GLORIA ARCHER-WILLAMS,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS	OF EDUCATION
Appellee.	Opinion No. 15-37

OPINION

INTRODUCTION

The Appellant, who served as a teacher at Mergenthaler Vocational Technical High School, challenges the decision of the Baltimore City Board of School Commissioners (local board) terminating her for willful neglect of duty.

We transferred the case pursuant to COMAR 13A.01.05.07 to the Office of Administrative Hearings (OAH) for review by an Administrative Law Judge (ALJ). On September 21, 2015, the ALJ issued a proposed decision recommending that the State Board uphold the decision terminating Appellant from her teaching position, but that it do so on the basis of incompetency and not willful neglect of duty.

The Appellant did not file any exceptions to the ALJ's proposed decision.

FACTUAL BACKGROUND

The factual background in this case is set forth in the ALJ's proposed decision, Findings of Fact, pp.4-9.

STANDARD OF REVIEW

Because this appeal involves the termination of a certificated employee pursuant to §6-202 of the Education Article, the State Board exercises its independent judgment on the record before it in determining whether to sustain the termination. COMAR 13A.01.05.05F.

The State Board transferred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify or remand the ALJ's proposed decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications or amendments to the proposed decision. *See* Md. Code Ann., State Gov't §10-216. In reviewing the ALJ's proposed decision, the State Board must give deference to the ALJ's demeanor based credibility findings unless there are strong reasons present that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

CONCLUSION

The ALJ found substantial evidence in the record to support Appellant's termination based on incompetence. We concur. Even though the Appellant had prior years of satisfactory evaluations, during the 2012-2013 school year she had consistent problems with classroom management and provided ineffective instruction. She was not performing her duties in a competent manner, despite multiple attempts from the administration to help her improve and her placement on a Professional Improvement Plan. Accordingly, we adopt the ALJ's Proposed Decision and affirm the local board's termination of the Appellant.

Guffie M. Smith, Jr.
President

Absent
S. James Gates, Jr.
Vice-President

Absent
James H. DeGraffenreidt, Jr.

Linda Eberhart
Linda Eberhart

Chester E. Finn, Jr.

Larry Giammo

Michele Jenkins Guyton

Absent
Stephanie R. Iszard

Absent
Madhu Sidhu

Andrew R. Smarick

Laura Weeldreyer

December 8, 2015

GLORIA ARCHER-WILLIAMS	*	BEFORE NANCY E. PAIGE,
v.	*	AN ADMINISTRATIVE LAW JUDGE
BALTIMORE CITY BOARD OF	*	OF THE MARYLAND OFFICE
SCHOOL COMMISSIONERS	*	OF ADMINISTRATIVE HEARINGS
	*	OAH No.: MSDE-BE-01-15-09744

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On or about October 15, 2013, Tisha Edwards, the Baltimore City Public Schools' (BCPS) Interim Chief Executive Officer (CEO), recommended to the Baltimore City Board of School Commissioners (Board) that the Appellant's employment be terminated based on incompetency and willful neglect of duty. The Appellant filed an appeal. On December 4, 2014, Hearing Examiner Elise Jude Mason, Esquire, conducted an evidentiary hearing. Lori Branch-Cooper, Associate Board Counsel, represented the CEO; Christopher J. Greaney, Esquire, represented the Appellant. On January 9, 2015, the Hearing Examiner recommended that the Board affirm the termination based upon willful neglect of duty.

On January 27, 2015, the Board issued an Order affirming the Hearing Examiner's recommendation that the Appellant be terminated, and on March 18, 2015, the Appellant appealed. On March 24, 2015, the Maryland State Board of Education (State Board) forwarded the case to the Office of Administrative Hearings (OAH) to conduct a hearing in accordance with section 6-202 of

the Education Article of the Maryland Annotated Code; and for the Administrative Law Judge (ALJ) to submit proposed written Findings of Fact, Conclusions of Law, and Recommendations to the State Board in accordance with Code of Maryland Regulations (COMAR) 13A.01.05.05F.

I conducted the hearing on June 22, 2015, at the OAH in Hunt Valley. Ms. Branch-Cooper represented the Board and the Appellant represented herself.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board, and the OAH's Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 13A.01.05; COMAR 28.02.01.

