

LYNDSAY GREENAN,  
Appellant

v.

WORCESTER COUNTY BOARD OF  
EDUCATION,  
Appellee.

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION  
Opinion No. 10-51

## OPINION

### INTRODUCTION

The Appellant filed a Notice of Appeal and Request for Hearing challenging the non-renewal of her teaching contract on the grounds that the decision was based on discriminatory practices. The Board of Education of Worcester County (local Board) filed an Answer and Motion for Summary Affirmance. The Appellant opposed that Motion and the local board filed a Reply.

### FACTUAL BACKGROUND

The undisputed facts are these. Ms. Greenan, the Appellant, was hired to teach 4<sup>th</sup> grade at Ocean City Elementary School for the 2007-2008 school year. For the three prior years, she taught in Dorchester County, received satisfactory evaluations, and secured tenure. (Appellant's Ex. 3 & 4; T. 74). She moved to Ocean City where she rented a house from the school principal, Ms. Kordick. While showing Ms. Greenan the Kordick rental property, Ms. Brown, who was also the principal's secretary and a friend of Ms. Greenan, had a conversation with Ms. Greenan about pregnancy. (T. 92, 415-417).

The school year began. In the first semester, Appellant was observed four (4) times - by Ms. Kordick the principal, by Ms. Marx, the vice principal, by Stephanie Zanich, and by Rosemary Heher, the latter two being County Coordinators. (Joint Ex. 2, Exs. 5-8). All ratings were satisfactory. In the last of the observations, on October 30, 2007, Ms. Kordick summarized as follows:

You did and [sic] exceptional job in completing the planning for this lesson using the voluntary state curriculum, as well as countless expectations and strategies which enable success for all students.

(Joint Ex. 6).

On November 30, 2007, Appellant received her first written evaluation receiving

satisfactory marks in each of the observed areas. On the Teacher Evaluation form, Ms. Kordick and Ms. Marx stated "We are fortunate to have Ms. Greenan as a member of our faculty." They wrote that her "probable success as a teacher" was "good." They recommended the following:

- For each lesson locate the specific VSC objective in your Planning Guide and be able to verbalize and model for students the score 3 response. For example, for objective \_\_\_\_\_, the students must be able to use the terms \_\_\_\_\_ and define \_\_\_\_\_.
- Write a model BCR response prior to class instruction (modeling). Mrs. VanKirk, Mrs. Spangler, etc. will give excellent feedback/guidance.
- Develop and use a STARR Binder for all students (we will provide you with any materials you may need- ie.-binders, plastic sleeves, etc.) Therefore, let Karen Spangler know what you need.
- Post the objective using all the \$100 vocabulary students are expected to demonstrate knowledge of/use in their writing.
- Work closely with Mrs. VanKirk and Mrs. Spangler asking for their feedback.
- Model and expect students to demonstrate our OCES Norms.
- Consistently display an enthusiastic and positive demeanor.
- Dress professionally.

(Joint Ex. 8).

In early December, 2007, Ms. Greenan learned that she was pregnant. She told Ms. Marx and Ms. Kordick who offered their congratulations and support. (T. 137-38). On December 5, 2007, Ms. Heher observed a math lesson which she rated satisfactory, but she made recommendations concerning failure to provide students with needed resources, the use of correct fractional symbols, professional attire, and Ms. Greenan's lack of enthusiasm in the classroom. (*Id.* Ex. 9). On December 12, 2007, Ms. Marx observed Ms. Greenan's math class. The rating was satisfactory, but Ms. Marx made recommendations for improvement, among other things, in lesson planning. (Joint Ex.10). On January 22, 2008, Ms. Kordick and Ms. Marx issued a letter of reprimand to Ms. Greenan for an unsatisfactory daily lesson plan book; and being late to school. (*Id.* Ex. 11).

On January 29, 2008, Ms. Zanich, the Reading and Language Arts Coordinator, observed Ms. Greenan. She found the classroom to be a pleasant and comfortable place for children to learn, but she set forth many recommendations based on the need for better planning and lesson focus. She rated the lesson unsatisfactory. (*Id.* Ex. 12).

