

CONSTANCE JEANNE SAMMARCO,

Appellant

v.

BOARD OF EDUCATION OF
PRINCE GEORGE'S COUNTY,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-01

OPINION

INTRODUCTION

Constance Jeanne Sammarco (Appellant) challenges the decision of the Prince George's County Board of Education (local board) to terminate her for incompetency under § 6-202 of the Education Article, after she received unsatisfactory evaluations for two consecutive years. Pursuant to COMAR 13A.01.05.07A(2), we transferred this case to the Office of Administrative Hearings (OAH) so that a hearing could take place before an Administrative Law Judge (ALJ). The ALJ recommended that the State Board affirm the local board's decision to terminate Appellant on the ground of incompetency. Appellant filed exceptions to the ALJ's Proposed Decision and the local board filed a response to the exceptions. Oral argument was heard before the State Board on December 16, 2014.

FACTUAL BACKGROUND

Appellant began her employment with Prince George's County Public Schools (PGCPS) in February 2003 as a ninth grade English teacher at Fairmont Heights High School. Transcript IV, pg. 1198. She went on to teach in the upper grades, including Advanced Placement courses, and received satisfactory evaluations each year, up to and including the 2009-2010 school year. Transcript IV, pg. 1208. The 2009-2010 school year also marked the beginning of Nakia Nicholson's tenure as principal of Fairmont Heights High School, which had a history of low test scores and a low graduation rate. Transcript II, pg. 369.

Over the next two years, Appellant was observed by multiple school administrators and PGCPS personnel, informed of serious teaching deficiencies, and provided with a package of assistance that included professional development, action plans, and a mentor. Nevertheless, Appellant received two consecutive unsatisfactory evaluations from Principal Nicholson, and was recommended for termination by the Superintendent on August 17, 2012. Sup. Ex. 11.

To understand the basis for Appellant's termination requires a chronology of what took place during the 2010-2011 and 2011-2012 school years. The ALJ has done a thorough job of setting forth the lengthy factual background in this case, and we adopt the Findings of Fact at pp.

4-14 of the Proposed Decision with limited corrections.¹ The following is a summary of the ALJ's factual findings with citations to the record.

2010-2011 School Year

On September 2, 2010, Assistant Principal Donna Daniel conducted a formal observation. Sup. Ex. 81. Ms. Daniel remarked that Appellant's classroom management techniques were "ineffective and counter-productive." *Id.* For example, Appellant said "excuse me" at least 50 times to quiet her students. *Id.* Ms. Daniel recommended professional development in the area and returned for an informal walk-through observation on September 15, 2010. Sup. Ex. 78. At that time, Ms. Daniel found that several elements of Management/Classroom Environment and Instructional Delivery remained only "Somewhat Evident" or "Not Evident." *Id.*

On September 17, 2010, Assistant Principal Daniel sent an e-mail to Appellant regarding a professional development opportunity within PGCPSS. Sup. Ex. 77. Later that day, Appellant sent an e-mail to Ms. Daniel, stating "you really have no idea what you are doing" and "[y]our little witch-hunt for bad teachers is actually starting to amuse me because you choose to attack me, the hardest working teacher who gives the most." *Id.* Ms. Daniel responded by issuing a letter of warning to Appellant regarding her unprofessional comments. Sup. Ex. 76. Appellant testified that she "felt persecuted" because Ms. Daniel had visited her classroom multiple times. Transcript IV, pg. 1225-27.

On October 8, 2010, Principal Nakia Nicholson conducted a formal observation. Sup. Ex. 74. Ms. Nicholson noted that students were not formatively assessed prior to closing the class. *Id.* She testified that Appellant was concerned with finishing and adhering to the lesson, not with providing students an opportunity to reflect on it. Transcript II, pg. 389. The classroom observation form also referred to a conference with Appellant three days earlier, which focused on using positive reinforcement rather than punitive consequences. Sup. Ex. 74. Appellant had adopted a strategy of calling the main office to remove students for cell phone usage. *Id.*

On November 15, 2010, Appellant received her first unsatisfactory interim evaluation from Principal Nicholson. Sup. Ex. 71. Several elements of learning climate, instruction, and professionalism were identified as deficient, and Appellant was instructed to adhere to an action plan. *Id.* Four days later, Ms. Nicholson reviewed the action plan with Appellant. Sup. Ex. 70. Required teacher actions included, among other things: use positive language when redirecting students (learning climate), provide adequate wait time for students to respond (instruction), and positively contribute and participate in collaborative sessions (professionalism). The anticipated date of completion for all areas of improvement was June 2011. *Id.*

On December 1, 2010, Assistant Principal Michael Austin conducted a formal observation. Sup. Ex. 69. Mr. Austin recommended that Appellant provide wait time in her lectures and monitor responses toward students, so that she did not communicate unconsciously negative perceptions or expectations. *Id.* For example, when a student asked Appellant to slow down, she replied, "Can I do the talking?" *Id.* When another student asked to leave the

¹ The errors in the ALJ's Findings of Fact do not impact the decision, and have been identified here solely for the purpose of clarifying the record.

classroom, Appellant responded by saying, “No, did I stutter?” *Id.* Mr. Austin further instructed Appellant to adhere to the action plan provided by Principal Nicholson. *Id.*

On January 19, 2011, Appellant and Principal Nicholson met with two members of the PGCPs support staff: Williams Barnes, Director of the High School Consortium, and Dr. Robert Papineau, Instructional Specialist. Sup. Ex. 67. The purpose of this meeting was to further discuss Appellant’s unsatisfactory interim evaluation. Appellant was told to construct an action plan using a template and have it signed by her principal. *Id.* The action plan that was created in February 2011 was virtually identical to the one from November, except that each teacher action noted whether it had been achieved, partially achieved, or not achieved. Sup. Ex. 66.

On February 23, 2011, Principal Nicholson conducted a formal observation. Sup. Ex. 65. As evidence of an unstructured classroom environment, Ms. Nicholson noted that students yelled out in frustration or held side conversations unrelated to the coursework, despite Appellant’s continued attempts to redirect them. *Id.* On March 2, 2011, Appellant requested a mentor based on her unsatisfactory evaluation and Ms. Nicholson attempted to meet that request. Sup. Ex. 64. No formal mentor program existed at the school level, but Appellant was informally paired with another English teacher, Robert Caldwell. Transcript II, pg. 439.

On April 11, 2011, Dr. Robert Papineau from the High School Consortium conducted a formal observation. Sup. Ex. 63. He wrote that he found it difficult to connect the objective to the learning activities, and also recommended formative assessment during the lesson. *Id.* In addition, Dr. Papineau stated that “excuse me” was not working as an expression to focus students. *Id.* Several weeks later, in an e-mail, Appellant compared conferencing with administrators to the Salem Witch Trials. Sup. Ex. 62. She was cited for inappropriate use of e-mail and instructed to meet with Principal Nicholson about professionalism. Sup. Ex. 60.

On May 27, 2011, Appellant received her first unsatisfactory end of year evaluation from Principal Nicholson. Sup. Ex. 61. Despite making some progress when compared to the interim evaluation, Appellant again received unsatisfactory ratings in learning climate, instruction, and professionalism. *Id.* On June 24, 2011, William R. Hite, Jr., then PGCPs Superintendent, notified Appellant that her teacher’s certificate would be reclassified to second class status for the 2011-2012 school year, which meant that her employment with the school district would be subject to review at the end of that year. Sup. Ex. 59.

2011-2012 School Year

Based on Appellant’s reclassification to second class status, PGCPs assigned a mentor named Jonathan Wemple. Mr. Wemple observed Appellant’s classroom on two occasions, and conferenced with her several more times.² Sup. Ex. 44. After an observation in November 2011, he noted that Appellant was defensive, insulted his suggestions, and “interrupted nearly every sentence.” Sup. Ex. 44. When Mr. Wemple suggested a strategy to generate more student questions, Appellant failed to implement it. Transcript III, pg. 696. In mid-December, Appellant asked that Mr. Wemple be removed as her mentor. Transcript III, pg. 694.

² On page 10 of the ALJ’s Proposed Decision, these meetings were incorrectly attributed to the 2010-2011 school year. Mr. Wemple mentored during the 2011-2012 school year, after Appellant was placed on second class status.