ISSUE

Should the Appellant's termination be affirmed?

SUMMARY OF THE EVIDENCE

EXHIBITS

A copy of the exhibits presented during the hearing before the Hearing Examiner, as well as a transcript of that hearing, were made a part of the record. COMAR 13A.01.05.07B. The following is a list of documents constituting the record which was submitted by the Board.

- October 21, 2013 letter from Neil T. Ross, Baltimore Teachers Union, to Janet T. Johnson, Baltimore City Board of School Commissioners
- November 10, 2014 letter from Liya Amelga, Esq., to counsel
- December 4, 2014 Appeal Hearing Sign-In Sheet

CEO Exhibits:

CEO Ex 1	September 19, 2012 Observation Feedback Form
CEO Ex 2	October 1, 2012 Informal Observation Feedback Form
CEO Ex 3	October 8, 2012 Performance Improvement Plan (PIP) with attachments
CEO Ex 4	November 21, 2013 Formal Observation Report

CEO Ex 5	January 13, 2013 Oracle Self-Service Human Resources: Details: Main Observer
CEO Ex 6	February 4, 2013 Informal Observation Feedback Form
CEO Ex 7	February 5, 2013, Oracle Self-Service Human Resources: Details: Main Observer
CEO Ex 8	March 6, 2013 Informal Observation Feedback Form
CEO Ex 9	April 27, 2013 Oracle Self-Service Human Resources: Evaluation Review
CEO Ex 10	January 18, 2013 Memorandum to Appellant from Chris A. Stewart with attached January 30, 2013, February 1, 2013, February 5, 2013, February 22, 2013 Letters of Concern
CEO Ex 11	October 15, 2013 letter from Kim Lewis, Baltimore City Public Schools, to Appellant with attached Statement of Charges
CEO Ex 12	October 27, 2014 Application for Service or Disability Retirement
CEO Ex 13	October 28, 2014 memorandum from Division of Employee Services – Retirement Office to Appellant
CEO Ex 14	October 24, 2014 Direct Deposit – Electronic Funds Transfer Sign-Up Form with attached October 27, 2014 Application for Service or Disability Retirement

Appellant Exhibits:

App. Ex 1	May 23, 2002 Annual Evaluation Report
App. Ex 2	June 9, 2003 Annual Evaluation Report
App. Ex 3	June 8, 2004 Annual Evaluation Report
App. Ex 4	June 13, 2007 Annual Evaluation Report
App. Ex 5	June 11, 2009 Annual Evaluation Report
App. Ex 6	June 14, 2011 Annual Evaluation Report
App. Ex 7	June 7, 2012 Oracle Self-Service Human Resources: Evaluation Review
App. Ex 8	October 20, 2013 letter from Appellant to Jerome Jones with attachment
App. Ex 9	December 1, 2014 Letter of Recommendation

App. Ex 10 Appellant's Philosophy of Education

App. Ex 11 November 24, 2014 letter from Appellant To Whom It May Concern

- February 20, 2015 letter from Liya Amelga, Esq., to Counsel
- January 27, 2015 Order
- January 9, 2015 letter from Liya Amelga, Esq., to Counsel
- January 9, 2015 Board Summary
- January 9, 2015 Recommendation of the Hearing Examiner
- December 4, 2014 Transcript

Testimony

Because the hearing was conducted solely on the record below, no testimony was taken.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Appellant was hired as a probationary teacher by BCPS in 2001. She was subsequently tenured. From the 2001-2002 school year through and including the 2011-2012 school year, the Appellant was rated satisfactory, except for one year when she was rated proficient.
2. The Appellant was assigned to Mergenthaler Vocational Technical High School (Mervo) in 2010.
3. During the 2010-11 school year, the Appellant taught a business course with a co-teacher. She received a total score of 79 on her year-end evaluation, which is nine points above the minimum for a satisfactory rating (70-85 points). She was rated "proficient" in "professional responsibility," and "exemplary" for attendance and punctuality. The evaluation included a comment that she "is a team player and is

considered an integral part of the Mergenthaler community. Thank you for your support." App. Ex. 6.