On January 30, 2008, Ms. Heher, the Mathematics Instruction Coordinator, observed a math lesson. She rated the lesson unsatisfactory stating "Throughout the thirty-two minutes spent in the classroom, there was virtually no teaching taking place." (*Id.* Ex. 13). Ms. Greenan's overall Teacher Evaluation for "Term Two" was deemed unsatisfactory because of

deficiencies in Planning, Learning Objectives, and Accepting Professional Responsibilities. (*Id.* Ex. 14).

On March 6, 2008, Ms. Kordick observed a reading lesson. She noted that Ms. Greenan used incorrect grammar and misspelled some words. She found deficiencies in the use of student work, leaning objectives, and planning. She rated the lesson unsatisfactory. (*Id.* Ex. 15). On March 11, 2008, Ms. Heher observed a math lesson and found it satisfactory, but also noted that Ms. Greenan made spelling errors. (*Id.* Ex. 17). On March 17, 2008, Ms. Zanich observed a reading lesson and rated it unsatisfactory, in part, because of deficiencies in planning. (*Id.* Ex. 18). On March 18, 2008, Ms. Greenan received a written reprimand because the Homework System in her class was deficient. (*Id.* Ex. 19). On March 30, 2008, Ms. Marx observed a MSA Review lesson. She rated it unsatisfactory because of deficiencies in planning and organization. (*Id.* Ex. 16).

All those observations culminated in a final teacher evaluation of unsatisfactory. (*Id.* Ex. 20). Despite the shortcomings that the observers documented, Ms. Greenan was recommended for continued employment “with hesitation” and with an admonition that there “must be immediate and ongoing improvement . . . .” (*Id.* Ex. 13).

On May 23, 2008, Ms. Greenan received a written reprimand for walking away from her bus duty assignment while students were still getting on the bus. (*Id.* Ex. 21). On that note, the school year ended.

As the new school year began, Ms. Greenan had had her baby and returned to the classroom in September 2009. (T. 147). She was provided with a mentor and additional support. (*See, e.g.,* Joint Ex. 25 at 7).

Over the course of the year, her teaching was evaluated.

<b>Exhibit</b>	<b>Date</b>	<b>Evaluator/Observer</b>	<b>Rating</b>
Ex. 22	September 26, 2008	Ms. Heher	satisfactory - with recommendations for improvement
Ex. 23	October 7, 2008	Ms. Marx	unsatisfactory
Ex. 24	November 13, 2008	Ms. Kordick	unsatisfactory
Ex. 25	November 24, 2008	Ms. Kordick	unsatisfactory
Ex. 26	December 16, 2008	Written Reprimand Deficiencies in Planning	
Ex. 27	January 22, 2009	Ms. Kordick	unsatisfactory
Ex. 29	January 28, 2009	Ms. Marx	unsatisfactory

Ex. 30	January 28, 2009	Teacher Evaluation	unsatisfactory
Ex. 31	February 12, 2009	Ms. Kordick	unsatisfactory
Ex. 32	March 9, 2009	Ms. Zanich	unsatisfactory
Ex. 33	March 11, 2009	Ms. Marx	unsatisfactory

On March 24, 2009, Ms. Kordick and Ms. Marx completed Ms. Greenan's Teacher Evaluation for the year concluding that:

During your two years of teaching at OCES, you were rated as unsatisfactory on the Worcester County Performance Criteria Evaluation areas of Planning and Learning Objectives on five out of the six evaluations. You were also rated unsatisfactory in Acceptance of Responsibilities on three out of the six evaluations. Finally, you were rated unsatisfactory in Organization and Management, Teacher Scholarship, and Resources and Materials on two out of the six evaluations. Therefore, we are recommending Non-Renewal of Contract for this Term Three Evaluation.

(*Id.* Ex. 34).

