

DIANE YARBRO SWIFT,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-09

### OPINION

Appellant, a tenured teacher with Montgomery County Public Schools (“MCPS”), contests her termination from employment with MCPS for willful neglect of duty and insubordination. The local board has submitted a Motion to Dismiss maintaining that Appellant has waived her right to appeal the dismissal to the State Board. Appellant has submitted a reply that does not address her relinquishment of rights to an appeal.

### FACTUAL BACKGROUND

Appellant was employed as a teacher by MCPS. By letter dated December 15, 2000, James A. Williams, Deputy Superintendent of Schools, acting as the superintendent’s designee, advised Appellant that he was seriously considering recommending Appellant’s dismissal for willful neglect of duty and insubordination based on her refusal to return to work or to provide necessary medical documentation as to why she was unable to return to her job. Appellant had not worked since August, 1999, and had not provided medical documentation of her purported condition.<sup>1</sup> Dr. Williams offered to meet with Appellant and her representative to hear reasons why he should not recommend Appellant’s dismissal.

Dr. Williams met with Appellant and her attorney, Laura Jordan, on January 9, 2001. Subsequent to that meeting, Dr. Williams determined that there was sufficient basis to recommend Appellant’s dismissal. The superintendent adopted Dr. Williams recommendation and in turn forwarded to the local board his recommendation that Appellant be dismissed for willful neglect of duty and insubordination.

By letter of March 16, 2001, the local board notified Appellant of her right to a hearing on the superintendent’s recommendation. Appellant requested a hearing and the matter was referred to a hearing examiner. A pre-hearing conference was held on April 30, 2001, and the parties agreed to a hearing date of July 25, 2001.

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<sup>1</sup>In her appeal materials, Appellant claims that despite her submission of medical documentation, she was denied sick leave benefits by MCPS. However, she has never provided medical documentation in support of this claim.

By letter dated July 7, 2001, Appellant's attorney withdrew her appearance from the case. The hearing examiner postponed the hearing from July 25, 2001 to October 9, 2001, in order to allow Appellant time to retain new legal counsel and time for her new counsel to familiarize himself with the record. Appellant was advised of the postponement by letter dated July 22, 2001. Appellant retained new counsel, John S. Pressley, Esquire. Mr. Pressley confirmed his appearance as Appellant's attorney on September 13, 2001. The hearing examiner sent notice of the October 9 hearing date to Mr. Pressley on September 14, 2001.<sup>2</sup>

On September 18, 2001, the hearing examiner received an undated but signed letter from Appellant that stated, in full:

I Diane Yarbro Swift relinquish my rights to an appeal, scheduled for October 9, 2001. John F. Pressley, Esquire, is aware of my decision.

The hearing examiner forwarded Appellant's letter to the director for the local board and requested the director to take the necessary steps to terminate the appeal. In a decision issued September 24, 2001, the local board unanimously terminated Appellant from employment on the grounds of willful neglect of duty and insubordination.<sup>3</sup> The local board noted in its decision that Appellant had relinquished her rights to an appeal, thereby acceding to the discipline being recommended by the superintendent. Appellant filed an appeal to the State Board by letter dated September 29, 2001.

## ANALYSIS

This appeal is currently before the State Board on the local board's Motion to Dismiss and not on the merits of the case. Specifically, the local board maintains that when Appellant withdrew her challenge to the superintendent's recommendation for her dismissal, she acquiesced in the termination decision, thereby precluding further appeal of the matter to the State Board.

In its argument, the local board relies on *Williams v. Maryland Dep't of Human Resources, et al.*, 136 Md. App. 153 (2000). In *Williams*, the appellant did not oppose the appellees' motion for summary judgment on an age discrimination claim, but then challenged the judgment on that claim. The Maryland Court of Special Appeals held, in part:

Maryland law is well settled that "[t]he right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal."

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<sup>2</sup>Appellant was copied on the hearing notice.

<sup>3</sup>One board member was absent and did not participate in the decision.

*Osztreicher v. Juanteguy*, 338 Md. 528, 534, 659 A.2d 1278 (1995) (quoting *Rocks v. Brosius*, 241 Md. 612, 630, 217 A.2d 531 (1966)). Appellant’s assertion on appeal is inconsistent with his acquiescence to summary judgment on the age discrimination claim before the circuit court. We hold, therefore, that appellant may not challenge the grant of summary judgment on the age discrimination claim.

*Williams*, 136 Md. App. at 176. The local board also relies on *Eagan v. Calhoun*, 347 Md. 72 (1997), in which the Maryland Court of Appeals stated as follows:

In *Stone v. Stone* and *Wilson Brothers v. Cooley*, *supra*, we adopted the statement of that principle set forth in 19 AM.JUR. *Estoppel* § 50 (1939), now found in 28 AM.JUR.2D *Estoppel and Waiver* § 68, at 694-95 (1966):

“Generally speaking, a party will not be permitted to maintain inconsistent positions or to take a position in regard to a matter which is directly contrary to, or inconsistent with, one previously assumed by him, at least where he had, or was chargeable with, full knowledge of the facts, and another will be prejudiced by his action.”

*Eagan*, 347 Md. at 88.

We believe that Appellant’s actions are analogous to the actions of the appellant in *Williams*. Here, Appellant notified the board that she relinquished her right to appeal in her letter which was received by the hearing examiner on September 18, thereby agreeing to the superintendent’s recommendation to terminate her for willful neglect of duty and insubordination. Pursuant to Maryland case law, Appellant cannot take inconsistent positions or actions by acquiescing in the termination decision before the local board but contesting the termination before the State Board. Moreover, in her reply to the local board’s Motion to Dismiss, Appellant fails to address the local board’s argument or to provide an explanation for her letter in which she relinquished her right to appeal.

## CONCLUSION

For these reasons, we find that Appellant has affirmatively waived her right to appeal. We therefore dismiss this appeal.

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Marilyn D. Maultsby  
President

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JoAnn T. Bell

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Philip S. Benzil

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Reginald L. Dunn

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Clarence A. Hawkins

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Walter S. Levin, Esquire

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Karabelle Pizzigati

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Edward L. Root

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Walter Sondheim, Jr.

February 26, 2002