establishes the burdens of proof required when an administrative body is authorized to convene a hearing and make a final disposition upon the evidence presented. This hearing officer is required to determine whether there is a preponderance of record evidence that supports the charges brought by the CEO against the Respondent. Having considered the entire record, including testimony and documentary evidence, it is the opinion of this Hearing Examiner that there is a preponderance of record evidence to support the charges against Respondent for dismissal from

her teaching position for willful neglect of duty and for misconduct.

The facts found support the conclusion that Respondent displayed behaviors between September and November, 1999 that resulted in her referral for medical evaluation to determine her medical fitness for duty. She admitted to an EAP counselor on November 11, 1999 that she was experiencing problems that were impacting her ability to perform her job. She continued to display behaviors in January, 2000, observed by the Interim Area Executive Officer, that called into question her stability. On February 9, 2000, Respondent was evaluated by a Board Certified physician and determined to be medically unfit for duty. She was given recommendations to follow with regard to treatment protocols and was advised that EAP would have to monitor her treatment regimen as a prerequisite to being reconsidered for duty.

Respondent did seek medical intervention, including hospitalization and clinical appointments with Pathfinder Health Services. It is true that she was released by these facilities to return to duty. However, it was the responsibility of the Office of Occupational Medicine and EAP to review the treatment protocols and regimen, monitor them and to ultimately certify compliance with its guidelines. Thus although Respondent did maintain clinical appointments and received releases from the treating physician, these did not mitigate the requirements of EAP, the Office of Occupational Medicine and the BCPSS.

Respondent was advised of this orally, and she was advised in writing with the warning that her failure to comply would result in her not being permitted to return to duty. It is this Hearing Examiner's belief that Respondent sufficiently understood these directives. While it was suggested by her counsel that information given Respondent was contradictory and confusing to her, when viewing all of the evidence, it appears that Respondent did have sufficient facility to find the EAP office and the Office of Occupational Medicine, go to the Interim Area Executive's office, go to the office where she was scheduled for medical examination, go to the hospital and keep appointments with Pathfinder. Had Respondent actually been confused about the guidelines given her, she could have requested further clarification and sought assistance from resources outside of BCPSS, including outside professionals, her union and her treating physician. There is no evidence that she did this.

On August 31, 2000, Respondent went to EAP and met with James Thomas, her assigned EAP counselor. Based upon the testimony of Respondent, other testimony and documents in

evidence, this was the first time since February or March, 2000 that Respondent returned to EAP. Her visit to EAP on August 31, 2000, followed the interaction she had with Sandra Graves, Principal at School #004 on August 28th, and followed a letter she received from Donald Rainey dated August 23, 2000. There is no evidence in the record that when she went to EAP August 31, 2000, she was there for the purpose of following the guidelines given her. There is no evidence of any discussion between Respondent and her assigned EAP counselor of her treatment or anything else relating to the guidelines that had been given her. Thus, Thomas followed up with correspondence stating that Respondent continued to be out of compliance with the guidelines of the examining physician and with treatment recommendations. It was following this that the charges against Respondent were prepared by the CEO.

It is this Hearing Examiner's conclusion that Respondent engaged in misconduct by failing to follow the directives of BCPSS as they related to the specific guidelines for her medical treatment and regimen. These guidelines and conditions, followed a medical examination by a Board Certified physician of the Office of Occupational Medicine, who found Respondent medically unfit to teach. The guidelines for monitoring and review by EAP, were terms, conditions and prerequisites issued to Respondent preliminary to EAP and the Office of Occupational Medicine ultimately determining whether she could be returned to duty. Unless and until she had satisfied these requirements, BCPSS could do nothing in regard to processing her return to duty, since this return was conditioned upon a medical decision that only the Office of Occupational Medicine could make. Further, based upon evidence in the record and inferences drawn from that evidence, it is this Hearing Examiner's conclusion that Respondent's misconduct was willful, negligent and violative of Section 6-202 (a), et seq, Education Article, Annotated Code of Maryland.

Thereupon, it is recommended that the charges of the CEO be sustained and that the Board accept her recommendation for the immediate dismissal of the Respondent as a teacher with BCPSS.

Respectfully submitted,
Elise Jude Mason