As a teacher of Advanced Placement courses, Appellant complained that her mentor, Mr. Wemple, was not appointed by the College Board and that his presence was an intrusion on her students. Sup. Ex. 41. Mr. Wemple testified that by January, he was unable to work with Appellant on lesson structure; instead, he resorted to coaching sessions where he would listen and Appellant would talk about things she had done. Transcript II, pg. 715. He also testified that Appellant told him she did not need a mentor and felt it was an embarrassment. Transcript III, pg. 689. Principal Nicholson testified that Appellant was resistant because she considered herself “one of the top teachers in the county, let alone the school.”³ Transcript II, pg. 439-40.

Concerns about professionalism continued throughout the year. On October 4, 2011, Assistant Principal Austin visited Appellant’s classroom and she became visibly agitated, stating in an escalated voice “I got you!” while students were present. Sup. Ex. 56. Appellant testified that she was responding to Mr. Austin’s past suggestion that her lesson objectives were incorrect. Transcript IV, pg. 1042-44. She testified that she could not change the objectives because they came from a guidebook, and that she “got” Mr. Austin by having the guidebook with her. Given the way she communicated her message, Mr. Austin issued a letter of warning for unprofessional behavior. *Id.* Appellant’s oppositional tone extended to conversations with students as well. On October 25, 2011, a parent e-mail indicated that Appellant had told a student that the principal was “out to get him and his brother out of the school.” Sup. Ex. 48. Principal Nicholson issued a letter of reprimand for inappropriate dialogue with a student. *Id.*

Much like the previous school year, school administrators conducted multiple formal observations. Appellant was formally observed on five occasions and informal walk-throughs occurred sporadically from September to April. Sup. Ex. 18 & 27. On September 14, 2011, Assistant Principal Daniel recommended that Appellant integrate formative assessment into the lesson. Sup. Ex. 57. On October 11, 2011, Assistant Principal Austin identified students arriving late and discussing unrelated topics. Sup. Ex. 53. On October 12, 2011, Principal Nicholson observed a lesson in which the majority of students did not score a 70 percent on a simulated quiz.⁴ Sup. Ex. 51. Some progress was observed by Ms. Daniel, but Appellant remained below proficient in multiple areas, particularly instruction. Sup. Ex. 43.

On January 11, 2012, Appellant received her second unsatisfactory interim evaluation. Sup. Ex. 39. As a result, Appellant met with Jane Spence, Instructional Director for High School Performance, on February 27, 2012, to create another action plan. Sup. Ex. 32. The action plan was connected to specific indicators that Principal Nicholson had marked as “needs to improve” in the interim evaluation. Sup. Ex. 34. Required teacher actions included, among other things: use Socratic discussion method to ensure full participation (learning climate), require students to demonstrate their understanding (instruction), and ensure that dialogue with school community members remains respectful (professionalism). *Id.* The date by which Appellant was to begin providing satisfactory evidence of these actions was March 2012. *Id.*

³ On page 10 of the ALJ’s Proposed Decision, this quotation is incorrectly attributed to Appellant. Nevertheless, on page 31 of her exceptions, Appellant similarly states that she is “one of the top teachers in the county.”

⁴ On page 11 of the ALJ’s Proposed Decision, this observation is incorrectly noted as occurring on October 11, 2011. The pre-observation conference occurred on October 11, 2011, not the actual observation. *See* Sup. Ex. 52.

Based on informal walk-through observations, Appellant did not improve according to schedule. On March 16, 2012, Principal Nicholson noted not only that “critical class time was wasted on a trade school presentation,” but also that “students were unengaged and slept/used electronic devices/or had side conversations.” Sup. Ex. 30. On April 26, 2012, Ms. Nicholson recommended a structured format for discussion because she observed no assessment of students who did not participate. Sup. Ex. 26. On May 4, 2012, she observed students using cell phones in class and instructed Appellant to monitor her classroom more effectively. Sup. Ex. 23.

On May 16, 2012, Appellant received her second unsatisfactory end of year evaluation. Sup. Ex. 20. Shortly thereafter, Principal Nicholson recommended to PGCPS that Appellant’s employment be terminated. Sup. Ex. 18. On June 7, 2012, Appellant became very upset when asked to return her keys because they were school property. Transcript I, pg. 65. A school police officer had to escort Appellant to her car to retrieve a school-issued laptop. Sup. Ex. 3. The same day, the English Department Chair, Eleanor Conwell, revealed that Appellant had told her privately, referring to Principal Nicholson, “I hate her! I hope she dies a painful and horrible death.”⁵ Sup. Ex. 17. On August 17, 2012, Superintendent Hite recommended to the local board that Appellant’s employment be terminated on the ground of incompetency. Sup. Ex. 11.

STANDARD OF REVIEW

Because this appeal involves 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(1) & (2). The State Board gives no deference to the local board’s decision under this standard.

After it has considered the evidence *de novo*, 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 the reasons for any changes, modifications, or amendments to the Proposed Decision. Md. Code Ann., State Gov’t § 10-216(b). In reviewing the ALJ’s Proposed Decision, the State Board must give deference to the ALJ’s demeanor-based determinations of witness credibility, unless there are strong reasons to reject them. *See Dep’t of Health & Mental Hygiene v. Shrieves*, 100 Md. App. 283, 302-303 (1994).

ANALYSIS

The State Board has previously set forth the criteria that must be met for dismissal of a teacher on the ground of incompetency. The record must demonstrate that: 1) the evaluation process was fair and impartial; 2) the teacher had serious teaching deficiencies; and 3) the teacher was provided adequate assistance to remedy those deficiencies. *Beck v. Montgomery County Board of Education*, MSBE Op. No. 04-13 (2004); *Shiflett v. Carroll County*, 6 Op. MSBE 617 (1993). Therefore, we will evaluate the record against this standard and address each of Appellant’s exceptions in turn.⁶

⁵ On page 10 of the ALJ’s Proposed Decision, this statement was incorrectly directed at Appellant’s mentor, Mr. Wemple. Appellant admits that she made this statement about Principal Nicholson. *See* Transcript IV, pg. 1223.

⁶ Appellant’s exceptions run for 35 pages, with arguments scattered throughout her findings of fact and discussion sections. The exceptions identified here represent an attempt to organize Appellant’s arguments.

I. The Evaluation Process Was Fair and Impartial

In order to ensure fairness and impartiality, an evaluation must be based on at least two observations during the school year. COMAR 13A.07.04.02. If the evaluation is unsatisfactory, at least one observation must be conducted by an individual other than the immediate supervisor. *Id.* In this case, Appellant was observed at least five times each school year. Appellant also received feedback from multiple informal walk-through observations of her classroom. She was observed not just by Principal Nicholson, but also by other administrators at Fairmont Heights High School. Moreover, she was observed by Dr. Papineau from the High School Consortium and Mr. Wemple, her assigned mentor, neither of whom was subordinate to the principal.

During the 2010-2011 school year, multiple observers identified similar deficiencies. On September 2, 2010, Assistant Principal Daniel noted that classroom management techniques were ineffective and counted Appellant saying “excuse me” at least 50 times during the lesson. Sup. Ex. 81. On October 8, 2010, Principal Nicholson expressed concern that students were not formatively assessed prior to closing the class. Sup. Ex. 74. The problems identified by Ms. Daniel and Ms. Nicholson were corroborated by Dr. Papineau from the High School Consortium. On April 11, 2011, Dr. Papineau noted that Appellant repeatedly said “excuse me” to quiet her students, and recommended that formative assessment be integrated into the lesson. Sup. Ex. 63. The similarities among these observations reinforce the credibility of the evaluation process.

During the 2011-2012 school year, the observation cycle repeated with similar results. On October 11, 2011, Assistant Principal Austin noted that students arrived late and discussed unrelated topics. Sup. Ex. 53. On November 28, 2011, the assigned mentor, Mr. Wemple, wrote that there was no objective or focus during the lesson. Sup. Ex. 44. On April 26, 2012, Principal Nicholson again expressed concern that there was no assessment of students who did not participate in discussion. Sup. Ex. 26. On May 4, 2012, she observed students using cell phones in class. Sup. Ex. 23. For two consecutive years, Appellant was rated unsatisfactory in the areas of learning climate, instruction, and professionalism. Sup. Ex. 20 & 61. The record clearly demonstrates that these ratings can be traced to observable teacher actions.

