

TRICIA BRISSETT.,
Appellant
v.
BALTIMORE COUNTY BOARD
OF EDUCATION,
Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 11-31

OPINION

Appellant filed this appeal challenging the decision of the Baltimore County Board of Education (local board) to terminate her for insubordination and willful neglect of duty. Appellant was a tenured teacher with the Baltimore County Public Schools assigned to Chatsworth Elementary School.

We transferred this case pursuant to COMAR 13A.01.05.07 to the Office of Administrative Hearings (OAH) for a hearing before an Administrative Law Judge (ALJ). On February 24, 2011, the ALJ issued a proposed decision recommending that the State Board affirm the local board's termination decision. The Appellant did not file any exceptions to the ALJ's Proposed Decision.

The Factual Background in this case is set forth in the Administrative Law Judge's Proposed Decision, Findings of Fact, pp.5 – 10. The discussion of the case is set forth on pp.10 – 15.

STANDARD OF REVIEW

Because this appeal involves the termination of a certificated employee pursuant to § 6-202 of the Education Article, the State Board exercises its independent judgment on the record before it in determining whether to sustain the termination. COMAR 13A.01.05.05(F)(1) and (2). The local board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05(F)(3).

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

v. Anderson, 100 Md. App. 283, 302-303 (1994).

ANALYSIS

We agree with the ALJ's conclusion that the local board was justified in its termination decision. The record in this case is replete with examples of Appellant's conduct that supports the charges of insubordination and wilful neglect of duty. These behaviors include the Appellant's repeated refusals to attend required meetings with school administrators and teachers, failure to adhere to time schedules, leaving students without supervision, and failure to follow the directives set forth in the Appellant's Teacher Assistance Plan. Moreover, these behaviors continued to occur despite the fact that the Appellant had received formal reprimands for much of it.

We further agree with the ALJ that the Appellant has failed to demonstrate that her termination was a result of discrimination based on race or disability. As the ALJ stated:

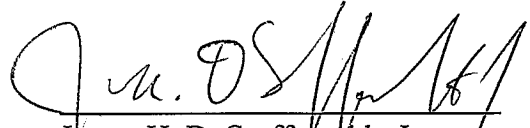
Interestingly, throughout the entire record, the Appellant did not dispute or offer evidence to refute the [local board's] evidence. She primarily alleged, although without any evidence, that she was being denied some form of accommodation or discriminated against. My initial impression upon review of the highly detailed and exhaustive record presented leads me to conclude that the Appellant was an employee who, at least in the latter years of her employment, simply did what she wanted to do, or did not do what she did not want to do. Then, when confronted, she claimed needed accommodation, lack of accommodation or discrimination as an excuse. However, there has been no documented or even claimed disability from the automobile accident that would warrant anything other than the accommodations that the Appellant requested and which were provided. My subsequent in depth review of the entire record does not change my initial impression. Indeed, even during the appeal process, the Appellant did not follow instructions or requirements as directed. That continued into the hearing.

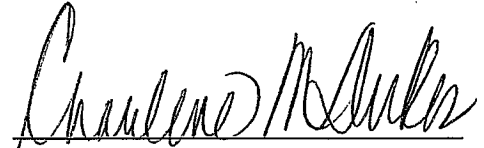
(ALJ Proposed Decision, pp.11-12).

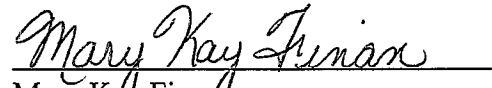
CONCLUSION


The ALJ's recommendation to uphold the local board's decision is supported by the facts and the law. Accordingly, we adopt the ALJ's Proposed Order and affirm the local board's

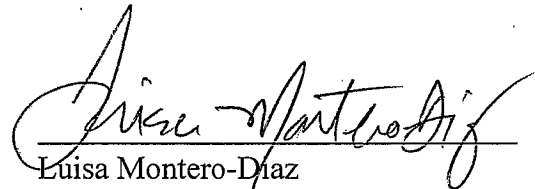
decision terminating the Appellant for insubordination and wilful neglect of duty.