4. During the 2011-12 school year, the Appellant taught mathematics. She received a total score of 72 on her year-end evaluation, two points above the minimum for a satisfactory rating. The evaluation included a comment, with respect to the "learning environment" that, "Planning indicates awareness of students' prior knowledge, skills and /or readiness levels. Planning reflects the use of Individual Education Plans, IEPs, and knowledge of individual needs, interests and/or learning styles." App. Ex. 7.
5. During the 2011-2012 school year, the Appellant experienced some difficulty managing behavioral problems with students in her math class.
6. The administration of the math department changed in the 2012-13 school year. The department head retired and Chris Stewart, Assistant Principal, became the academic administrator of the department.
7. In 2012-2013, the Appellant was in her third year at Mervo. She was assigned to teach honors geometry and algebra because it was expected that students in that class would be better behaved and thus decrease the difficulties with discipline the Appellant had experienced the prior year.
8. During the 2012-2013 year, the principal, Craig Rivers, and the Assistant Principal, Chris Stewart, conducted a number of formal and informal observations of the Appellant. These observations revealed that the Appellant was still experiencing difficulties with classroom management, including students permitted to be out of uniform, student lateness, and student use of electronic devices (cell phones).

9. Ms. Stewart and Mr. Rivers implemented a Performance Improvement Plan (PIP) in October 2012. Ms. Stewart noted continued criticism of the Appellant, particularly with respect to classroom management, in PIP appraisals from October 2012 through March 2013.

10. The Appellant did not attend scheduled meetings with Ms. Stewart on October 9 and 16, but did meet with Ms. Stewart on October 12 and 15, 2012. The Appellant was hospitalized on October 24, 2012.

11. On November 5, 2012, Ms. Stewart instructed the Appellant to submit lesson plans a week in advance and to meet with her on Mondays and Wednesdays. The Appellant submitted four lesson plans on November 13, 2012.

12. On November 20, 2012, Ms. Stewart noted that students were "still not in uniform compliance or in groups." CEO Ex. 3.

13. In a formal observation on November 21, 2012, Mr. Rivers noted that the students were in six groups and that the Appellant had implemented at least one technique suggested in coaching. He wrote that she began her lesson with 100% student participation, but that the students became confused when the Appellant made an error and she was unable to refocus them.

14. In a January 15, 2013 Performance Review (Mid-Year Evaluation), Mr. Rivers rated the Appellant satisfactory in "Planning and Preparation" and "Professional Responsibilities," and unsatisfactory in "Learning Environment" and "Instruction/Instructional Support" Report, but did not find a PIP indicated.

15. On February 4, 2013, Ms. Stewart conducted an informal observation of the Appellant. She noted lack of compliance with policies respecting electronic devices (cell phones), hats and uniforms, and that the classroom was not orderly and

conducive for learning. She also observed that forty minutes were spent on a drill and it was still not completed. She posed questions as to why the lesson was not paced and a time schedule not maintained for each portion of the lesson; why there was no seating chart; how the Appellant was developing her classroom behavior management plan (CBMP), why key students were not group leaders and how she was meeting the needs of special education students.

16. On February 5, 2013, Mr. Rivers performed a formal observation of the Appellant's teaching. He made a number of critical observations indicating that some of the students were confused about the subject and that the Appellant did not resolve their confusion. He also noted a number of instances in which students were talking amongst themselves and found that the Appellant did not effectively correct misbehavior. As a result, he directed that the Appellant stay on her PIP.

17. On March 6, 2013, Ms. Stewart conducted an informal observation of the Appellant. She again noted non-compliance with policies related to cell phones, hats and uniforms, that the classroom was not orderly and conducive for learning, that blackboard components were not displayed and that teacher and students were not engaged in instruction. She noted that the Appellant was seated at her desk while students waited with completed tasks.

18. On April 27, 2013, Mr. Rivers completed an annual evaluation of the Appellant and rated her unsatisfactory overall.

19. On January 17, 2013, Ms. Stewart wrote to the Appellant that she had failed to do the following:

    1. Attend math team meetings regarding the development of curriculum mapping
    2. Develop a classroom behavioral management plan
    3. Maintain proactive parent communication log

4. Establish decorum in your classroom so as to produce effective academic rigor in your classroom
5. Utilize data link in the planning of pre and post tests or academic tracking of student growth

Ms. Stewart further directed:

Immediately, you are to do the following:

1. Attend your Tuesday PD sessions with Mr. Rivers. Take detailed notes which will be reviewed in our Wednesday morning (10:00 a.m.) coaching sessions
2. Attend and participate in your weekly team collaboration meetings concerning the curriculum mapping. This mapping in invaluable to effective planning.
3. Seek audience with your peers who have effective classroom behavioral plans that they utilize. Develop your plan. It is due in detail on the 25th also.