- a. *Appellant raises an exception that her evaluations represent nothing more than the principal’s opinion, and that the ALJ erroneously reiterated that opinion.*

It is to be expected that Appellant disagrees with her evaluations. Evaluation of teacher competency “is necessarily a highly subjective determination that does not easily lend itself to precise quantification.” *Beauchamp v. Davis*, 550 F.2d 959, 961 (4th Cir. 1977). So long as the evaluation process is fair and impartial, however, we decline to substitute our own evaluation of teacher competency for that of school officials. Teacher competency is an area in which school officials must remain free to exercise their judgment and discretion. *Id.* We agree with the ALJ that Principal Nicholson’s professional judgment was supported by the evidence.

The observation notes taken by Principal Nicholson are not mere opinion. They are the work product of a professional educator and they are part of the evidentiary record, just like the observations of the other school administrators and PGCPs personnel who visited Appellant’s classroom. Particularly useful are the notes that include a verbatim record of teacher and student

actions. Appellant had ample opportunity to give her side of the story, and that too is part of the evidentiary record. The ALJ weighed the evidence and concluded that the evidence supported the unsatisfactory evaluations that resulted in Appellant's termination. We agree with that conclusion.

- b. *Appellant raises an exception that the principal used the evaluation process as a subterfuge to discredit her and exercise a preference for age and race.*

The ALJ's Proposed Decision does not address Appellant's perception of discrimination. The Hearing Examiner, however, concluded that there was no evidence that anyone set out to unfairly prejudice Appellant or discriminate on the basis of her age or race. Hearing Examiner Recommendation, pg. 15. Our review of the record also finds no evidence of status-based discrimination against Appellant. Not only has Appellant failed to make a prima facie case of discrimination, but also the extensive record in this case is sufficient to prove that Appellant was terminated for legitimate reasons, not as a mere pretext for discrimination. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

II. The Teacher Had Serious Teaching Deficiencies

Appellant's deficiency in learning climate can be traced to poor classroom management and negative responses to students. Assistant Principal Daniel and Dr. Papineau from the High School Consortium both concluded that Appellant's classroom management techniques were ineffective. Sup. Ex. 81 & 63. During subsequent observations, Assistant Principal Austin and Principal Nicholson identified several students arriving late to class, using electronic devices, or discussing topics unrelated to the lesson. Sup. Ex. 53 & 30. Mr. Austin also recommended that Appellant monitor her responses to students. Sup. Ex. 69. The behaviors observed by school officials are sufficient to conclude that there was a serious deficiency in learning climate in Appellant's classroom.

Appellant's deficiency in instruction can be traced to a teacher-centered delivery of lessons. On December 1, 2010, Assistant Principal Austin recommended that Appellant provide wait time in her lectures. Sup. Ex. 69. Students were quoted as saying, "Why are you going so fast?" and "Can you slow down a bit?" *Id.* Principal Nicholson testified that Appellant was concerned with finishing and adhering to the lesson. Transcript II, pg. 389. Assistant Principal Daniel also testified that Appellant failed to probe for higher order questions, and chose instead to bring the lesson back to where she wanted it to go. Transcript I, pg. 188. Appellant repeatedly failed to assess whether students understood the lesson as delivered. Principal Nicholson and Dr. Papineau from the High School Consortium each recommended formative assessment. Sup. Ex. 74 & 63. Regardless of Appellant's own content knowledge, the record demonstrates a serious deficiency in instruction because she failed to ensure it was transmitted to students.

Appellant's deficiency in professionalism can be traced to a series of inappropriate interactions with school administrators and PGCPs personnel. On September 17, 2010, Appellant e-mailed Assistant Principal Daniel the statement "you really have no idea what you are doing" and received a letter of warning. Sup. Ex. 77 & 76. Despite being informed that such

language was inappropriate, Appellant later compared conferencing with administrators to the Salem Witch Trials. Sup. Ex. 62. On October 4, 2011, Appellant told Assistant Principal Austin “I got you!” in an escalated voice and received another letter of warning. Sup. Ex. 56. Appellant tended to use an oppositional tone with supervisors and students alike. When Appellant told a student that the principal was “out to get him and his brother out of the school,” Principal Nicholson issued a formal letter of reprimand. Sup. Ex. 48. She was warned that her behavior was unprofessional and yet she persisted. Appellant’s statements in the school environment represent not just poor judgment, but also a clear deficiency in professionalism.

- a. *Appellant raises an exception that her students received passing grades and she taught Advanced Placement courses, which are inconsistent with incompetency.*

That students received passing grades is not necessarily an indicator of competency. Teachers award grades on their own scale. Evidence of competency rests in the level of student engagement, classroom discussion, and academic outcomes as compared to peers. During the 2009-2010 school year, which was the last year Appellant received a satisfactory evaluation, she had the second lowest benchmark scores in the school, with just 23 percent of her students scoring either proficient or advanced. Sup. Ex. 84. On October 12, 2011, Principal Nicholson observed a lesson in which the majority of students did not score a 70 percent. Sup. Ex. 51. On April 26, 2012, Principal Nicholson remarked that she observed no assessment of students who did not participate in discussion. Sup. Ex. 26.

Nor does teaching Advanced Placement courses in consecutive years necessarily indicate competency. In this case, it appears to have been a strategic staffing decision. The English Department Chair, Ms. Conwell, testified that it was an attempt to give Appellant more mature students in order to avoid classroom management issues. Transcript I, pg. 59. This version of events accords with Appellant’s persistent deficiency in learning climate. In addition, Appellant admitted that after teaching Advanced Placement for two years, only four or five of her students scored high enough to receive college credit. Transcript IV, pg. 1304.

- b. *Appellant raises an exception that the ALJ provided no meaningful examples of inappropriate remarks to students and confused sarcasm with unprofessionalism.*

The poor learning climate in Appellant’s classroom is evidenced in the record. In 2010, when a student asked to leave the classroom, Appellant responded, “No, did I stutter?” Sup. Ex. 69. This response is not only inappropriate because it could be offensive, but also because it is ineffective. In 2011, Appellant told a student that Principal Nicholson was going to kick him out of school, and then testified that she did so to help him avoid an office referral. Transcript III, pg. 899-900. Regardless of her intent, it is generally inappropriate to carry adult conversations back to students. This illustrates poor judgment and a lack of positive classroom management strategies. In 2012, Principal Nicholson had to direct Appellant to “refrain from discussing [her] personal and professional challenges during the instructional period amongst students.” Sup. Ex. 40. Because these examples negatively affect the learning climate in Appellant’s classroom, they constitute inappropriate remarks to students.

Appellant’s professionalism deteriorated as her relationship with school administrators worsened. In 2010, she sent an e-mail to Assistant Principal Daniel stating, “you really have no

idea what you are doing.” Sup Ex. 81. Appellant testified that she “felt persecuted” because Ms. Daniel had visited her classroom multiple times. Transcript IV, pg. 1225-27. In 2011, Appellant sent an e-mail to Principal Nicholson that compared conferencing with administrators to the Salem Witch Trials. Sup. Ex. 62. The possibly sarcastic nature of this statement fell flat because animosity clearly already existed. Such animosity extended to Appellant’s mentor, Mr. Wemple, as well. After his first observation, he noted that Appellant insulted his suggestions. Sup. Ex. 44. As for Principal Nicholson, Appellant privately stated, “I hate her! I hope she dies a painful and horrible death.” Sup. Ex. 17. Appellant correctly pointed out that she did not say this about Mr. Wemple, but she admits it was said about the principal. No matter the target of these words, this is unprofessional behavior. The pattern of such behavior is a serious deficiency.

III. The Teacher Was Provided Adequate Assistance to Remedy Those Deficiencies

Adequate assistance comes in the form of a package of professional development and individualized supports. Appellant received feedback after each formal observation and informal walk-through, not just from her school administrators but also PGCPs personnel. The record shows that more than the minimum number of observations and conferences took place during the 2010-2011 and 2011-2012 school years. Action plans were prepared timely and aligned with the evaluation cycle. For example, after each unsatisfactory interim evaluation, a conference was held with Appellant to discuss improvement strategies. Sup. Ex. 67 & 32. Appellant also had access to regular professional development. Sup. Ex. 24. She admitted in her testimony that Principal Nicholson arranged for her to observe two other teachers at Fairmont Heights High School. Transcript IV, pg. 1235-37. Appellant received adequate feedback from a variety of sources yet remained unwilling or unable to execute the recommended actions.

