NORMAN L. NICHOLS,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
CAROLINE COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 02-11

OPINION

In this appeal, Appellant contests the local board's affirmance of the superintendent's decision to reclassify Appellant's teaching certificate to second class, thereby denying him a salary increment. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has filed an opposition to the local board's Motion.

FACTUAL BACKGROUND

Appellant is employed as a teacher at the Colonel Richardson Middle School ("CRMS") in Caroline County where he teaches music and two health/nutrition classes.[1] Appellant has been a teacher for approximately 33 years. He is certified in the area of music for grades 7-12 and in supervision and administration. Tr. H-33.

During the 2000-01 school year, the principal and assistant principal of CRMS conducted classroom observations of Appellant. Those observations noted that Appellant needed improvement in a variety of areas. *See* Reports of Classroom Observation dated 1/5/01, 3/21/01, 4/2/01, 5/21/01. The observation on May 21, 2001, noted that Appellant needed improvement in the following categories:

- Having written lesson plans;
- Stating learning objective(s) and standards for student performance;
- Using motivation to engage students in the learning activity;
- Pursuing lesson objective(s) in an organized, logical manner;
- Using a variety of instructional strategies;
- Differentiating instruction to meet individual needs;
- Utilizing instructional time effectively;
- Maintaining effective standards of student behavior; and
- Establishing and maintaining effective classroom procedures.

Appellant received an overall rating of "Unsatisfactory" on his evaluation for the 2000-01 school

[1]Appellant is also a minister. Tr. H-6.

year. The evaluation form indicated that Appellant needed improvement in instructional effectiveness, management skills, and professional ethics/interpersonal relationships. *See* Evaluation Form dated 5/24/01. Based on his end of year evaluation, Appellant was placed on a Performance Improvement Plan. Appellant's work history also reflects a pattern of performance problems involving, among other things, excessive disciplinary referrals of students, lack of control over classrooms activities, and imposition of his individual sectarian beliefs on his classroom students despite repeated admonishment from school officials and direction to cease such activity. *See* Employment History Documentation.

On May 25, 2001, Janet Fountain, the principal of CRMS recommended to the superintendent that Appellant's certificate be placed on second class for the 2001-02 school year based on unsatisfactory performance. By letter of May 30, 2001, the superintendent advised Appellant that he had accepted the principal's recommendation to reclassify Appellant's certificate as second class. The letter further advised Appellant that he needed to improve his performance to an acceptable level during the 2001-02 school year to warrant removal of the second class designation, and that failure to do so could result in termination. In accordance with law, reclassification of Appellant's certificate to second class status resulted in the denial of a salary increment based on experience for the 2001-02 school year.[2]

Appellant appealed the superintendent's decision to the local board and a hearing was conducted on August 7, 2001. Upon consideration of the evidence and the testimony, the local board unanimously affirmed the decision of the superintendent to place Appellant on a second class certificate for the 2001-02 school year, stating in part:

> The evidence and testimony presented established that the Superintendent's decision was based on the unsatisfactory evaluation provided by the Principal of CRMS, and by the Appellant's record which included, among other things, large numbers of disciplinary referrals to the Principal which indicate a lack of classroom control, repeated incidents involving the improper imposition of sectarian beliefs, and the significant need for improvement in the Appellant's teaching skills.

Local Board Decision at 2.

ANALYSIS

Preliminary Issues

As a preliminary matter, Appellant claims that two members of the local board should not

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[2]Section 6-301 of the Education Article provides that a "teacher or principal whose certificate is rated by a county superintendent as second class under § 6-102 of this title may not receive a salary increment based on experience."

have participated in his case based on a conflict of interest/appearance of impropriety. One board member was a former student of Appellant and the other board member has children who were former students of Appellant. For guidance on this issue, we look to Maryland case law concerning the recusal of judges from cases before them based on the appearance of impropriety. *See Regan v. State Bd. of Chiropractic Exam'rs*, 355 Md. 397, 410 (1999) (Applying generally the "appearance of impropriety" standard set forth in cases involving judges to members of Maryland administrative agencies performing quasi-judicial or adjudicatory functions). In order to overcome the presumption of impartiality, "the party requesting recusal must prove that the [decision maker] has a 'personal bias or prejudice' concerning him or 'personal knowledge of disputed evidentiary facts concerning the proceedings.'" *Jefferson-El v. State*, 330 Md. 99, 107 (1993). Thus, the mere appearance of impropriety or conflict of interest is insufficient to warrant recusal.