CEO Ex. 10.

20. On January 30, 2013, Ms. Stewart sent a Letter of Concern to the Appellant citing Appellant's "continued refusal to adhere to requested deadlines and attendance at meetings." CEO Ex. 10.

21. On February 1, 2013, Ms. Stewart sent a Letter of Concern to the Appellant stating, *inter alia,* that she was "showing no effort to comply with the tasks given to her." CEO Ex. 10.

22. On February 5, 2013, Ms. Stewart sent a Letter of Concern to the Appellant citing certain observations she had made the previous day, including "disorder, chaos, sidebar conversations, and inappropriate language reigned."

23. On February 22, 2013, Ms. Stewart sent a Letter of Concern to the Appellant stating, among other things, that behavioral issues in her class continued to not be addressed in her CBMP; that she had not followed up on requests to plan lessons to address pacing, lesson plans to conform to students' progress, and implementing techniques that Mr. Rivers had encouraged.

24. Mr. Rivers conducted professional development meetings every Tuesday intended to improve the performance of all teachers. The Appellant did not attend all such meetings, in part because of illness. Her attendance record was not in evidence.

25. Reports of formal and informal observations of the Appellant included detailed feedback respecting the critique of her performance and suggested techniques to address noted shortcomings.

26. Mr. Rivers provided binders to all teachers in which they were expected to collect data on their professional development, including notes on professional development meetings. The Appellant's binder was empty.

27. The PIP directed the Appellant, among other things, to maintain a seating chart for students and to prepare a CBMP to assist in classroom management. The Appellant did not implement a seating chart and did not submit a CBMP that was satisfactory to her supervisors.

28. As a result of parent complaints about the Appellant's teaching, Mr. Rivers transferred a number of students out of her class. Other teachers then complained of the resulting teaching load.

29. As a result of their lack of progress in the Appellant's math class, students felt they were not prepared to pursue Advanced Placement (AP) math courses and the school did not offer such courses.

30. The Appellant suffers from extremely high blood pressure. She was taken from school to the hospital at least once and was absent a number of days for this reason.

DISCUSSION

Standard of Review

Section 6-202 of the Education Article provides the framework under which a teacher may be suspended or dismissed and provides that "[o]n the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, other professional assistant" for reasons including "[i]ncompetency" and "[w]illful neglect of duty." Md. Code Ann., Educ. § 6-202(a)(1)(ii), (v) (2014 & Supp. 2014). It further states that the individual "may appeal from the decision of the county board to the State Board." Md. Code Ann., Educ. § 6-202(a)(4). Under COMAR 13A.01.05.07A, the State Board "shall transfer an appeal to the [OAH] for review by an administrative law judge" under circumstances including an "appeal of a certificated employee suspension or dismissal" pursuant to section 6-202 of the Education Article.

Under COMAR 13A.01.05.05, the standard of review for dismissal actions involving certificated employees is *de novo*: "The State Board shall exercise its independent judgment on the record before it in determining whether to sustain the suspension or dismissal of a certificated employee." Thus, I am to make a new decision, that is, a *de novo* determination based upon the record created before the matter came to me. I do not conduct an entirely *de novo* hearing, starting everything anew. Although an entirely *de novo* hearing is not contemplated by the regulation, COMAR 13A.01.05.04C provides that an appellant may present additional evidence if it is shown that the evidence is material and that there were good reasons for the failure to offer the evidence in the proceeding before the Local Board. No new evidence was admitted in this case.[1] The Local Board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05F.

[1] The Appellant offered an exhibit at the hearing which the HE had declined to admit. I did not accept the exhibit. No other new evidence was offered in this case.