James H. DeGraffenreidt, Jr.
President

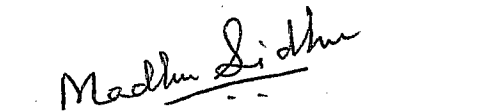

Charlene M. Dukes
Vice President

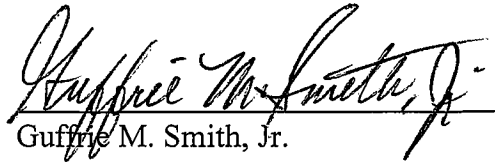

Mary Kay Finnan

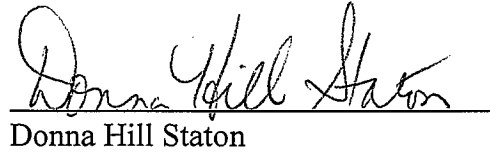

S. James Gates, Jr.


Luisa Montero-Diaz

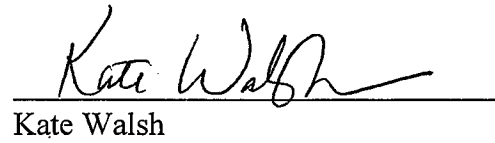

Sayed M. Naved


Madhu Sidhu


Guffie M. Smith, Jr.


Donna Hill Staton


Ivan C.A. Walks


Kate Walsh

June 21, 2011

TRICIA BRISSETT,

APPELLANT

v.

BALTIMORE COUNTY BOARD OF

EDUCATION

* BEFORE A. J. NOVOTNY, JR.,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE OF

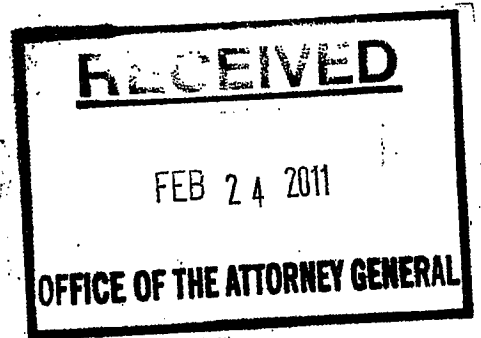
* ADMINISTRATIVE HEARINGS

* OAH CASE NO.: MSDE-BE-01-10-29985

* * * * *

PROPOSED DECISION

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



STATEMENT OF THE CASE

On or about July 6, 2009, William Lawrence, Area Assistant Superintendent, Designee of the Superintendent of the Baltimore County Board of Education (BC-BOE or County Board) notified Tricia Brissett (Appellant), a teacher at Chatsworth Elementary School (Chatsworth), that the County Board was recommending her termination from employment with Baltimore County Public Schools (BCPS). On January 28, 2010, Jeffrey Griffith, Esquire, a Hearing Examiner for the County Board, held a hearing on the Appellant's termination in Towson, Maryland. On April 26, 2010, Hearing Examiner Griffith recommended the Appellant's termination to the County Board. On June 16, 2010, the County Board accepted the Hearing Examiner's recommendation and terminated the Appellant. Md. Code Ann., Educ. § 6-203 (2008).

The Appellant filed an appeal of the County Board's termination decision with the Maryland State Board of Education (State Board) on July 16, 2010. The State Board referred the

matter to the Office of Administrative Hearings (OAH), where it was received on August 20, 2010, for further proceedings. Md. Code Ann., Educ. § 6-202(a)(4) (2008).

On October 12, 2010, I held a telephone prehearing conference at the OAH in which Margaret-Ann Howie, Esquire, appeared for the BC-BOE, and the Appellant appeared in her own behalf. The parties participated on the record by conference call and speaker telephone. I issued my Prehearing Conference Report and Scheduling Order on October 13, 2010.

I conducted the hearing on Thursday, December 9, 2010, at the OAH in Hunt Valley. The Appellant represented herself. Margaret-Ann Howie, Esquire, and J. Steven Cowles, Esquire, represented the County Board.

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 of Education, and the OAH's Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); Code of Maryland Regulations (COMAR) 13A.01.05; COMAR 28.02.01.

ISSUE

The issue is whether the Appellant's termination was proper.

SUMMARY OF THE EVIDENCE

Exhibits¹

DOCUMENTS

1. Transcript of Hearing Held on January 28, 2010

Appellant's Exhibits

1. November 5, 2008 Grievance Report Form
2. January 26, 2010 Employee Appeal of Termination

¹ For ease of locating documents, I duplicated the format, layout and numbering of the document index attached to the exhibit folder submitted by the County Board.