Here, Appellant has presented no evidence to substantiate "personal bias or prejudice" on the part of the two board members. The mere fact that Appellant taught one of the board members and taught the children of another board member does not, without more, require the board members to recuse themselves from participating in review of the appeal. When Appellant raised this matter at the hearing before the local board, the two board members indicated that they would be able to render an impartial decision. Tr. H-5. Based on the principles noted above, we do not find that recusal of the two board members was warranted in this case.[3]

Appellant further maintains that the local board acted illegally by hearing the appeal itself rather than referring the matter to a hearing examiner. Section 6-203 of the Education Article provides that "[f]or all proceedings before a county board under §§ 4-205 (c), 6-202, and 7-305 of this article, the county board may have the proceedings heard first by a hearing examiner."[4] The plain language of section 6-203 does not mandate the use of a hearing examiner. It merely allows the local board, at its discretion, to choose to have a matter heard first by a hearing examiner. Appellant's contention is therefore without merit.

Appellant also objects to the admission of hearsay evidence during the course of the hearing. The proceedings in this case consisted of a hearing before an administrative body which is not bound by the strict rules of evidence and in which hearsay evidence is admissible. *See, e.g., Travers v. Baltimore Police Dep't*, 115 Md. App. 395, 408 (1996); *Kade v. Charles H. Hickey Sch.*, 80 Md. App. 721, 725 (1989); *Eichberg v. Maryland Bd. of Pharm.*, 50 Md. App. 189, 192-193 (1981). Thus, we find no violation of law on this basis.

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[3]Along similar lines, Appellant argues that legal counsel for the local board created an impermissible conflict of interest by presiding at the local level hearing when he also represented the local board in a discrimination lawsuit initiated by Appellant. However, there is no evidence in the record to show personal bias or prejudice by legal counsel against Appellant. Moreover, a review of the transcript discloses that Appellant was afforded a fair hearing with the opportunity to present testimony, cross-examine witnesses, and submit evidence.

[4]This matter initially arose before the local board pursuant to § 4-205.

Merits of the Case

The standard of review applicable in this case is that the decision of a local board of education shall be considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.01.03E(1).

Under Maryland law, a teacher's certificate is either a first class or a second class certificate. Md. Code Ann., Educ. § 6-102(a). The law further requires each local superintendent to "classify the certificate of each teacher employed by the school system of his county at least once every two years." § 6-102(c). In determining the class of the certificate, the local superintendent is to consider the teacher's scholarship, executive ability, personality, and teaching efficiency. § 6-102(d). Moreover, as previously noted, § 6-301 of the Education Article prohibits a salary increment for a teacher whose certificate has been classified as second class based on experience.

Based upon our review of the record in this case, we find that the superintendent had sufficient reason to place Appellant on a second class certificate. Appellant's classroom observations and overall performance evaluation for the 2000-01 school year, as well as his previous work history, demonstrate deficiencies in performance in a variety of areas related to Appellant's teaching efficiency, executive ability, and personality.[5] These are all appropriate considerations for a reclassification of Appellant's certificate.

Appellant maintains that the evaluation which contributed to the reclassification decision was improper because it stemmed from four observations, three of which were conducted during his health and nutrition classes which are outside of Appellant's certification area.[6] There is nothing in State law or regulation to support this claim. COMAR 13A.07.04.02, which sets forth the minimum requirements for the evaluation of professionally certificated personnel, merely states that "[a]n evaluation shall be based on at least two observations during the school year." COMAR 13A.07.04.02A(4). This provision does not require that those evaluations be based on two observations within the individual's area of certification. We therefore find no merit to this

[5]Appellant claims that because his evaluation stems from his receiving a "Needs Improvement" rating in three of the four evaluation categories, an overall "Unsatisfactory" rating is improper. We find this is a distinction that has no impact on the outcome. Under COMAR 13A.07.01.02A(3), "an overall rating that is not satisfactory or better is considered unsatisfactory." Therefore, even if the overall evaluation had resulted in a "needs improvement" rating, the overall rating would still be considered "unsatisfactory" under the COMAR requirement.