Merits of the Case

Craig Rivers, Mervo Principal, was the primary witness for the Board. He reviewed the Appellant's tenure at Mervo, indicating that problems with her classroom management were first observed during her second year at the school, when she was transferred from teaching a business class to teaching math. He detailed the various observations and efforts to improve the Appellant's performance and her failures to manage the classroom environment. He cited specific misbehavior by students, such as being out of uniform, using cellphones and talking in class, and he described the Appellant's ineffective control of the classroom. He described a "buzz" emanating from the Appellant's classroom that was beyond what was acceptable. He noted that the Appellant took no action when students came to her class out of uniform and she made no comment when two students came in as much as 35 minutes late. He said the Appellant did not keep a late book, so there was no record upon which to base discipline.

Mr. Rivers testified that the Appellant did not implement a seating chart, which was suggested to assist her in discipline. He noted that she did not have a log of parent communication, did not maintain proactive communication with parents, which could have helped with discipline, and did not consult or collaborate with peers on behavior management. She also did not enter student information in the Data Link system, thereby limiting the ability to track student progress.

Mr. Rivers did not think the Appellant had a problem with planning, but that she had difficulty pacing her lessons to accomplish what was planned, in large part because of her failure to manage the classroom. This compounded the discipline problems, because students who finished the assignments quickly were left with nothing to do, and therefore turned to socializing, contributing to the disorderly atmosphere.

When problems were first identified in 2011-12, Mr. Rivers transferred the Appellant to an honors class, because he felt that honors students were more goal-oriented and therefore less

likely to be disruptive. He said that matters initially improved, but by the following year, things had deteriorated and similar problems persisted.

Mr. Rivers also testified that he had multiple complaints from students and parents about the Appellant's teaching and that he attempted to address these by transferring students to a different class. This resulted in imposing unacceptable workloads on other teachers and he eventually exhausted that option. He also testified that, as a result of deficiencies in the Appellant's teaching, students who had the ability to handle more advanced work were not adequately prepared for advanced placement courses, and so the school was not able to offer such courses in math.

The Hearing Examiner found that the Appellant's failure to perform her duties satisfactorily "were acts of willful neglect of duty and not due to incompetence." Recommendation of the Hearing Examiner, at 16. The Board adopted that recommendation and in its Prehearing Conference Report in this case stated, "The legal issue in this case is whether Appellant's conduct constituted willful neglect of duty as set forth in Md. Ed. Art. § 6-202." Accordingly, I will first address that issue.

Section 6-202 of the Education Article does not define "willful neglect of duty." Willful neglect of duty in regard to the Education Article has been defined by the MSDE as "a willful failure to discharge duties which are regarded as general teaching." *See Crawford v. Bd. of Educ. of Charles Cnty.*, 1 Op. MSBE 503 (1976); *Steward v. Balt. Cnty. Bd. of Educ.*, 5 Op. MSBE 15 (2005); *see also Moore v. Balt. City Bd. of Sch. Comm'rs*, 4 Op. MSBE 03 (2003) (finding Moore's failure to follow the assistance plan willful neglect of duty).

There is evidence that the Appellant attempted to address concerns raised in her evaluations and the various observations. On November 5, 2012, Ms. Stewart instructed the Appellant to submit lesson plans a week in advance. The Appellant submitted four lesson plans on November

13, 2012. On November 20, 2012, Ms. Stewart criticized the Appellant because the students were not in groups. On November 21, 2012, Mr. Rivers observed the class and noted that the students were in six groups and that the Appellant had implemented at least one technique suggested in coaching.

Mr. Rivers testified that at an informal observation on February 4, 2013, after her midyear evaluation, the Appellant had a lesson plan available upon request, a deficiency in displaying required blackboard components had been corrected, and the teacher and students were engaged in instruction. Mr. Rivers also testified that the Appellant got to work early and came to talk to him, which is not consistent with willful neglect of duty.

As to attendance at planning and collaborative meetings, while there were numerous instructions to the Appellant to attend professional development meetings that were held every Tuesday, and collaborative team meetings, it is not at all clear what the Appellant's attendance was at such meetings. Mr. Rivers testified that her attendance at professional development meetings was sporadic, but he offered no attendance records and no specific dates or numbers of times that she had missed such meetings. He also testified that he knew she had been ill, but he could not quantify the number of meetings she missed because of illness. Ms. Stewart noted that the Appellant had missed two meetings on October 9 and 16, 2012, but met with her on October 12 and 15, and was hospitalized on October 24, 2012.