After her teacher’s certificate was placed on second class status, Appellant was assigned a mentor in accordance with PGCPs policy. Her mentor, Mr. Wemple, attempted to conduct classroom observations, but found Appellant defensive and unreceptive to feedback. Sup. Ex. 44. Mr. Wemple testified that by January 2012, he was unable to work with Appellant on lesson structure and could only talk about things she was already doing in her classroom. Transcript II, pg. 715. When Mr. Wemple suggested a strategy to generate more student questions, Appellant failed to implement it. Transcript III, pg. 696. When Mr. Wemple offered to help set up an observation of another Advanced Placement teacher, Appellant again turned him down. Sup. Ex. 44. With regard to her mentor, adequate assistance was provided, but Appellant failed to even attempt some of the suggestions for improvement.

- a. *Appellant raises an exception that PGCPs failed to assign her a mentor for the 2010-2011 school year and, as a result, violated the Accardi Doctrine.*

The *Accardi Doctrine* requires that agencies follow their own rules, and if they do not, the resulting agency action is invalid. *Board of School Commissioners of Baltimore City v. James*, 96 Md. App. 401, 421 (1993). It is the policy of PGCPs to assign mentors to teachers who have had their teacher’s certificate placed on second class status. Transcript II, pg. 438. Appellant was not placed on second class status until June 24, 2011, after she received her first unsatisfactory final evaluation. Sup. Ex. 59. PGCPs assigned Mr. Wemple as Appellant’s

mentor during the 2011-2012 school year, in accordance with district-level policy. Transcript II, pg. 625.

To raise an exception regarding mentorship during the 2010-2011 school year appears disingenuous. Appellant testified that she knew no mentor program existed at the school level, and that her request was sarcastic. Transcript IV, pg. 1074-75. The record clearly demonstrates that there was no violation of the *Accardi* Doctrine.

b. *Appellant raises an exception that her mentor was inadequate, her action plans were generic, and school officials just went through the motions to terminate her.*

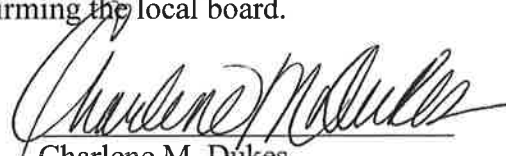
Mentors are not just for teachers who are new to the profession. PGCPS also assigns mentors to veteran teachers “who need to have refreshment in terms of instructional output.” Transcript I, pg. 228. Appellant nevertheless argues that her mentor, Mr. Wemple, only came to her class one time, and that his strategies were inappropriate for Advanced Placement courses. Visitation logs show that Mr. Wemple observed Appellant’s classroom on November 9, 2011 and November 28, 2011, and that they conferenced several more times. Sup. Ex. 44. The interaction after the first observation is instructive. Mr. Wemple demonstrated how to ask an open-ended question to students and Appellant “became defensive,” stating that he had “wasted time and gone nowhere with that discussion” and “randomly broken her structure.” Sup. Ex. 44. Principal Nicholson testified that she has had other teachers receive a mentor while on second class status and remain on staff because they made satisfactory progress. Transcript II, pg. 440. Mentorship was provided here, but Appellant’s resistance made it unproductive.

Appellant’s action plans were aligned with her evaluations, which rated several elements of learning climate, instruction, and professionalism as unsatisfactory. Sup. Ex. 70 & 34. While the actions plan received in 2010 and 2012 may appear similar, this is not surprising because Appellant continued to need improvement in those areas.

Finally, the claim that school officials were just going through the motions to terminate Appellant does not accord with the extensive record in this case. Appellant was observed by multiple school administrators and PGCPS personnel, informed of serious teaching deficiencies, and provided with a package of assistance that included professional development, action plans, and a mentor. In the end, Appellant failed to remedy her deficiencies because she refused to admit that she had any.

CONCLUSION

We agree with the ALJ’s assessment that the record in this case supports the local board’s termination of Appellant from her teaching position on the ground of incompetency. We, therefore, adopt the ALJ’s Proposed Decision affirming the local board.


Charlene M. Dukes
President

Mary Kay Finan
Mary Kay Finan
Vice President

James H. DeGraffenreidt, Sr./MCP
James H. DeGraffenreidt, Jr.

Linda Eberhart
Linda Eberhart

Absent

S. James Gates, Jr.

Larry Giammo/MCP
Larry Giammo

Luisa Montero-Diaz
Luisa Montero-Diaz

Absent

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton/MCP

Donna Hill Staton

Guffie M. Smith, Jr.
Guffie M. Smith, Jr.

January 27, 2015

CONSTANCE JEANNE SAMMARCO, * BEFORE MICHAEL W. BURNS,
APPELLANT * AN ADMINISTRATIVE LAW JUDGE
V. * OF THE MARYLAND OFFICE
PRINCE GEORGE’S COUNTY * OF ADMINISTRATIVE HEARINGS
BOARD OF EDUCATION * OAH NO.: MSDE-BE-01-14-01158

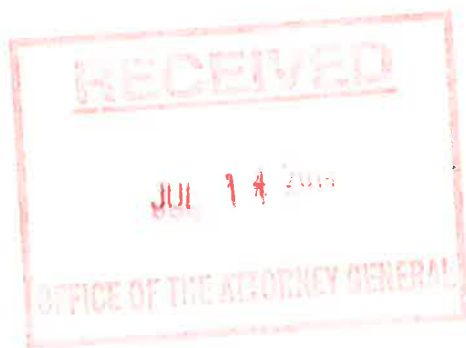
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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE

SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION

PROPOSED CONCLUSIONS OF LAW
PROPOSED RECOMMENDATIONS
PROPOSED ORDER



STATEMENT OF THE CASE

On August 17, 2012, the Prince George’s County Public Schools’ (PGCPS) Superintendent recommended to the Prince George’s County Board of Education (PG Co. Board) that the Appellant’s employment be terminated based on her receipt of unsatisfactory evaluation ratings for two years. The Appellant filed an appeal. On December 5, 10, 12, 2012 and January 14, 2013, Hearing Examiner F. Robert Troll, Jr., conducted an evidentiary hearing, and on June 18, 2013, he recommended that the PG Co. Board affirm the termination.

On December 13, 2013, the PG Co. Board issued an Order terminating the Appellant and on January 6, 2014, the Appellant appealed. On January 10, 2014, 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 with 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.01.05.07E. On January 17, 2014, the OAH sent the parties a Notice of Telephone Prehearing Conference (Conference) to be held on February 26, 2014.

On February 26, 2014, I conducted the Conference with Shani K. Whisonaut, Esquire, counsel for the PG Co. Board, and the Appellant participating. On February 27, 2014, I issued a Prehearing Conference Report and Scheduling Order (Scheduling Order). On February 27, 2013, the OAH issued a Notice of Hearing informing the parties that a hearing on any open motions (Motions Hearing) would be held on April 16, 2014, and a hearing on the merits, if necessary, would held on April 29 and 30, 2014.

In the Scheduling Order, I noted that requests to supplement the record below with additional testimony pursuant to COMAR 13A.01.05.04C and 13A.01.05.07C(1) would be addressed, as necessary, at the Motions Hearing. I also noted that except for the possibility that the Appellant would attempt to call one witness (Robert Thomas Caldwell, Jr.), neither party intended to supplement the record.

I conducted the scheduled Motions Hearing on April 16, 2014, at the OAH offices, in Hunt Valley, Maryland. Ms. Whisonaut represented the PG Co. Board and the Appellant represented herself. The PG Co. Board's Motion for Summary Affirmance (Motion) was argued, and after the presentations of both parties, I held the Motion *sub curia* for decision at the Merits Hearing. Further, the PG Co. Board indicated that it did not intend to elicit any further testimony at the Merits hearing, but intended to rely on the record of the hearing below. Conversely, the Appellant stated that she wanted to elicit testimony from Robert Thomas Caldwell, Jr. at the Merits Hearing and requested a subpoena be issued for Mr. Caldwell. The Appellant did not,

however, proffer any persuasive argument why the evidence to be offered by Mr. Caldwell was material, was not already contained in the record or why any such evidence was not offered in the previous proceedings. After considering the proffer, I denied the Appellant's request to subpoena Mr. Caldwell. COMAR 13A.01.05.04C; 07C. Accordingly, the Merits Hearing was conducted based on the record produced before the Hearing Examiner.