On April 27, 2009, Superintendent Andres informed Ms. Greenan that he decided not to renew her contract. (*Id.* Ex. 36). She appealed that decision to the local board.

On August 13, 2009, the local board held an evidentiary hearing on Ms. Greenan's charge that the decision not to renew her contract was influenced by one or more improper factors - - her pregnancy in 2007-2008; her relationship with/marriage to an African American man; and her business relationship with Ms. Kordick. (Board Opinion at 3-4, attached to Notice of Appeal).

As to the business relationship related to renting Ms. Kordick's property, the Board found no evidence that that had a negative impact on Ms. Greenan's employment. (*Id.* at 4).

As to her personal relationship, the local board found no evidence that Ms. Kordick used the race of Ms. Greenan's husband as a reason to evaluate Ms. Greenan negatively. (*Id.* at 5). The local board stated:

As support for her racial discrimination claim, Ms. Greenan points to a comment made by Principal Kordick when inspecting her house the day before Ms. Greenan moved out in May 2008. According to Ms. Greenan, Principal Kordick questioned whether a basketball had been thrown against a high ceiling thus causing some minor damage to the texture coating. Apparently the implication is that (1) basketball is predominantly played by African-American males, (2) Ms. Greenan's

husband is African-American, and (3) he threw a basketball in the house and damaged the ceiling. Frankly, we find this argument to be without any merit to support a racial discrimination claim.

(*Id.* Ex. 6).

The local board viewed the heart of Ms. Greenan's claim to be discrimination related her pregnancy. They concluded that there was no basis for the claim, stating:

Ms. Greenan wants this Board to accept her view that, despite her statements of congratulations and support, Principal Kordick immediately turned against Ms. Greenan and, with the help of her assistant principal and the county coordinators of instruction, pursued a course of action to destroy Ms. Greenan's opportunity to become a tenured teacher in Worcester County. We cannot and do not agree with Ms. Greenan's position because there is absolutely nothing, other than the unfavorable reports, to lend credence to it. It is merely Ms. Greenan's perception or assumption or opinion without any factual support. To sustain such a serious allegation of wrongdoing by Principal Kordick requires more than conjecture.

(*Id.* Ex. 7) (Footnote deleted).

The local board upheld the non-renewal decision. This appeal ensued.

#### STANDARD OF REVIEW

Because a probationary teacher has no due process right to the renewal of her contract, the local board does not have to establish cause for the basis of its decision not to renew. *Ewing v. Cecil County Bd. of Educ.*, 6 Ops. MSBE 818 (1995). A local board's decision to non-renew cannot be based on illegal or discriminatory reasons, however. It is the Appellant's burden to prove illegality "with factual assertions, under oath, based on personal knowledge." *Etefia v. Montgomery County Bd. of Educ.*, Op. No. 03-03 (2003).

Thus, in our review we must determine whether the Appellant met her burden to establish that the decision not to renew her contract was based on discriminatory reasons.

#### LEGAL ANALYSIS

##### *Request For Another Evidentiary Hearing*

The Appellant asserts that this Board should refer this case to the Office of Administrative Hearings for another evidentiary hearing because there are disputes of fact in the

record and transcript before us. She asserts that, because there was a great deal of conflicting testimony, an Administrative Law Judge should be given the opportunity to assess credibility.

We point out that almost every case that comes before us, or for that matter before any appellate body, contain conflicting testimony in the record. In reviewing that record, we give deference to the fact-finder, the local board, as to credibility determinations.

It is well established that determinations concerning witness credibility are within the province of the local board as trier of fact. *See, e.g., Board of Trustees v. Novik*, 87 Md. App. 308, 312 (1991) *aff'd*, 326 Md. 450 (1992) (“It is within the Examiner’s province to resolve conflicting evidence. Where conflicting inferences can be drawn from the same evidence, it is for the Examiner to draw the inferences.”); *See also, Board of Educ. v. Paynter*, 303 Md. 22, 36 (1985) (“[N]ot only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.”).