There were repeated instructions to the Appellant to amend her CBMP. It is not at all clear, however, that she failed to do so, as opposed to preparing an unsatisfactory plan. Again, the evidence does not show that she willfully failed to comply with suggestions, but only that she failed to meet the standards required by her supervisors.

On January 18, 2013, Ms. Stewart wrote to the Appellant that she had failed to do the following:

1. Attend math team meetings regarding the development of curriculum mapping
2. Develop a classroom behavioral management plan
3. Maintain proactive parent communication log
4. Establish decorum in your classroom so as to produce effective academic rigor in your classroom
5. Utilize data link in the planning of pre and post tests or academic tracking of student growth

Ms. Stewart further directed:

Immediately, you are to do the following:

1. Attend your Tuesday PD sessions with Mr. Rivers. Take detailed notes which will be reviewed in our Wednesday morning (10:00 a.m.) coaching sessions
2. Attend and participate in your weekly team collaboration meetings concerning the curriculum mapping. This mapping in invaluable to effective planning.
3. Seek audience with your peers who have effective classroom behavioral plans that they utilize. Develop your plan. It is due in detail on the 25th also.

On January 30, 2013, Ms. Stewart wrote to the Appellant as follows:

This letter of concern is written because of your continued refusal to adhere to requested deadlines and attendance at meetings. On January 18, 2013, you received a memorandum regarding expected accountability tasks which you signed for on January 18, 2013.

We were scheduled to meet today during your free period to discuss the following:

- Yesterday's PD with Mr. Rivers re: "looking at Student Work. . ."
- Your amended and updated classroom behavioral management plan
- Your content area's curriculum mapping plan

Your responsibility as a classroom teacher on a Professional Improvement Plan (PIP) is clearly mapped out, and you must attempt to comply with the tasks given you. Support is being provided to you. Your comment to Mr. Rivers was that, "everything you are asking for will be in your hands by Monday." That comment was made in [sic] January 15, 2013 at your midyear session.

Please plan to meet with me on Friday, February 01, 2013, at the beginning of your planning period. Failure to do so will result in a letter of insubordination. Please have your curriculum mapping plan, your amended classroom behavioral plan, and your data link pre/post tests.

While it is abundantly clear that Ms. Stewart was not satisfied with the Appellant's compliance with the PIP, it is not at all clear what the Appellant failed to do. The letter does not make clear whether she failed to attend the scheduled meeting on January 30, 2013, or whether she did attend the meeting, but was not prepared to address the issues enumerated. It does not specify the Appellant's failure to meet deadlines. It is thus impossible to infer whether the Appellant's alleged failures were deliberate, i.e. willful, as opposed to simply deficient.

There is a follow-up letter on February 1, 2013, acknowledging that the Appellant met with Ms. Stewart and a Mr. Turk. The opening line states, "First of all, we would hope you are feeling better." The letter then states that the Appellant was unprepared to discuss the matters scheduled, and that she was "showing no effort to comply with the tasks given." In light of the recognition that the Appellant had been ill, it cannot be inferred that her lack of effort was "willful."

On February 5, 2013, Ms. Stewart again wrote to the Appellant, acknowledging a meeting that day. The letter identifies a number of issues arising out of an observation by Ms. Stewart the previous day, asks the Appellant to "[a]llow me to assist you," and then directs the Appellant to be prepared to answer a number of questions the following day. There is no record of what occurred the following day.

In a letter dated February 22, 2013, Ms. Stewart addressed concerns with the Appellant's CBMP and states that behavioral issues in her classroom continue to not be addressed in her CBMP. It also states that the Appellant had acknowledged that she had not followed up upon Ms. Stewart's request to plan her lessons to address certain specified needs. Ms. Stewart states that the Appellant's classroom behavioral issues were a direct result of her ineffective planning and non-implementation of the "excellent techniques that Mr. Rivers has encouraged." CEO Ex. 10. The letter states that the next meeting would be with Mr. Rivers.

There is no doubt that Ms. Stewart and Mr. Rivers were dissatisfied with the Appellant's progress in remedying the issues that were raised in her PIP. It is also clear that she failed to implement changes that her supervisors felt would address those issues. At the same time, there is no evidence of rejection on her part of the suggestions, of insubordination, defiance or deliberate lack of cooperation. While the Appellant's CBMP clearly did not satisfy her superiors, it is not at all clear either from the testimony or the documents that she made no efforts in this regard, that she failed to submit the requested documents (as opposed to submitting unsatisfactory documents), or that she failed to attend meetings without legitimate excuse. It is acknowledged that she was ill at times, and her testimony that she was sent to the hospital from school because of extremely high blood pressure is not disputed.

