

KELLY HACKETT,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-32

OPINION

INTRODUCTION

The Appellant, Kelly Hackett, a paraprofessional in James McHenry Elementary/Middle School, appealed the decision of the Baltimore City Board of School Commissioners (local board) to terminate her from her position. The local board filed a Motion for Summary Affirmance to which the Appellant responded. The local board thereafter filed a Reply.

FACTUAL BACKGROUND

Kelly Hackett began her employment with the Baltimore City Public School System (“BCPS”) in 2006 as a history teacher. Thereafter, her certification lapsed. After a brief departure, she returned to the school system in 2010 as a paraprofessional and began taking graduate courses at Towson University in order to obtain certification to return to a teaching position with BCPS. She was last assigned to James McHenry Elementary/Middle School, where, as a paraprofessional, she taught computer and technology courses.

“MB” was one of Ms. Hackett’s students. On the morning of March 5, 2013, Ms. Hackett intervened in a physical altercation between MB and another student in her classroom. As Ms. Hackett positioned herself between the two students, she was hit inadvertently in the back by MB. Ms. Hackett then removed MB from the classroom. The principal, Grace Yador, was outside of Ms. Hackett’s classroom at the conclusion of the altercation and saw Ms. Hackett removing the student from the classroom. That “removal” process presents the central issue in this case. Did Ms. Hackett impose corporal punishment on MB during the course of the removal process? In Ms. Yador’s view, Ms. Hackett did so by pushing MB hard on his back to get him out of the classroom. Ms. Hackett denies pushing MB at all, rather she states that she grabbed MB by the wrist and led him out of the classroom.

Ms. Yador did not hold a disciplinary meeting with Ms. Hackett to address the March 5 incident, or otherwise notify Ms. Hackett of her account of the matter. Ms. Yador submitted a narrative report of the incident to the Office of Labor Relations.

On the basis of Ms. Yador’s narrative report, a *Loudermill* hearing concerning the altercation was conducted on March 20, 2013 by the BCPS Labor Relations Associate Mary Ellen Quinn Johnson. At the conclusion of the hearing, relying almost solely on Ms. Yador’s account of the matter, Ms. Johnson issued a recommendation that Ms. Hackett be terminated

from employment with BCPS for using corporal punishment. A letter formally implementing the termination was issued to Ms. Hackett on March 26, 2013.

On September 16, 2013, an appeal hearing on Ms. Hackett's termination was held before an independent Hearing Examiner appointed by the Board. After considering all of the evidence presented, the Hearing Examiner issued a 46-page Recommendation finding against BCPS and recommending Ms. Hackett's reinstatement. (Attached to Motion, Exhibit 5).

The Hearing Examiner faulted BCPS for failing to conduct an adequate and impartial investigation before terminating Ms. Hackett, and for affording undue weight to Ms. Yador's account while neglecting to consider the contrasting statements of the 14 student witnesses. (Recommendation at 45). The Hearing Examiner also questioned the reliability of Ms. Yador's account, finding it implausible that Ms. Hackett's alleged use of force against MB would go unnoticed by the student witnesses to the encounter: "That same force against an 80-100 pound child should have been noticed by others...Students and children, in general, are very observance [sic] of wrongdoing by adults and are more probable to have noted in their report an adult forcefully pushing a child" (Recommendation at 42-43). Consequently, the Hearing Examiner found that there was insufficient evidence to sustain the termination charge and recommended that Ms. Hackett be reinstated to her position with BCPS (Recommendation at 44).

The local board considered the Hearing Examiner's Recommended Decision at its January 28, 2014 meeting. It rejected the Hearing Examiner's recommendation and affirmed BCPS's termination of Ms. Hackett.

STANDARD OF REVIEW

Because this appeal involves the decision of the local board involving local policy, the local board's decision is 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.01.05.05A.

LEGAL ANALYSIS

In order for the State Board to conduct a meaningful review of a local board's decision we have repeatedly explained that the local board must provide the rationale for its decision, particularly when it rejects the Hearing Examiner's Recommended Decision. In this case, the Board rejected the Hearing Examiner's decision by stating, in full:

Upon review of the case and the recommendation of Andres A. Alonso, Ed.D., former Chief Executive Officer (CEO) of the Baltimore City Public School System (City Schools) to terminate Kelly Hackett, paraprofessional at James McHenry Elementary/Middle School, #10, from employment with City Schools, and after due consideration and deliberation, and relying on the preponderance of the evidence presented, on the 28th day of January, 2014,

IT IS ORDERED:

That Kelly Hackett violated the Board's policy prohibiting corporal punishment because there was no safety risk to either Ms. Hackett or other individuals to warrant Ms. Hackett's physical contact with the student; and

That Kelly Hackett was afforded due process; and

That the recommendation of the Hearing Officer to reinstate Kelly Hackett to her former position, dated December 2, 2013 is **REJECTED**; and

That the recommendation of the CEO to terminate Kelly Hackett from her employment at James McHenry Elementary/Middle School, #10, is **HEREBY AFFIRMED**.