The State Board may not substitute its judgment for that of the local board unless there is independent evidence in the record to support the reversal of a credibility decision. *See Philip A. v. Howard County Board of Education*, MSBOE Op. No. 05-20 citing *Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

#### *Evidence of Discrimination*

The Appellant asserts that the decision to non-renew her contract was based on discriminatory reasons - - specifically, gender discrimination related to her pregnancy and race discrimination related to her husband being African-American.

The Appellant has the right to be free from discrimination on the basis of sex and race in her employment, pursuant to Title VII of the Civil Rights Act. “[C]laims of employment discrimination are evaluated under a burden-shifting analysis.” The Supreme Court established the burden-shifting paradigm in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Under that paradigm, the plaintiff is initially required to prove a *prima facie* case by showing that she belongs to a protected class and suffered an adverse action. She must present sufficient evidence to give rise to an inference of unlawful discrimination. *Id.* at 802. If the plaintiff presents a *prima facie* case, the burden then shifts to the employer to present evidence of a non-discriminatory reason for the termination. *Id.*; *see also Williams v. Maryland Department of Human Resources*, 136 Md. App. 153, 164 (2000). If the employer meets that burden, the employee “must show that the employer’s stated reason for the decision was a pretext for discrimination.” *Williams*, 136 Md. App. at 165.

Thus we look to the record for Appellant’s evidence. We agree that she is a member of a protected class and that she suffered an adverse employment action. The evidence in the record concerning the non-renewal of her contract is based on the 19 observations and two evaluations

described above, but Ms. Greenan asserts that the observations and evaluations were negative because Ms. Kordick and Ms. Marx had a discriminatory intent based on their belief that a pregnant woman could not do the job; or showed racial animus toward Ms. Greenan because she was married to an African-American.

*Evidence of Discriminatory Intent Based on Pregnancy Stereotypes*

The record reflects one instance in which the issue of pregnancy came up - - that is Ms. Brown's conversation with Ms. Greenan as they toured Ms. Kordick's house for rent. Ms. Greenan asserts that Ms. Brown was speaking for Ms. Kordick and admonishing her not to get pregnant in her first year of teaching in the school system. She recounts the conversation this way:

. . . and I said, my comment was oh, we really like the house, it's very cute, but it only has two bedrooms. So after Jake and I get married, we're going to have to find something bigger because we're going to have another child.

. . . [Ms. Brown's] comment which responded to that well, Ms. Kordick doesn't think it would be a good idea for you to get pregnant your first year of teaching because you'd miss a lot of school.

I didn't care. I know Lisa Brown. Her daughter and I went to school together. So I thought it was odd that she said that.

I talked to my mom and my husband. I'm like that's a weird comment. I'm not getting pregnant. I had no intentions of getting pregnant my first year teaching at all, trust me, first year teaching in Ocean City.

So I didn't really pay that much attention, but the house was laid out downstairs bedroom, then an upstairs like loft bedroom. There wouldn't have been more room which would be the reason the conversation came up in the first place.

(T. 92-93).

Ms. Brown also recounts the conversation:

Q. Do you recall ever telling her that she better not get pregnant during her first year at the school and that Ms. Kordick wouldn't like that?

A. No.

Q. Would you have said something like that to her?

A. The conversation we had one day, Lindsay was friends with my daughter. My daughter was recently married. Lindsay

asked me in a conversation one day how does Amber like being married, is she adjusting. We were talking about our families. She said is Amber interested in starting a family. I said no, not at this point.

Lindsay shared with me that she would like to become pregnant, that she wanted to get married first, that they had to wait until financially they were better or whatever. I said that's probably not a bad idea, and as I would have told my own daughter at that point, I said to Lindsay a new house, a new job, and a new baby might be a lot to take on.

- Q. You didn't ~  
A. I said that as a mother and as a friend to Lindsay.  
Q. But you were just expressing your personal opinion to her?  
A. Exactly.  
Q. You did not express anything to her on behalf of Ms. Kordick on this subject?  
A. No. This came from me.