The Hearing Officer recognized that "the Appellant may have been experiencing health, fatigue or other issues that affected her abilities to respond to changing student dynamics and/or to implement suggested best practices." She then finds that the Appellant was obligated to address these issues, but, "Instead, Appellant's approach was reactive and not proactive." While I agree that the Appellant had a responsibility to address her health issues, I find that her failure to do so does not render the deficiencies in her professional performance "willful."

Thus, based upon my *de novo* review, I find that the record does not support the conclusion that the Appellant was guilty of willful neglect of duty. I do find, however, that there is ample evidence that she was not performing her duties in a competent manner in 2012-2013.

There was ample evidence of ongoing problems with the Appellant's classroom management and lack of effective instruction. The Appellant did not offer any evidence to show that her teaching in 2012-2013 met professional standards, or that the observations reported by the principal and assistant principal were fallacious. Rather, she relied upon her satisfactory evaluations in prior years. She did not offer any evidence that she had attempted to implement

suggestions by Ms. Stewart and Mr. Rivers, or that she was prevented from doing so. She did claim, however, that far from supporting her disciplinary efforts, she was undermined, particularly by Ms. Stewart. She reported that in October 2012, she had imposed one hour detention on the entire class, but Ms. Stewart openly rejected that action and released the class after about fifteen minutes. She also complained that when a student threw something at her when her back was turned, and she turned to Mr. Rivers for support, all he did was say to the class, "Is this my honors class?" Mr. Rivers noted that the Appellant was unable to identify the culprit, and that he could not, therefore, discipline that person. He did not explain why he did not otherwise demonstrate his disapproval and his support for the Appellant.

The failure to vigorously support a teacher who is having discipline problems in her class can be devastating to her efforts to remedy those problems, because it reinforces the students' disrespect. I do not find, however, that these two incidents are sufficient to explain the Appellant's ongoing failure to control the classroom over an extended period, especially in the light of undisputed evidence that the Appellant failed to implement remedial measures suggested by her supervisors or to seek advice from peers.

I recognize that the Appellant had a history of satisfactory, or better, evaluations for a number of preceding years, and that Mr. Rivers had found her sufficiently competent to entrust her with an honors class, even after the problems noted in 2010-2011. Her implication that her difficulties arose because of lack of support after Ms. Stewart took over administration of the math department in 2012-13 is inconsistent with the record of management problems in the preceding year and Mr. Rivers' attempt to assist her with those problems by giving her an honors class. The fact that she was well-educated and apparently well-trained, and that she had been an able educator in the past does not negate the incompetence of her performance in the year in issue. There is substantial evidence of the Appellant's failure to control her classroom and provide effective

instruction which she has not even contested, let alone disproved. A teacher who is not providing effective instruction is subject to termination for incompetency.

Although the Appellant produced little supporting evidence, it is not unlikely that the precipitous decline in her performance was due in some degree to health issues and possibly stress.[2] If that was the case, it is surely regrettable, but she did not seek any relief based upon her health and did made no claim that she was denied relief related to her health.

Based upon my *de novo* review, I find that the record supports a finding of incompetency in 2012-2013. I find that the Board was justified in terminating the Appellant because she was not performing in a competent manner, despite ongoing efforts to assist her. I therefore conclude that the decision of the Board to terminate the Appellant should be affirmed.[3]

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Appellant, a teacher employed by the Baltimore City Board of School Commissioners, was properly dismissed because of incompetence. Md. Educ. Code Ann. §6-202(a).

PROPOSED ORDER

It is proposed that the decision of the Baltimore City Board of School Commissioners dismissing the Appellant be **UPHELD**.

September 21, 2015
Date Decision Mailed

Nancy E. Paige
Administrative Law Judge

NEP/emh
#158048

[2] The Appellant had a stroke in 2002, from which she apparently recovered. There is no dispute that she suffered from extremely high blood pressure. She also submitted medical documentation before this hearing that she had suffered a second stroke in January 2015, not long after the hearing that resulted in her termination.