[6]Appellant was assigned to teach two classes in health and nutrition. Under COMAR 13A.12.02.02B(1), certified teachers may be assigned to two classes outside of the teacher's area of certification.

contention.

Appellant also maintains that he did not receive appropriate notice of his deficiencies to allow sufficient time for him to correct the problems. He states that he was verbally advised of his unsatisfactory evaluation six days prior to being reclassified as second class. Based upon our review of the record, we find that Appellant is incorrect in his analysis. He received four classroom observations over the course of several months: January 5, 2001, March 21, 2001, April 2, 2001, and May 21, 2001. It is the culmination of these observations that led to his overall unsatisfactory rating for the 2000-01 school year. Each observation report notes deficiencies in Appellant's performance and behavior. Thus, we find that Appellant had sufficient notice of his performance problems and ample opportunity to rectify his deficiencies prior to having his certificate reclassified.[7]

Appellant also claims that two documents submitted into evidence at the hearing before the local board misrepresented the truth. One is the comment on the "Teaching Contract Chronology" that Appellant was "Released from contract 6/30/71." Appellant maintains that he was terminated without due process of law. Needless to say, termination is synonymous with being released from employment. Moreover, any alleged due process violation should have been challenged at that time, nearly 32 years ago.

The second is the comment "Rec'd needs improvement on eval. form" for the 1998-99 school year. A review of Appellant's evaluation form for 1998-99 discloses that he received an overall satisfactory, with no "needs improvement" indication. Thus, Appellant's assertion on this notation appears to be correct. However, as previously noted, the classification to second class certificate was based on many factors including his 2000-01 unsatisfactory evaluation, large numbers of student disciplinary referrals indicating lack of classroom control, repeated incidents involving imposition of sectarian beliefs, and significant deficiencies in teaching skills. We

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[7]Appellant's reliance on *Shief v. Board of Educ. of Montgomery County*, 1 Op. MSBE 470 (1978), is misplaced. In *Shief*, the State Board adopted the hearing officer's findings of fact and conclusions of law upholding the reclassification of Shief's certificate to second class. The hearing examiner found that while Appellant was only given two months' notice of her deficiencies, she was sufficiently observed during those two months and her supervisors conferred with her with enough frequency to give her ample opportunity to correct her deficiencies. 1 Op. MSBE at 473. Likewise, in this case, Appellant was given ample opportunity over the course of several months to eradicate any performance problems.

Appellant's also relies on *Cathcart v. Board of Educ. of Montgomery County*, 1 Op. MSBE 475 (1976). In *Cathcart*, the State Board adopted the hearing officer's findings of fact and conclusions of law reversing the reclassification of Cathcart's certificate to second class. The hearing examiner found that the reclassification had been made in violation of local board regulations requiring four observations subsequent to the midyear report and prior to evaluation. However, the Montgomery County Board regulations do not apply to Appellant who works for the Caroline County Board. Thus *Cathcart* is clearly distinguishable from Appellant's case.

therefore find no basis on this ground to reverse the local board.

Although Appellant claims he was subject to harassment, retaliation, and intimidation, he has failed to present any evidence to support this allegation. While Appellant has submitted an affidavit indicating his belief that the reclassification of his certificate was a response to his filing a discrimination lawsuit against the school system, this is a bald assertion that is insufficient to create a dispute of material fact.[8] As explained above, we find that the superintendent had a clear and reasonable basis for reclassifying Appellant's certificate.

Additionally, to the extent that Appellant has raised issues alleging a violation of the negotiated agreement between the Caroline County Teachers' Association and the local board, those matters are not appropriate for consideration before the State Board. The remedy available to Appellant is to file a grievance pursuant to the procedures set forth under that contract.

CONCLUSION

For all of these reasons, we find that the local board's decision upholding the superintendent's reclassification of Appellant's certificate to second class is not arbitrary, unreasonable, or illegal. Accordingly, we affirm the decision of the Board of Education of Caroline County.

Marilyn D. Maultsby
President

Reginald L. Dunn
Vice President

JoAnn T. Bell

[8]Appellant's affidavit also makes reference to other matters which we find irrelevant to the case at hand.

Philip S. Benzil

Clarence A. Hawkins

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

* Walter S. Levin, Esquire recused himself from participation in this appeal.

March 27, 2002