(T. 415-417).

On cross-examination, Ms. Brown reiterated her recollection of the conversation.

- Q. With regard to the discussion about being pregnant, wasn't it true that not only new house, new baby, being untenured, it was too much to take in?  
A. Nontenured was not part of the equation. Once again, what I said to Lindsay was trying to get her in, trying to get her settled, trying to get her a place to live, and all I said was simply new house, new job, new baby might be a lot for anybody to undertake. I said that, once again, only as a friend and as a mother and having a young daughter myself. It was not a directive to don't get pregnant.

(T. 422).

Ms. Greenan uses that conversation with Ms. Brown as the basis for her claim that Ms. Kordick and Ms. Marx had a view that pregnancy was not appropriate for a first year teacher. It is Ms. Greenan's position that once she announced her pregnancy, everything changed and, thereafter, Ms. Kordick and Ms. Marx engaged in a concerted effort to persecute, humiliate, depersonalize her and ultimately get rid of her because they disapproved of her pregnancy. (Opposition at 6). The Appellant asserts that the discriminatory intent can be seen in the intensity, numerosity, and specificity of the evaluations, particularly in light of the fact that all



her students were either proficient or advanced on the MSAs in 2008 and 2009. (T. 316, Appellant's Ex. 10 & 11, attached to Board's Answer and Motion).

We cannot agree. First, we have read all of the evaluations - pre-pregnancy; pregnancy; post-pregnancy. They are extraordinarily comprehensive; they set out specific examples of student learning issues, planning issues, organization issues. They are detailed. They contain specific recommendations and ideas to improve performance. We point out that even the first-year Teacher Evaluation, which was satisfactory, contained kernels of information that serve as a precursor to the problems identified in subsequent observation.<sup>1</sup>

To us the observations/evaluations demonstrate the kind of focus one would want a principal to have on the new teachers in her school so that when they gain tenure the school system is as sure as it can be that it has an effective teacher for its students.

The fact that the students in Appellant's class scored well on the MSAs is one indicator - - albeit a strong one - - of Ms. Greenan's effectiveness, but it is not the only one. As the record reflects, Ocean City Elementary School is a National Blue Ribbon School. There are high standards for students and an expectation of excellence for teachers. (T. 370). Ms. Kordick explained that in Worcester County the MSAs are "the floor . . . the basic data that kids need to know to be successful in life. And so this is like the bottom . . . we teach to the top." (T. 535).

It appears that Ms. Greenan just did not meet the expectations for a teacher in Ocean City Elementary School. We cannot find that the unsatisfactory evaluations and ultimate non-renewal of her contract demonstrated a discriminatory intent based on pregnancy stereotyping. Indeed, if

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- For each lesson locate the specific VSC objective in your Planning Guide and be able to verbalize and model for students the score 3 response. For example, for objective \_\_\_\_\_, the students must be able to use the terms \_\_\_\_\_ and define \_\_\_\_\_.
- Write a model BCR response prior to class instruction (modeling). Mrs. VanKirk, Mrs. Spangler, etc. will give excellent feedback/guidance.
- Develop and use a STARR Binder for all students (we will provide you with any materials you may need- ie.-binders, plastic sleeves, etc.) Therefore, let Karen Spangler know what you need.
- Post the objective using all the \$100 vocabulary students are expected to demonstrate knowledge of/use in their writing.
- Work closely with Mrs. VanKirk and Mrs. Spangler asking for their feedback.
- Model and expect students to demonstrate our OCES Norms.
- Consistently display an enthusiastic and positive demeanor.
- Dress professionally.

(Joint Ex. 8).

pregnancy were a factor, it stopped being so when Ms. Greenan returned to school in 2009. We point out that the unsatisfactory evaluation continued into 2009, after Ms. Greenan had her baby.

In short, we conclude that Ms. Greenan has not met her burden to present sufficient evidence to give rise to an inference of unlawful discrimination based on her pregnancy. But, even if the shift from satisfactory to unsatisfactory ratings right around the time she announced her pregnancy could raise the inference of discrimination, the local board heard and found credible evidence in the observation and evaluation reports and in testimony that there was a non-discriminatory reason for the non-renewal.