[3] I note that the record reflects that the Appellant was retired as of the date of the Hearing Officer's hearing. She had sent a letter withdrawing her request for retirement a few days before the hearing, but the letter had not been processed.

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this Proposed Decision has the right to file written exceptions within 15 days of receipt of the decision; parties may file written responses to the exceptions within 15 days of receipt of the exceptions. Both the exceptions and the responses shall be filed with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

Gloria Archer-Williams
5405 Knell Avenue
Baltimore, MD 21206

Lori Branch-Cooper, Esquire
Associate Counsel
Baltimore City Public Schools
200 East North Avenue
Baltimore, MD 21202

GLORIA ARCHER-WILLIAMS	*	BEFORE NANCY E. PAIGE,
v.	*	AN ADMINISTRATIVE LAW JUDGE
BALTIMORE CITY BOARD OF	*	OF THE MARYLAND OFFICE
SCHOOL COMMISSIONERS	*	OF ADMINISTRATIVE HEARINGS
	*	OAH No.: MSDE-BE-01-15-09744

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EXHIBIT LIST

A copy of the exhibits presented during the hearing before the Hearing Examiner, as well as a transcript of that hearing, were made a part of the record. COMAR 13A.01.05.07B. The following is a list of documents constituting the record which was submitted by the Board.

- October 21, 2013 letter from Neil T. Ross, Baltimore Teachers Union, to Janet T. Johnson, Baltimore City Board of School Commissioners
- November 10, 2014 letter from Liya Amelga, Esq., to counsel
- December 4, 2015 Appeal Hearing Sign-In Sheet

CEO Exhibits:

CEO Ex 1	September 19, 2012 Observation Feedback Form
CEO Ex 2	October 1, 2012 Informal Observation Feedback Form
CEO Ex 3	October 8, 2012 Performance Improvement Plan (PIP) with attachments
CEO Ex 4	November 21, 2013 Formal Observation Report
CEO Ex 5	January 13, 2013 Oracle Self-Service Human Resources: Details: Main Observer
CEO Ex 6	February 4, 2013 Informal Observation Feedback Form
CEO Ex 7	February 5, 2013, Oracle Self-Service Human Resources: Details: Main Observer
CEO Ex 8	March 6, 2013 Informal Observation Feedback Form

CEO Ex 9 April 27, 2013 Oracle Self-Service Human Resources: Evaluation Review

CEO Ex 10 January 18, 2013 Memorandum to Appellant from Chris A. Stewart with attached January 30, 2013, February 1, 2013, February 5, 2013, February 22, 2013 Letters of Concern

CEO Ex 11 October 15, 2013 letter from Kim Lewis, Baltimore City Public Schools, to Appellant with attached Statement of Charges

CEO Ex 12 October 27, 2014 Application for Service or Disability Retirement

CEO Ex 13 October 28, 2014 memorandum from Division of Employee Services – Retirement Office to Appellant

CEO Ex 14 October 24, 2014 Direct Deposit – Electronic Funds Transfer Sign-Up Form with attached October 27, 2014 Application for Service or Disability Retirement

Appellant Exhibits:

App. Ex 1 May 23, 2002 Annual Evaluation Report

App. Ex 2 June 9, 2003 Annual Evaluation Report

App. Ex 3 June 8, 2004 Annual Evaluation Report

App. Ex 4 June 13, 2007 Annual Evaluation Report

App. Ex 5 June 11, 2009 Annual Evaluation Report

App. Ex 6 June 14, 2011 Annual Evaluation Report

App. Ex 7 June 7, 2012 Oracle Self-Service Human Resources: Evaluation Review

App. Ex 8 October 20, 2013 letter from Appellant to Jerome Jones with attachment

App. Ex 9 December 1, 2014 Letter of Recommendation

App. Ex 10 Appellant's Philosophy of Education

App. Ex 11 November 24, 2014 letter from Appellant To Whom It May Concern

- February 20, 2015 letter from Liya Amelga, Esq., to Counsel
- January 27, 2015 Order
- January 9, 2015 letter from Liya Amelga, Esq., to Counsel
- January 9, 2015 Board Summary
- January 9, 2015 Recommendation of the Hearing Examiner
- December 4, 2015 Transcript