On April 29, 2014, I conducted the hearing at the offices of the OAH in Hunt Valley, Maryland. Ms. Whisonaut represented the PG Co. Board and the Appellant represented herself. After the Appellant presented her case the PG Co. Board renewed its Motion. After considering the argument of the parties, I denied the Motion on the record.

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 (2009 & Supp. 2013); Code of Maryland Regulations (COMAR) 13A.01.05; COMAR 28.02.01.

ISSUE

Was the Appellant's termination was proper?

SUMMARY OF THE EVIDENCE

Exhibits

The parties did not introduce any exhibits into evidence but instead relied on the exhibits that were introduced at the hearing below on December 5, 10, 12, 2012 and January 14, 2013. A transcript of the hearing, the exhibits introduced by the parties at that hearing, and the Hearing Examiners' Findings of Fact, Conclusions of Law and Recommendation, dated June 18, 2013, are also part of the record before me.

Testimony

The Appellant did not present testimony from any witnesses.

The PG Co. Board did not present testimony from any witnesses.

PROPOSED FINDINGS OF FACT

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

1. The Appellant is certified to teach English for grades six through twelve.
2. The Appellant was employed by the PG Co. Board on or about February 3, 2003 as a ninth grade English teacher at Fairmont Heights High School (Fairmont Heights) in Prince George's County, Maryland.
3. The Appellant taught at Fairmont Heights from 2003 until the time of her proposed termination in 2012.
4. Nakia Nicholson became the principal at Fairmont Heights shortly before the start of the 2009-2010 school year.
5. As principal at Fairmont Heights, Ms. Nicholson evaluated the Appellant's teaching performance.
6. During the 2009-2010 school year, the Appellant taught tenth grade English.
7. An assessment of all tenth grade English classes at Fairmont Heights for the 2009-2010 school year resulted in a finding that the Appellant's students had the second lowest achievement results.
8. Ms. Nicholson evaluated the Appellant's 2009-2010 performance as satisfactory.
9. On September 2, 2010, Donna Daniel, an assistant principal at Fairmont Heights, formally observed the Appellant's eleventh grade English class. Ms. Daniel noted her observations in a Classroom Observation Form.

10. The Appellant's September 2, 2010 lesson was compromised by the lack of discipline and management and the Appellant's classroom management techniques were ineffective and counter-productive to the Appellant's ability to deliver a quality lesson and for the students to receive quality instruction.
11. Ms. Daniel prepared an action plan (Daniel Action Plan) for the Appellant with specific recommendations for improvement. The Daniel Action Plan was reviewed by the Appellant.
12. On September 15, 2010, Ms. Daniel again observed the Appellant, on this occasion, during an eleventh grade Advanced Placement (AP) English class.
13. Ms. Daniel found that specific components of both Management/Classroom Environment and Instructional Delivery continued to be only "Somewhat Evident" or "Not Evident" during this second observation. Ms. Daniel found two components of Curriculum Planning to be only "Somewhat Evident" as well.
14. The Appellant failed to achieve the goals of the Daniel Action Plan to improve her teaching performance.
15. On September 17, 2010, Ms. Daniel sent an electronic mail (email) to the Appellant attaching information regarding a Professional Development opportunity that Ms. Daniel thought would assist the Appellant in her professional growth.
16. The Appellant responded to Ms. Daniel's September 17, 2010 email with an email insulting and degrading Ms. Daniel. The email included the following: "you really have no idea what you are doing" and that "[y]our little witch-hunt for bad teachers is actually starting to amuse me because you choose to attack me, the hardest working teacher who gives the most."
17. In response to the Appellant's email Ms. Daniel issued to the Appellant a formal warning by letter dated September 21, 2010, regarding the Appellant's unprofessional comments.

18. On September 13, 2010, Ms. Nicholson conducted an informal walk-through observation of the Appellant's eleventh grade AP Language class.
19. On September, 13, 2010, the Appellant's AP Language class was not taught with the level of rigor required for an AP Language class and all aspects of instructional delivery were not evident. Students wanted to succeed but were confused by the Appellant's presentation. A number of specific Management/Classroom Environment, Curriculum Planning, and Motivation components were found to be only "Somewhat Evident" by Ms. Nicholson. All components of Instructional Delivery were found to be "Not Evident".
20. On October 8, 2010, Ms. Nicholson conducted a Formal Observation of the Appellant's eleventh grade English class.
21. On October 8, 2010, the Appellant's eleventh grade English class had a cluttered and disorganized learning environment, with no clear expectations for the students. The Appellant simply wanted to get through the lesson without concern whether the students understood the material presented.
22. As a result of her Formal Observation, Ms. Nicholson recommended another action plan (Nicholson Action Plan) for the Appellant, this one focusing on the observed weaknesses in planning and preparation, classroom learning climate, instruction, professionalism and achievement outcome. The Nicholson Action Plan was reviewed by the Appellant.
23. On November 15, 2010, the Appellant received a detailed unsatisfactory interim evaluation (First Unsatisfactory Evaluation) from Ms. Nicholson. The Appellant received unsatisfactory grades in ten areas involving learning climate, instruction and professionalism and was found not to have achieved the achievement objective regarding significant and demonstrable progress on the part of students. The Appellant also received "Needs to

Improve” grades in nine component areas. The Appellant was advised to adhere to the Nicholson Action Plan in order to improve instructional outcomes for students. The Appellant received a copy of First Unsatisfactory Evaluation.

24. On December 1, 2010, Michael Austin, Assistant Principal at Fairmont Heights, observed the Appellant’s AP English 11 class.
25. Mr. Austin noted in his Classroom Evaluation Form that the Appellant should monitor her responses to students so as to avoid communicating negative perceptions or expectations to the students. He also advised the Appellant to adhere to the Nicholson Action Plan. The Appellant reviewed Mr. Austin’s Classroom Evaluation Form.
26. The Appellant made negative and inappropriate remarks to her students during her December 1, 2010, AP English 11 class.
27. William Barnes, Director, High School Consortium, reviewed the Appellant’s November 15, 2010, Interim Evaluation and met with the Appellant, Ms. Nicholson, and Dr. Robert Papineau, Instructional Specialist, on January 19, 2011. Mr. Barnes detailed several areas needing improvement – planning and preparation, learning climate, instruction, professionalism, and achievement outcome – and instructed the Appellant to construct an action plan for improvement in each area.
28. The Appellant prepared and submitted an action plan (Appellant Action Plan) on February 2, 2011.
29. The Appellant partially achieved or achieved several component items in the Appellant Action Plan, but failed to achieve a number of the listed component items in each of the areas of the Appellant Action Plan during the remainder of the 2010-2011 school years.

30. Ms. Nicholson observed the Appellant's English 11 Class on February 23, 2011. Ms. Nicholson detailed in her Classroom Observation Form various ongoing deficiencies in the Appellant's teaching and advised the Appellant to adhere to her action plan in order to improve instructional practices and increase the success of student outcomes.
31. During her February 23, 2011 English 11 class, there was only minimal improvements in the Appellant's performance. The Appellant struggled tremendously with connecting to her students. The Appellant's execution of her lessons was very choppy and disconnected.
32. On April 11, 2011, Dr. Papineau conducted a classroom observation of the Appellant's English 12 class. Dr. Papineau noted his observations and recommendations in a Classroom Observation Form produced after his visit.
33. On April 11, 2011, the Appellant exhibited management issues and her management practices were ineffective in focusing her students on learning during her English 12 class. The Appellant experienced issues with maintaining control of her class and was generally ineffective at maintaining control. There was an absence of sound work habits, routines, expectations and serious work during that class as well. Dr. Papineau advised the Appellant, who reviewed his Classroom Observation Form, to review the action plan developed as a result of her interim unsatisfactory evaluation.
34. The Appellant received an unsatisfactory evaluation (Second Unsatisfactory Evaluation) from Ms. Nicholson for the 2010-2011 school year on May 27, 2011. The Appellant received unsatisfactory grades in five component areas including learning climate, instruction, and professionalism and had not achieved the achievement outcome of students showing significant and demonstrable progress in this evaluation.