#### *Discrimination Based on Race*

The Appellant presents two facts to support the argument that the non-renewal was a result of race discrimination. First, Ms. Kordick asked the Appellant to remove family pictures and her daughter's drawings from her desk. The pictures were of her husband who is African-American and their first child. Second, Ms. Kordick questioned whether the damage to the ceiling in the house Ms. Greenan rented from her was caused by her husband throwing a basketball.

As to the pictures, Ms. Greenan explained that in March 2008 Ms. Kordick observed one of her classes. Ms. Greenan testified:

I was told by Ms. Kordick that having taped my daughter's kindergarten work taped to my desk was insulting to my students and that my family's photographs needed to be taken down.

Behind my desk I had a little chalkboard area. Not only did I have my family's pictures up there, my now husband, daughter, I also had pictures of my students from my other school and pictures from my class then, I had like a collage of pictures on a little, small chalkboard area that resided behind my desk.

Every teacher in that school has family photos up in their classroom. You can't walk in a classroom in that school, or an office for that matter, that does not have family photos up, and every teacher who has a child who is school age who may have a grade assignment they did, may have that work posted somewhere, and I happen to have it taped.

(T. 227).

When Ms. Kordick was cross-examined she was asked about the family picture incident and her written observation report.

Q. And at one time in the course of the school year, isn't it true that you asked Ms. Greenan to remove pictures of her family from her desk?

A. I'll read it out loud. "I strongly believe in celebrating one's own family. However, you had the side of your desk covered with your daughter's kindergarten work samples. You need to use your class space to support student self-esteem. The work that was displayed in very sloppy form. It was hanging off, and there was no work, virtually very little work displayed of the children of her classroom." And I said to her - -

...  
I strongly believe celebrating one's own family." In fact, I would say basically all of our colleagues have their families, their kids, their significant other, their cat, their dog up around their desk. It's kind of like a norm in our school.

(T. 541-544).

Ms. Greenan also testified about Ms. Kordick's statements about the basketball incident.

Q. What occurred when Ms. Kordick showed up at the house?

A. Ms. Kordick showed up at the house to see the residence prior to me leaving, and upon going through the house, it was just myself and my daughter there. My husband had gone to finish our load over there.

Looked at the crack in the ceiling and said what exactly is that from. Mind, you this is an A-framed house. The ceiling is extremely high, and I said Irene, remember the leaks. Jim said that with this speckled ceiling, you're going to have to get it re-something, I don't know, and her comment was *are you sure he wasn't throwing a basketball at the ceiling.*

Now mind you, there's absolutely nothing in my house. There's no basketball hoop, there is no basketball, and there is no reason for her to assume that my husband plays basketball, nor is there a reason for her to assume a grownup, 28 year old man, would sit in a house and throw a basketball at the ceiling, and I assured her no, that wasn't the case, and I proceeded to cry and then she left.

MR. HULBURD: You said you started to cry?

THE WITNESS: Yeah. There was a couple of not nice comments, but that was just it. I just was at a point. I just couldn't understand why.

(T. 258-259) (emphasis added).

We have looked carefully at Ms. Greenan's and Ms. Kordick's testimony which is the factual basis for the racial discrimination claim. Ms. Greenan argues that Ms. Kordick's statements reflect a racial bias that influenced her observations and evaluations of Ms. Greenan's teaching and infected the observations of the three other persons who contributed to the evaluations. We believe that Ms. Greenan's argument stretches the testimony too far. We agree with the local board that Ms. Greenan has failed to establish a *prima facie* case of racial discrimination.

#### CONCLUSION

For all these reasons, we affirm the decision of the local board.

  
James H. DeGraffenreidt, Jr.  
President

ABSENT  
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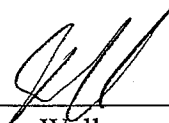
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