(Appeal, Ex. 1).

We have commented on the need to provide an adequate rationale to support a local board's decision in at least four cases in Baltimore City Public Schools in the last several years. *See, e.g., Trilisa Collier-Sims v. Baltimore City Bd. of School Comm'rs.*, MSBOE Opin. No.13-01; *Gary Richardson v. Baltimore City Bd. of School Comm'rs.*, MSBOE Opin. No.13-29; *Cressida Chung v. Baltimore City Bd. of School Comm'rs.*, MSBOE Opin. No.12-45; *Timothy Valenzia v. Baltimore City Bd. of School Comm'rs.*, MSBOE Opin. No.12-26. We repeatedly explained our position that a reasoned decision must contain the Board's reasoning. For example, in the *Valenzia* case we explained why that was critical. We will repeat that explanation here because it has not been heeded in this case.

It is particularly important for us to be able to understand the local board's rationale when the local board rejects a Hearing Officer's recommendation. In this case, the sole reason the local board gave for rejecting the Hearing Officer's decision was "based on the facts of the case and exceptions filed."

Courts have held, and we have reiterated, that it is inappropriate for an administrative body to rest its decision on "broad conclusory statements." *See id.; Bucktail, LCC v. County Council of Talbot County*, 352 Md. 530, 553-54 (1999). Rejecting a hearing officer's decision, in part, "based on the facts of the case" is just such a conclusory statement. It is unhelpful in our decision making because we are essentially called on "to *read* the record, *speculate* upon the portions which probably were believed by the board, *guess* at the conclusions drawn from credited portions, *construct a basis* for decision, and *try to determine* whether a decision thus arrived at should be sustained." *Bucktail, LLC v. County Council of Talbot County*, 352 Md. at 556 citing *Gough v. Board of Zoning Appeals*, 21 Md. App. 697-702 (1974)(emphasis court's)(quoting 3 R.M. Anderson, *American Law of Zoning* §16.41, at 242 (1968));

see also Ocean Hideaway Condominium Ass'n v. Boardwalk Plaza Venture, 68 Md. App. at 662 (1986).

(*Id.* at 4).

While the local board's explanation of its decision in this case contains more "statements" than the *Valenzia* case contained, they are only broad and conclusory statements insufficient to provide a basis for review. There is no explanation of the "preponderance of evidence" the local board says it relied on, no explanation as to why the local board concluded that Ms. Hackett had been offered due process, or what act of corporal punishment Ms. Hackett committed.

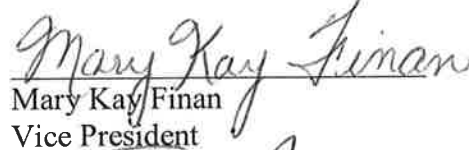
In the past, we have reversed but remanded such cases for further proceedings allowing the local board an opportunity to write a reviewable decision. We see no valid reason to continue that practice. It prolongs the proceedings and has failed to induce the Board to produce reviewable decisions, particularly when the Hearing Examiner's decision is rejected. A decision that is unsupported by fact or law is, by its nature, arbitrary and unreasonable. Therefore, we will reverse the decision of the local board to terminate Ms. Hackett.

CONCLUSION

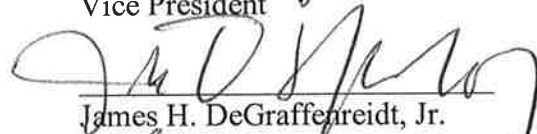
For the reasons stated herein, we reverse the decision of the local board to terminate the Appellant and order her reinstatement.

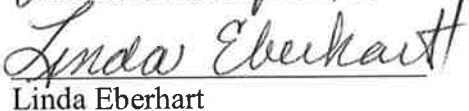

Charlene M. Dukes

President

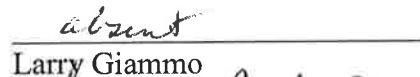

Mary Kay Finan

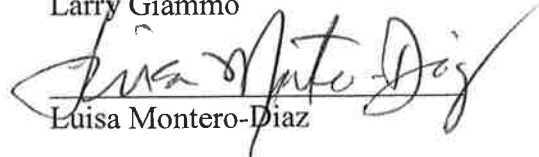
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June 27, 2014