35. In spite of the efforts of Ms. Nicholson and other PGCPs personnel throughout the 2010-2011 school year, the Appellant maintained deficiencies in, and showed only minimal interest in improving the areas of learning climate, instruction, and professionalism at the end of the 2010-2011 school year.
36. The Appellant's interaction with students was especially poor and ineffective. The Appellant was unable to maintain appropriate discipline in her classroom and was unable to interact appropriately with her students. Many of the Appellant's students dreaded attending her class.
37. On June 24, 2011, William R. Hite, Jr., Superintendent of the PGCPs, notified the Appellant that because of her unsatisfactory evaluation for the 2010-2011 school year, her teacher's certificate would be reclassified to second-class status effective for the 2011-2012 school year and that it was subject to review at the conclusion of that year.
38. The Appellant was on notice that her teaching performance had to improve during the 2011-2012 school year.
39. The PGCPs attempted to assist the Appellant to improve her teaching performance and skills repeatedly during the 2010-2011 school year.
40. During the 2010-2011 school year, Ms. Nicholson, Ms. Daniel, Mr. Austin and Dr. Papineau observed the Appellant teaching.
41. During the 2010-2011 school year, both Ms. Daniel and Ms. Nicholson produced action plans to assist the Appellant with her teaching performance.
42. The Appellant showed little, if any progress, in improving her teaching performance during the 2010-2011 school year.

43. In the fall of the 2011-2012 school year, the PGCPSS assigned a mentor to the Appellant to assist her with her teaching performance and skills. The mentor was a teacher named Jonathan Wemple.
44. The Appellant and Mr. Wemple met on several occasions during the 2010-2011 school year.
45. The Appellant did not believe that she required the aid of a mentor.
46. The Appellant felt that it was an embarrassment to have a mentor.
47. The Appellant did not believe that Mr. Wemple could provide her with assistance regarding her teaching skills and performance.
48. The Appellant was resistant to the assistance offered by Mr. Wemple.
49. The Appellant did not cooperate with Mr. Wemple. The Appellant stated, for example, that it was the Appellant's opinion that she was "one of the top teachers in the County, let alone the school" and that Mr. Wemple "could not provide her with any value added leadership to improve her instructional practices."
50. The Appellant was also unprofessional in her comments regarding Mr. Wemple, telling a staff member that the Appellant hated Mr. Wemple and wanted to see him die a slow death.
51. Ms. Daniel conducted an observation of the Appellant's AP English Literature class on September 14, 2011. Ms. Daniel made several recommendations for improvement to the Appellant and initiated another action plan (Second Daniel Action Plan) for the Appellant. The Appellant reviewed the action plan.
52. Ms. Daniel monitored and attempted to assist the Appellant with improving her classroom instruction and management during the 2011-2012 school year.
53. The Appellant failed to cooperate with Ms. Daniel during the 2011-2012 school year and failed to utilize the Second Daniel Action Plan to improve her teaching performance.

54. On October 4, 2011, Michael Austin visited the Appellant's classroom to provide the Appellant information regarding a school program. During their discussion, the Appellant became visibly agitated in front of students entering the classroom. The Appellant raised her voice with Mr. Austin, and he left the room in order to deescalate the situation.
55. As a result of the October 4, 2011, incident, Mr. Austin sent the Appellant a letter that day requesting that she refrain from unprofessional behaviors in the school.
56. On or about October 25, 2011, the Appellant told a student that Ms. Nicholson was out to get the student and his brother out of the school. Ms. Nicholson was contacted by the student's mother regarding what the Appellant said.
57. On October 26, 2011, Ms. Nicholson gave the Appellant a formal letter of reprimand for the October 25, 2011 incident.
58. The Appellant believed that students were out to get her and she was very aggressive, and often disrespectful, in dealing with students.
59. The Appellant continued to exhibit unprofessional behavior throughout the 2011-2012 school year, including discussing personal matters with students. Ms. Nicholson eventually brought the matter to the attention of Monica Goldson, Associate Superintendent, PGCPs, for assistance regarding the Appellant's ongoing unprofessional behavior.
60. On October 11, 2011, Ms. Nicholson conducted another formal observation of the Appellant. Ms. Nicholson observed ongoing issues with the Appellant's teaching performance.
61. On October 11, 2011, the Appellant's class lesson was unsatisfactory and recommendations were made for improvement. These recommendations for improvement were made by Ms. Nicholson and were reviewed by the Appellant.
62. On December 19, 2011, Ms. Daniel observed the Appellant's class.

63. On December 19, 2011, although there was some improvement observed, many of the teaching performance issues and deficiencies observed previously were still exhibited by the Appellant during the class observed by Ms. Daniel.
64. On January 11, 2012, the Appellant received an unsatisfactory interim Teacher Evaluation (Third Unsatisfactory Evaluation) from Ms. Nicholson. The Teacher Evaluation rated the Appellant as “Needs to Improve” in seven rating components, including learning climate, instruction and professionalism. The Teacher Evaluation also indicated that the Appellant had not achieved the required achievement outcome regarding significant and demonstrable progress on the part of students.
65. In the Third Unsatisfactory Evaluation, staff requested that the Appellant take advantage of working with her mentor and others to improve her performance.
66. The Appellant continued to not cooperate with her mentor after receiving her January 11, 2012 Third Unsatisfactory Evaluation.
67. As a result of the Third Unsatisfactory Evaluation received by the Appellant, Ms. Jane W. Spence, Instructional Director for High School Performance, PGCPs, met with the Appellant and with Ms. Nicholson on February 27, 2012, to discuss plans for the Appellant to achieve satisfactory performance.
68. As a result of the February 27, 2012 meeting, another action plan (Spence Action Plan) was prepared for the Appellant.
69. As part of the Spence Action Plan, various specific deadlines were established for the Appellant to make needed improvements in the areas of learning climate, professionalism and achievement outcome. Specific actions/strategies for achieving these deadlines were

described in detail in the Spence Action Plan. The Appellant reviewed the Spence Action Plan.

70. The Appellant failed to perform the requirements of the Spence Action Plan.
71. Ms. Nicholson conducted additional walk-through visits of the Appellant's classes on March 16, 2012 and April 26, 2012.
72. On both March 16, 2012, and April 26, 2012, the Appellant continued to fail to provide adequate instructional delivery and failed to adequately manage student behavior.
73. The PGCPS made repeated efforts to support and assist the Appellant during the 2011-2012 school year.
74. The Appellant failed to make meaningful progress in her classroom instruction and management, and she exhibited unprofessional behavior with both students and fellow staff during the 2011-2012 school year.
75. On May 16, 2012, the Appellant received an unsatisfactory rating from Ms. Nicholson on her year-end evaluation (Fourth Unsatisfactory Evaluation). As of May 16, 2012, the Appellant was still unsatisfactory in six elements of classroom learning climate, instruction, and professionalism, and was still not achieving the required achievement outcome for students.
76. The Appellant's teaching performance improved very little in any meaningful way between the 2010-2011 year-end evaluation and the 2011-2012 year-end evaluation.
77. The Appellant's professional relationship with both students and with her peers did not improve in the 2011-2012 school year.
78. On May 29, 2012 Ms. Nicholson completed an Evaluation Cover Sheet for Submission to Instructional Director's Office for Review upon which she recommended that the Appellant be terminated from employment with the PGCPS.

79. On August 14, 2012, a conference was held with the Appellant to address the pending recommendation from Ms. Nicholson for termination of the Appellant's employment based upon the unsatisfactory evaluation ratings for two years.

80. On August 17, 2012, Dr. Hite recommended that the Appellant be terminated on the grounds of incompetency.

DISCUSSION

Section 6-202 of the Education Article of the Maryland Annotated Code provides that “[o]n the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant” for reasons including “incompetency.” Md. Code Ann., Educ. § 6-202(a)(1)(iv) (2008). The law 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.01.05.05F(1), the standard of review for dismissal actions involving certificated employees is described as “*de novo*.” The next subsection provides that “[t]he State Board shall exercise its independent judgment on the record before it in determining whether to sustain the . . . dismissal of a certificated employee.” COMAR 13A.01.05.05F(2). Accordingly, I will make a *de novo* determination based upon the record created before me. Although an entirely *de novo* hearing is not contemplated or authorized 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. Even in such a case, however, COMAR 13A.01.05.07C(1) allows for the

exclusion of additional evidence that is “unduly repetitious of that already contained in the record.” The local board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05F.

