

SUSAN KING,  
Appellant

v.

ANNE ARUNDEL COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION  
Opinion No. 15-10

### OPINION (Revised)

#### INTRODUCTION

The Appellant challenges her overall rating of “Satisfactory but Needs Improvement in Some Areas” for the 2011-2012 year end evaluation. The Anne Arundel County Board of Education (local board) filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. The Appellant opposed the motion, and the Board filed a response to the opposition.

#### FACTUAL BACKGROUND

The Appellant is a teacher with Anne Arundel County Public Schools (“AACPS”) where she has been teaching for approximately 12 years. She has been a special education teacher in Maryland for more than 29 years. (Tr. 15, line 21). For the 2004-2005 school year, the Appellant began working at MacArthur Middle School (“MacArthur”) where she taught 6<sup>th</sup> grade through the end of the 2010-2011 school year. The Appellant received ratings of “highly effective” on her 2004-2005 evaluation, and “outstanding” and “highly effective” on her 2005-2006 evaluation from the principal of MacArthur at that time, Reginald Ferrare. The parties did not include ratings for the 2006-2011 school years in the record.

At the start of the 2011-2012 school year, Stacy Gray became the new principal at MacArthur. For that same school year, Appellant was assigned to co-teach standard level 7th and 8th grade classes with a regular education teacher. (Tr. 157).

On January 13, 2012, Christopher Wukitch, the Vice-Principal, conducted an informal classroom observation of the Appellant’s 7<sup>th</sup> grade science class. The observation form contained three main evaluation areas, and each area consisted of several subcategories. (Appellant’s Ex. 1).

In the “preparing for student learning category,” Appellant received an “Ineffective” rating in “pre-assessment of students’ readiness.” With regard to Appellant’s “instructional delivery,” Appellant received an “Ineffective” rating in the “logical sequencing and pacing of the lesson components.” In addition, under the “student learning behaviors category,” Appellant received an “Ineffective” in her ability to have the students interact with the content in ways that moved them towards independence, to have them exhibit perseverance on challenging tasks, and to have them consistently involved and have a sustained interest in learning. *Id.* Mr. Wukitch

noted that many of the activities observed during the lesson required little knowledge of the content being covered in class. He commented that Appellant needed to work on differentiating her lesson to help challenge the students on a daily basis. He also noted that the Appellant could have held more discussion on relating the activities that were planned to the final product the students would leave with at the end of the class period. *Id.* The Appellant did not dispute Mr. Wukitch's evaluation and stated that he acted fairly in his assessment. (Tr. 83-85).

On May 23<sup>rd</sup>, 2012, Ms. Gray, conducted a formal classroom observation of the Appellant's 8<sup>th</sup> grade language arts class. (Tr. 91). Appellant received "Ineffective" ratings in various subcategories of the five main evaluation areas. The evaluation categories on the form were Planning for Learning, Preparing for Student Learning, Instructional Delivery, Student Learning Behaviors, and Assessing for Learning. (Appellant's Ex. 1).

On the classroom observation form, Ms. Gray noted that Appellant did not effectively communicate a clear vision of what the students would be doing to reach the stated learning goal.<sup>1</sup> Ms. Gray also pointed out that instruction was not differentiated and that students did not have the opportunity to process their thinking or write down their understandings as they moved from one work station to the next. Ms. Gray further commented that the manner in which Appellant questioned the students prohibited her from knowing if the students were clear about what they were learning. Additionally, Ms. Gray remarked that the Appellant did not have updated student work on the bulletin boards in the classroom. *Id.* Ms. Gray and the Appellant reviewed the observation together. (Tr. 193). The Appellant did not appeal the evaluation.<sup>2</sup>

During the 2011-2012 school year, Appellant made various inappropriate and unprofessional comments that ultimately resulted in her receiving a five day suspension for misconduct. (Hearing Examiner Nussbaum's Report, 8/21/13, p.1). Those incidents are as follows:

*"Black Friday" Comment:* On or about November 28, 2011 the Appellant entered a teacher's classroom and conversed with the teacher about the teacher's new boots. (*Id.* at 36-38). The conversation took place after Thanksgiving and the topic of "Black Friday" sales was brought up. When an African American student interjected himself into the conversation, the Appellant commented that the student must have "a lot of Black Fridays." *Id.*

*"Teacher's Lounge" Comment:* In late November or December of 2011, the teachers were discussing the school's implementation of a peace day in the teacher's lounge. (*Id.* at 36, 38). The discussion centered around parents teaching their kids to defend themselves and fight back which made the implementation of peace days difficult. One of the teachers testified that the Appellant remarked "Not white kids. White kids aren't taught that." *Id.* The implication was that that African American students would fight while the white students would not.