In the instant case, no additional evidence was received. Accordingly, because there is no evidence to supplement the record below, I shall exercise my independent judgment based on the record below and I shall make a *de novo* decision as to whether the Appellant was incompetent or engaged in the willful neglect of duty. As such, I find that the evidence in this case contained in the record overwhelmingly supports the conclusion that the Appellant was incompetent in the performance of her teaching duties. Based upon the evidence, no other conclusion is possible. I also find that dismissal is an appropriate sanction in this case.

Throughout her appeal, the Appellant has maintained that she is an excellent teacher, one of the best in Prince George’s County in fact, who is the victim of what can only be described as a conspiracy against her by a number of PGCPS employees. She denies the validity of the detailed evaluations and observations of the many persons involved in this matter over a period of almost two years.

The Appellant’s arguments are utterly devoid of any merit. There is no evidence whatsoever to support the Appellant’s unsubstantiated claims regarding other staff waging a vendetta against her. The evidence presented by the PGCPS is, on the other hand, overwhelming. It is detailed, substantive, documented and corroborated by the testimony of numerous different individuals.

The record is clear and detailed that the Appellant exhibited serious teaching deficiencies and professional behavioral issues over a period of nearly two years. The record is also clear and detailed that in spite of efforts by numerous staff members over many months to assist the

Appellant over this period, the Appellant refused to take advantage of the efforts made to improve her teaching and professional performance and failed to improve in any meaningful way. In point of fact, the Appellant resented the attempts and consciously refused to take advantage of the numerous efforts made to assist her and improve both her classroom performance and her professional relationships with both student and peers. The result was a dysfunctional, unprofessional and incompetent teacher.

The facts are clear from the record below and demonstrate the basis for the conclusions found above. During the fall of 2011, the Appellant was observed by Fairmont Heights Principal Nakia Nicholson and Assistant Principal Donna Daniel during various classes. Both observed a number of deficiencies in the Appellant's teaching, including weakness in planning and preparation for class, classroom learning climate, instruction, and professionalism. Ms. Daniel specifically noted ineffective and counter-productive classroom management techniques and found that the students were not engaged in the lesson. Ms. Nicholson noted that the Appellant was deficient in the areas of planning and preparation, classroom learning climate and instructional delivery and that the Appellant had failed to engage her students at a level expected of the advanced placement class being observed. Significantly, Ms. Nicholson found that the Appellant's goal was to "just get through the lesson". December 10, 2012, Transcript p. 389. Both Ms. Daniel and Ms. Nicholson produced detailed action plans to assist the Appellant in making improvements in the various specific areas noted by both evaluators, which the Appellant reviewed and was expected to follow.

There is no evidence that the Appellant utilized and followed either of these two action plans in any meaningful way. Ms. Daniel observed the Appellant's class again on September 15,

2010, and found ongoing issues with classroom management and environment as well as instructional delivery.

Additionally, there is detailed and persuasive evidence that the Appellant did not recognize the need to improve her skills and presentation and, in fact, was hostile regarding the attempts to assist her. On September 17, 2010, Ms. Daniel sent an email to the Appellant regarding an opportunity which Ms. Daniel thought would assist the Appellant in her professional growth. The Appellant responded with an email two days later that was condescending and insulting, replying to Ms. Daniel: “you really have no idea what you are doing” and that “[y]our little witch-hunt for bad teachers is actually starting to amuse me because you choose to attack me, the hardest working teacher who gives the most.” Superintendent’s Hearing Exhibit Number 77. The Appellant’s response was clearly unprofessional and was regarded as such by Ms. Daniel. It also was illustrative of a pattern evident throughout this matter in which the Appellant believed that there was no need for her to alter her teaching methods and that repeated offers to assist her in doing so were insulting and beneath her. The Appellant exhibited ongoing resentment towards those who observed her performance and offered to assist her throughout the relevant period. Indeed, the Appellant often made that resentment clear to PGCPs employees.

On November 15, 2010, Ms. Nicholson gave the Appellant an unsatisfactory rating on her interim evaluation because of the Appellant’s ongoing weaknesses in classroom learning climate, instruction and professionalism. The Appellant was urged by Ms. Nicholson to adhere to the action plan created by Nicholson for her. Similarly, further observation by Assistant Principal Michael Austin on December 1, 2010, indicated little evidence of improvement by the Appellant in the areas repeatedly stressed to her as requiring improvement. In addition, and

perhaps even more disturbing, Mr. Austin observed the Appellant being sarcastic and rude to her students. His evaluation stressed the need for the Appellant to monitor her statements to students so as to not communicate “negative perceptions or expectations” to them.

As part of Ms. Nicholson’s ongoing efforts to assist the Appellant, a meeting occurred between the Appellant, Ms. Nicholson and William Barnes, Director of the PGCPS High School Consortium which resulted in specific, detailed recommendations being made to the Appellant to improve her teaching performance in the areas of planning and preparation, learning climate and professionalism. The Appellant created an action plan to implement the recommendations of the meeting.

Ms. Nicholson observed the Appellant again on February 23, 2011, but found only minimal improvement in her performance. Ms. Nicholson found that the Appellant still had difficulty in connecting to students and had a very fragmented approach in delivering instruction. Ms. Nicholson once again advised the Appellant to follow her action plan in the future.

Dr. Robert Papineau, High School Consortium Instructional Specialist, observed the Appellant’s class on April 11, 2011. Dr. Papineau’s observations were similar to those of Ms. Nicholson and Ms. Daniel. He noted that the Appellant had difficulty with classroom management, including maintaining classroom discipline and working with students, and also with her instructional style. The Appellant failed to make significant efforts to improve her performance and did not do so.

As a result of her failure to improve her performance, the Appellant received an unsatisfactory evaluation from Ms. Nicholson for the 2010-2011 school year on May 27, 2011. In spite of the efforts of Ms. Nicholson, Ms. Daniel and others throughout the 2010-2011 school year, the Appellant maintained deficiencies in, and showed only minimal improvement in, the

areas of learning climate, instruction, and professionalism at the end of the 2010-2011 school year. The Appellant did not seriously attempt to make the corrections sought by Ms. Nicholson throughout the 2010-2011 school year and refused to cooperate with the efforts to assist her.

As a result of her receiving this unsatisfactory evaluation, William R. Hite, Jr. Superintendent of the PGCPs, notified the Appellant on June 24, 2011, that as a result of her unsatisfactory evaluation for the 2010-2011 school year, her teacher's certificate would be reclassified to second-class status effective for the 2011-2012 school year. The Appellant was also warned that her certificate was subject to review at the conclusion of that year. The Appellant was clearly on notice, therefore, that improvement in her teaching performance was expected and required.

Unfortunately, the 2011-2012 school year saw very little improvement by the Appellant, and very little genuine effort by the Appellant to improve either her teaching performance or her professional behavior with staff and students. The Appellant was provided with a professional development schedule and opportunities to attend developmental classes to assist her. There is no evidence that she benefited from such opportunities. In addition, she was also provided an experienced mentor, Mr. Joseph Wemple, to advise and assist her in improving her performance, assistance that she refused to except as the Appellant erroneously believed that she was one of the top teachers in the County. The Appellant vehemently resisted and greatly resented Mr. Wemple's offers of assistance, as exemplified by the fact that she told a staff member that she hated Mr. Wemple hoped that he died a slow death. December 10, 2012 Transcript at p. 445.

The Appellant, quite simply, refused to accept Mr. Wemple's assistance. When he met with the Appellant, her response was decidedly negative - it was the Appellant's opinion that she

was “one of the top teachers in the County, let alone the school.” and that Mr. Wemple “could not provide her with any value added leadership to improve her instructional practices.”

December 10, 2012, Transcript pp. 439-440. Mr. Wemple’s documented, repeated attempts to assist the Appellant were repeatedly refused and rebuffed over a number of months. The Appellant did not believe she needed to change her way of teaching and did not have any interest in accepting Mr. Wemple’s guidance and advice in improving her teaching performance. In fact, the Appellant’s resistance went to unacceptable extremes, with Mr. Wemple testifying that he had been told that the Appellant hated him and wanted to see him “die a slow death.” December 10, 2012 Transcript at p. 445.

Continuing efforts by both Ms. Daniel and Ms. Nicholson to assist the Appellant were also rebuffed. On September 14, 2011, Ms. Daniel again observed the Appellant’s class, made recommendations for improvements and completed another action plan for the Appellant to follow. On October 20, 2011, Ms. Nicholson observed a class taught by the Appellant. Ms. Nicholson noted areas that needed improvement and made recommendations to the Appellant. Ms. Daniel conducted another observation on December 19, 2011, which resulted in her finding several of the same issues and deficiencies she had previously noted.

The Appellant failed to make satisfactory progress in improving her teaching and received an unsatisfactory interim evaluation rating on January 11, 2012 from Ms. Nicholson, who specifically found that the Appellant needed to improve in seven component areas, including the presentation of lessons, the instruction of students and in professionalism. The Appellant was urged to continue to work with her mentor and other staff to improve her performance.

Ms. Jane W. Spence, Instructional Director for High School Performance, PGCPs, met with the Appellant and with Ms. Nicholson on February 27, 2012 to assist the Appellant. Deadlines were established for the Appellant to make improvements in areas where she had received unsatisfactory ratings on the interim evaluation and Ms. Spence prepared yet another action plan for the Appellant with deadlines established for the Appellant to make improvements in the areas – learning climate, professionalism and achievement outcome - in which improvement was found to be needed. Specific actions and strategies for achieving these deadlines were described in detail.

The Appellant failed to implement the Spence action plan. Ms. Nicholson conducted additional observations of the Appellant’s classes on March 16, 2012 and April 26, 2012 and found that the Appellant continued to deliver inadequate instructional delivery and failed to adequately manage her students’ behavior.

The Appellant also continued to exhibit unprofessional behavior throughout the 2011-2012 school year, including discussing personal matters with students. Ms. Nicholson eventually brought the matter to the attention of Monica Goldson, Associate Superintendent, PGCPs, for assistance regarding the Appellant’s ongoing unprofessional behavior and refusal to improve that behavior.

In spite of the efforts of the PGCPs to support and assist the Appellant during the 2011-2012 school year, the Appellant failed to make substantive progress in her classroom instruction and management. On May 29, 2012, Ms. Nicholson gave the Appellant an unsatisfactory evaluation for the 2011-2012 school year, again noting the oft-cited deficiencies in the areas of learning climate, instruction and professionalism. In spite of “continuous support”, the Appellant’s progress was “mediocre” according to Ms. Nicholson. Ms. Nicholson

recommended that the Appellant be terminated. On August 17, 2012, Dr. Hite recommended that the Appellant be terminated from employment with the PGCPSS on the ground of incompetency.

My review of the record, as is summarized herein, indicates ample, documented evidence to support Dr. Hite's recommendation. The numerous documents in evidence, as well as the credible testimony of witnesses – which included Ms. Daniel, Ms. Nicholson, Ms. Spence, and Mr. Wemple – proved that the Appellant was incompetent as a teacher and had little or no desire to improve. In spite of ongoing, repeated efforts over almost two years to assist her, the Appellant's teaching did not improve, nor did her professional interaction with staff and students. I found substantial evidence that the Appellant saw no need to change or even consider the validity of the observations made over time by staff. The Appellant exhibited little interest in improving as requested in the areas noted and, similarly, exhibited little actual improvement in those oft-cited areas. No conclusion is possible other than the Appellant's teaching performance was incompetent.

It is also clear from the record that the Appellant exhibited rude and inappropriate comments to her students throughout the period involved herein and not just on the occasion observed by Mr. Austin. For example, the Appellant told one student that Ms. Nicholson was out to get the student and his brother out of the school which Ms. Nicholson discovered when she was contacted by the student's concerned mother regarding what the student had been told by the Appellant. As a result, the Appellant was formally reprimanded for her action by Ms. Nicholson. The Appellant was often confrontational and short with students. There is abundant evidence that the Appellant was very negative regarding her interaction with students and there is ample support for Ms. Nicholson's statement that student's "dreaded going to her class."

December 10, 2012 Transcript pp. 416-417. The Appellant's comments to students over the two school years at issue often were often rude, inappropriate and unprofessional and helped create a dysfunctional learning environment for her students.

The Appellant was also unprofessional in her relationships with other staff members. The two incidents involving Ms. Daniel and Mr. Wemple noted previously are indicative of an on-going pattern from the Appellant of rudeness, negativity, condescension, sarcasm and unprofessionalism that is well-documented and intolerable. The Appellant's behavior with other staff was often not professional and no amount of effort from her superiors could get her to either recognize that fact or change that behavior.

The Appellant received an exceptional amount of support as an at-risk teacher. December 10, 2012, Transcript pp. 323-333. Unfortunately, however, the Appellant was an unsuccessful teacher who exhibited ongoing and repeated failures in classroom instruction and management, as well as unprofessional behavior involving her interaction with other staff- including Mr. Wemple, Ms. Daniel and Ms. Nicholson – as well as with students. The Appellant refused to recognize her teaching and professional behavior deficiencies or the need to work to improve those issues. The Appellant was incompetent as a teacher, including her performance in the classroom and in her unprofessional interaction with both students and staff.

Having found that the Appellant was incompetent as a teacher, I conclude that dismissal of the Appellant is the only appropriate sanction. Ms. Nicholson provided the Appellant with extensive and detailed assistance and the Appellant was also provided assistance from other staff at her school and from the school system as well. A total of least four action plans were prepared over a period of two school years by three different individuals to assist the Appellant. An experienced mentor was assigned to assist the Appellant as well. Unfortunately, the Appellant

refused to accept any personal accountability for her incompetence as a teacher and failed to improve her teaching performance. She had no interest in altering her teaching manner and did not do so. Her behavior with fellow staff members - including Ms. Nicholson, Ms. Daniel and Mr. Wemple - was often condescending, negative and rude. Her comment wishing that Mr. Wemple die a slow and painful death is breathtakingly cruel, vicious, unprofessional and intolerable. Her behavior with her students was also often inappropriate – she was condescending, sarcastic and rude on various occasions throughout the two school years. Her attitude created an ineffective and stressful learning environment and I can understand why students “dreaded” attending her class.

The Appellant’s reaction to the attempts to assist her and improve her teaching performance was undermined by the Appellant’s erroneous belief that she was one of the most qualified teachers in Prince George’s County. Her assessment is demonstrably incorrect. In spite of great efforts by the PGCPs to assist the Appellant, the Appellant failed to even minimally improve over the period at issue. The Appellant was on notice that her performance as a teacher was not satisfactory and was given many opportunities to improve. Two consecutive years of unsatisfactory performance, as demonstrated herein, is ample justification for the PG Co. Board to dismiss the Appellant. Her performance was clearly incompetent under the statute.

I find that the Appellant is an incompetent, unprofessional teacher and I conclude that dismissal of the Appellant is a rational, appropriate response and that she should be dismissed by the PG Co. Board.

PROPOSED CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law that the Appellant is incompetent and that the Appellant's dismissal was proper. Md. Code Ann., Educ. § 6-202(a); COMAR 13A.01.05.05F.


PROPOSED RECOMMENDATION

I recommend that the decision of the Prince George's County Board of Education dismissing the Appellant for incompetence of her teaching duties be **UPHELD**.

PROPOSED ORDER

I **PROPOSE** that the decision of the Prince George's County Board of Education dismissing the Appellant for incompetent performance of her teaching duties be **UPHELD**.

July 8, 2014
Date Decision Mailed



Michael W. Burns
Administrative Law Judge

MWB/tc
#149155

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.

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CONSTANCE JEANNE SAMMARCO, * BEFORE MICHAEL W. BURNS,
APPELLANT * AN ADMINISTRATIVE LAW JUDGE
V. * OF THE MARYLAND OFFICE
PRINCE GEORGE'S COUNTY * OF ADMINISTRATIVE HEARINGS
BOARD OF EDUCATION * OAH NO.: MSDE-BE-01-14-01158

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FILE EXHIBIT LIST

Exhibits

The parties did not introduce any exhibits into evidence but instead relied on the exhibits that were introduced at the hearing below on December 5, 10, 12, 2012 and January 14, 2013. A transcript of the hearing, the exhibits introduced by the parties at that hearing, and the Hearing Examiners' Findings of Fact, Conclusions of Law and Recommendation, dated June 18, 2013, are also part of the record before me.