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<sup>1</sup> Appellant testified that the observation took place on the first day of a two day lesson. She did not, however, communicate this information to Ms. Gray at any time during the observation or during the post-observation conference.

<sup>2</sup> Although Appellant did not appeal the May evaluation at the time, in her appeal to the State Board she disagrees with the negative ratings. (Appeal, p. 6).

*Other Inappropriate Statements:* On or about February 7, 2012 the Appellant referred to a student as “cuckoo” in a conversation with the Assistant Principal. On a separate occasion Appellant admitted to telling another student to “stop acting like a creature.” (*Id.* at 39-41).

In the case involving the Appellant’s suspension, the local hearing examiner (Nussbaum) found that the five day suspension was warranted based on the totality of the inappropriate and racially insensitive comments in light of Appellant’s lengthy history of warning letters and reprimands that she had received over the years for related conduct. The local board affirmed the suspension on appeal.

On June 6, 2012, Ms. Gray completed the Appellant’s 2011-2012 end of year evaluation, giving her an overall rating of “NI” which stands for “Satisfactory but Needs Improvement in Some Areas.”<sup>3</sup> (Appellant’s Ex. 1; Tr. 195). The evaluation contained several “Needs Improvement” and “Unsatisfactory” ratings in various subcategories of five out of the six main evaluation areas.<sup>4</sup> In addition to the classroom observations, the Appellant’s general conduct and the incidents that supported the Appellant’s five day suspension factored into the overall rating decision. (Tr. 173, 202).

Ms. Gray’s primary area of concern was with Appellant’s interpersonal relationships. She noted deficiencies in all subcategories of this area of the Appellant’s evaluation. (Tr. 210-211). Ms. Gray commented that the Appellant “says inappropriate things during staff and team meetings” and that as a result “[Appellant] is perceived poorly by parents, students, staff members, and administrators.” She also noted that “[t]hese interactions tend to create a hostile work/learning environment.” (Appellant’s Ex.1).

In further explaining the interpersonal relationship category, Ms. Gray testified that Appellant exhibits unprofessional conduct in her interactions with school staff, particularly when there was an issue or a disagreement that needs to be resolved. She also stated that there were complaints about the Appellant by school staff members. One co-teacher submitted a letter to Mr. Wukitch complaining about the classroom environment with the Appellant. She expressed concern about Appellant’s unprofessional behavior in front of the students and with the Appellant regularly leaving the classroom during instructional time, sometimes not returning for 30-40 minutes. She also reported that the Appellant was consistently late to class.<sup>5</sup> (Exh. 7).

In another instance, Ms. Gray’s administrative assistant complained about the unprofessional manner in which Appellant barged into her office and began accusing her of

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<sup>3</sup> The Appellant refused to sign the end-of-year evaluation and later submitted a rebuttal disagreeing with the ratings and Ms. Gray’s comments. (Appellant’s Ex. 1; Tr. 209-10).

<sup>4</sup> The main evaluation areas were planning, instructional effectiveness, classroom management/organization, interpersonal relationships, professional ethics, and scholarship. (Appellant’s Ex.1).

<sup>5</sup>On March 13, 2012, Mr. Wukitch held a formal counseling session with the Appellant to discuss her lateness to work. (Exh. 3).

getting the Appellant blamed for an incident. (Tr. 201).<sup>6</sup> It reached the point where some staff members were afraid to report information about the Appellant's behaviors to the administration out of concern that Appellant would confront them. (Tr. 201). Ms. Gray testified that she took all of the incidents that happened with teachers and staff into consideration when evaluating the Appellant, as well as various complaints from students and parents about their interactions with the Appellant. (Tr. 173-177; 200-204; 207).

With regard to professional ethics, Ms. Gray rated the Appellant as needing to improve her observance of school rules and secure maintenance of confidential information. She noted that the Appellant "has had several meetings with administrators about her work behavior," but that Appellant "tends to complain about the administrator(s) to staff members, instead of keeping the content of these meetings private." *Id.* Ms. Gray testified that when the Appellant was upset about something regarding school, she would often go to a general work area in the school to complain about her conversations with administrators. (Tr. 202). She also explained (and Appellant admitted) that Appellant sometimes left IEP documents out where others could see them, including students. (Tr. 208). With regard to the school routines, Ms. Gray testified that the Appellant did not always report student behaviors through the appropriate referral process and did not always follow the appropriate channels in informing the administration of her late arrival to work. (Tr. 208).

In the classroom management/organization category, Ms. Gray rated the Appellant as needing to improve her use of appropriate behavior management strategies in a fair and consistent manner. Ms. Gray commented that Appellant "tends to loose (sic) patience with students who do not follow the established routines and rules." *Id.* Ms. Gray explained in her testimony that the Appellant was not taking opportunities to utilize the PBIS (Positive Behavior Intervention Supports) strategies that were supposed to be implemented at the school. (Tr. 200).

In general, Ms. Gray advised the Appellant to participate in professional development opportunities to "enable her to improve her interpersonal interactions with all students, parents, administrators, and staff members." She also advised that Appellant must "maintain integrity and professionalism in her relationship with the principal" and that "collusion of any kind is unethical." *Id.*

Appellant appealed the evaluation. On October 9, 2012, the Superintendent's Designee upheld Ms. Gray's end-of-year evaluation. (Davis Letter).

Appellant appealed the decision to the local board. The local board referred the appeal to Hearing Examiner Taylor for review. The Hearing Examiner conducted an evidentiary hearing and recommended, based on the testimony and evidence, that the Appellant's appeal be denied. She found that the Appellant offered no evidence demonstrating that Ms. Gray's rating was arbitrary, unreasonable, or illegal. (Hearing Examiner Taylor's Report, 8/21/14).

On November 5, 2014, the Local Board adopted the Hearing Examiner's Report and Recommendation and upheld the Superintendent's decision.

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<sup>6</sup> The record contains no additional information about the incident other than the fact that the administrative assistant was very upset by the incident. Ms. Gray also testified that she received complaints about interactions with the Appellant from parents and students. (Tr. 173-177).

This appeal followed.

## STANDARD OF REVIEW

In cases involving a local board's policy, or a controversy and dispute regarding the local board's rules and regulations, the local board's decision is considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A. The burden of proof lies with the Appellant. COMAR 13A.01.05.05D.

## LEGAL ANALYSIS

### *Objection to Hearsay Evidence*

As a preliminary matter, the Appellant maintains that Hearing Examiner Taylor erred by admitting hearsay evidence because it was not shown to have reliable or probative value.<sup>7</sup> In particular, Appellant objects to the admission of Ms. Gray's testimony that the Appellant had negative interactions with teachers, parents and students, and also to the admission of the decision of Hearing Examiner Nussbaum regarding the Appellant's five day suspension for misconduct. In response, the local board argues that the Appellant has waived her right to raise the hearsay issue on appeal to the State Board because she did not pursue the evidentiary issue before the local board prior to it making its final decision to adopt the Hearing Examiner's Report and Recommendation.

The local board provided the Appellant its Rules of Procedure for Appeals and Hearings when she appealed the end of year rating to the local board. (Local Bd. Reply to Appellant's Opposition, Ex. 2). Those procedures specify that the parties to an evidentiary hearing before a hearing examiner may request oral argument or make written argument before the local board on the hearing examiner's report and recommendation. Although the Appellant may have raised the evidentiary issues at the hearing,<sup>8</sup> the Hearing Examiner's Report and Recommendation does not address the evidentiary issue. The Appellant failed to make any argument before the local board, either oral or written, objecting to Hearing Examiner Taylor's admission of the evidence on the basis that it was hearsay,<sup>9</sup> and the local board did not render a decision on the issue. The State Board has long held that it will not review matters that were not initially reviewed by the local board. *Paul and Ety E. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-05 (2012); *Donald and Natalia C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-19 (2011).

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<sup>7</sup> Hearsay evidence is admissible in an administrative proceeding if it has "sufficient reliability and probative value." *Travers v. Baltimore Police Department*, 115 Md. App. 395, 408, 411-412 (1996).

<sup>8</sup> We note that the parties also dispute whether or not the Appellant objected to the admission of the evidence during the hearing on the basis of hearsay. (See Tr. 7, 176-77).

<sup>9</sup> The Appellant was represented by counsel at the time of the hearing.

### *Merits of Overall "NI" Rating on End of Year Evaluation*

The Appellant maintains that the local board's decision accepting Hearing Examiner Taylor's recommendation is arbitrary, unreasonable, and illegal. The Appellant alleges that Ms. Gray gave her the "Satisfactory but Needs Improvement in some areas" rating on the end of year evaluation based on her personal dislike of the Appellant. In support of this claim, Appellant argues that she was performing in the majority of levels at an "Effective" level with only two areas in common in which Ms. Gray and Mr. Wukitch rated her performance as "Ineffective."<sup>10</sup> Additionally, the Appellant believes that she was unfairly rated in the May 2012 observation, claiming that she was not in charge of the bulletin boards and that Ms. Gray only saw one of the two days of the lesson's implementation. The Appellant maintains that this demonstrates an effort on the part of Ms. Gray to "arbitrarily diminish" the Appellant's status as a teacher.

It was Hearing Examiner Taylor's duty to weigh all of the evidence in the case and issue a recommendation based upon the evidence she found to be credible and relevant. *See Komolafe v. Board of Educ. of Prince George's County*, MSBE Op. No. 14-47. The evidence included two classroom observations by two separate people on different days noting various aspects of Appellant's performance that required improvement. One lesson was 7<sup>th</sup> grade science and the other was 8<sup>th</sup> grade language arts. The fact that there may have been differences in the ratings does not negate the fact that on each particular day certain areas in need of improvement were observed. The observations supported the finding that the Appellant needed to work on specific aspects of her classroom teaching, such as differentiation, student assessment, and communicating teaching activities to learning goals. The documentary evidence and testimony also showed that the Appellant had trouble with her interpersonal skills and had a history of making inappropriate or derogatory comments for which she had previously received a five day suspension. Specifically, Ms. Gray testified that she had received complaints from parents, students and teachers about their interactions with Appellant, and also noted Appellant's inappropriate racial comments. (Tr. 172-175). All of these issues factored into the Appellant's overall rating. Appellant did not submit any evidence that showed that Ms. Gray issued the overall "Needs Improvement" year-end rating based on a personal dislike of the Appellant.

With regard to the May 23, 2012 observation conducted by Ms. Gray, Appellant disputes the "Ineffective" rating under the area "Planning for Learning" in the subcategory "Classroom is neat and organized; arranged for student interaction; and reflects current student learning." Appellant claims that it was not her responsibility to manage the classroom bulletin boards, which were still displaying student work from December 2011, because it was her view that they belonged to the regular education classroom teacher with whom Appellant co-taught the class. In response, Ms. Gray testified that the classroom belonged just as much to the Appellant as it did the co-teacher because that is where the Appellant taught, and that the Appellant had the opportunity to post current student work. (Tr. 183). Ms. Gray further testified that Appellant should have been collaborative and engaged her colleague about what could be done to display updated student work in the room. (Tr. 184). The Appellant chose not to do so.

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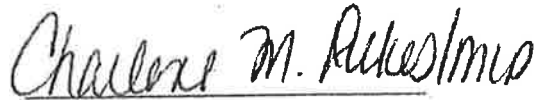
<sup>10</sup> The overlapping areas in which Appellant received "Ineffective" ratings from both observers were in (1) logical sequencing and pacing of lesson components and (2) students exhibiting perseverance on challenging tasks. (Appellant's Ex. 1).

Appellant also argues that her May 23, 2012 observation rating suffered because Ms. Gray did not understand that the lesson was the first day of a two day lesson. Unfortunately the Appellant did not convey this piece of information to Ms. Gray prior to her observation. (Tr. 181). Although the lesson plan states under "Lesson Sequence" that it is "Day 1 Building Background Information," the lesson plan does not provide any explanation about additional days of the lesson. Moreover, whether or not it was the first day or the second day of a lesson, Appellant should have been able to effectively demonstrate her teaching abilities, such as her ability to differentiate instruction and communicate performance expectations for learning to the students.

The Appellant has offered no evidence to support her allegation that her overall year end rating was based on Ms. Gray's personal dislike of her or some movement to diminish Appellant's status as a teacher. Although Appellant had explanations for the negative ratings and the events that transpired, the Hearing Examiner's and the local board's failure to credit Appellant's version of the events does not mean that the Hearing Examiner's Report and Recommendation or the local board's decision are arbitrary, unreasonable or illegal. It simply means that they found the testimony and evidence submitted in support of the evaluation decision to be more convincing. The evidence in the record rationally supports the local board's decision.

#### CONCLUSION

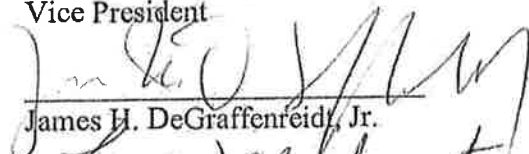
For all the reasons stated above, we affirm the decision of the local board upholding the overall "Satisfactory but Needs Improvement in some areas" rating on the Appellant's 2011-2012 end of year evaluation.



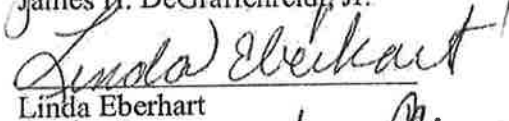
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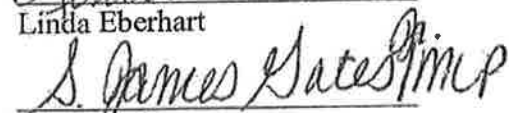
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ABSENT

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*Madhu Sidhu*

Madhu Sidhu

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Donna Hill Staton

*Guffie M. Smith, Jr.*

Guffie M. Smith, Jr.

March 24, 2015