3. Employment Discrimination/Harassment Complaint Form

Superintendent's Exhibits

1. July 6, 2009 Recommendation of Termination (with attachments A-P)
2. Undated Grievance from Tricia Brissett
3. January 14, 2009 Mid Year Evaluation
4. February 25, 2009 Warning Letter, Class II Status
5. Superintendent's Rule 4418
6. Board of Education Policy 4002, Precepts, Beliefs and Values
7. Board of Education Policy 4008, Obligations of Employees of the Board of Education of Baltimore County
8. Conference Notes
 - A. September 15, 2008
 - B. September 26, 2008
 - C. October 1, 2008
 - D. October 3, 2008
 - E. November 12, 2008
 - F. December 8, 2008
 - G. January 14, 2009 (Mid Year Evaluation)
9. Assistance Plan, November 5, 2008
10. Weekly Reports
 - A. November 17, 2008
 - B. December 1, 2008
 - C. December 8, 2008
 - D. December 15, 2008
 - E. January 5, 2009
 - F. January 12, 2009
 - G. January 19, 2009
 - H. January 26, 2009
 - I. February 2, 2009
 - J. February 9, 2009
 - K. February 16, 2009
 - L. March 2, 2009
 - M. March 9, 2009
 - N. March 16, 2009

11. Letters of Reprimand and Warning
 - A. November 26, 2008
 - B. December 1, 2008
 - C. December 10, 2008
 - D. January 15, 2009 re: Faculty Meetings
 - E. January 15, 2009 re: Attendance
 - F. January 22, 2009
 - G. March 13, 2009
 - H. March 20, 2009
 - I. March 25, 2009
 - J. April 1, 2009
 - K. April 1, 2009 re: Meeting
 - L. April 1, 2009 re: Faculty Meeting
 - M. April 1, 2009 re: Supervising Students
 - N. April 3, 2009 re: Length of School day
 - O. October 27, 2008 re: Memo of Warning, Team Meeting

12. Formal Observation Reports
 - A. September 26, 2008
 - B. October 24, 2008
 - C. December 12, 2008
 - D. January 8, 2009
 - E. February 26, 2009
 - F. March 30, 2009

13. Informal Observation Notes and Memos
 - A. October 29, 2008
 - B. November 11, 2008
 - C. November 19, 2008
 - D. March 4, 2009
 - E. March 15, 2009

14. Incident Reports, April 16, 2009
 - A. Nancy Casalena (2 pages)
 - B. Debi Cascio

15. January 7, 2009 – January 5, 2009 Electronic Mail Messages

2. Transcript of Hearing Held on January 29, 2010

Appellant's Exhibits

4. E-Mail from Jordan Birnbaum to Ms. Cascio, 4/3/09, with Copy to Ms. Brissett

Superintendent's Exhibits

16. May 9, 2009 memo from Tricia Brissett to Ray Suarez
 17. May 11, 2009 letter from Tricia Brissett to Ray Suarez
 18. November 13, 2009 letter from Nancy Casalena to Tricia Brissett
 19. November 25, 2008 email from Tricia Brissett to Nancy Casalena
 20. Undated Grievance from Tricia Brissett, with handwritten notes
 21. August 27, 2008 letter from Bobette Watts-Hitchcock to Tricia Brissett
 22. Southwest Area Office File, Tricia Brissett, 2006-2007 School (Marked) Year; 2007-2008 School Year
 23. Evaluation Report, Tricia Brissett, 2006-2007 School Year (Marked)
 24. Homeroom Details Report
 25. Chatsworth School, Observation Schedule, 2008-2009 School Year
3. Closing Arguments on Behalf of Appellant, March 19, 2010
 4. Superintendent's Post-Hearing Memorandum, March 19, 2010
 5. Findings of Fact, Conclusions of Law and Recommendation of Hearing Examiner Jeffrey Griffith, Esquire, April 26, 2010
 6. Transcript of Oral Argument before the Board of Education of Baltimore County, June 10, 2010
 7. Opinion and Order of the Board of Education of Baltimore County, June 10, 2010

Testimony

Neither the Appellant nor the County Board presented witnesses.

FINDINGS OF FACT

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

1. The Appellant was a tenured teacher in the Baltimore County School System, assigned to Edmondson Heights Elementary School during the 2006-2007 school year.
2. The Appellant ended the 2006-2007 school year with an unsatisfactory overall evaluation.
3. The Appellant was assigned to Chatsworth School (Chatsworth) as a teacher for the 2008-2009 school year, where she received accommodations as a result of physical disabilities from an automobile accident.
4. The physical accommodations included:
 - a. Use of an elevator;
 - b. An instructional assistant (IA) who would accompany the Appellant's students to the cafeteria, recess; other classes, and during emergency evacuations;
 - c. A wheeled cart, if needed;
 - d. A high stool.
5. During the 2008-2009 school year, Appellant's duties at Chatsworth began at 9:00 a.m.
6. On September 15, 2008 the Appellant met with Ms. Casalena, the Principal, among others, who developed an assistance plan (the Plan), which was updated on 11/15/01, that, along with the agreed upon accommodations, included directives and instructions to the Appellant that she would be required to:
 - a. Adhere consistently to established time schedules;
 - b. Appear for appointments and specific responsibilities;
 - c. Co-plan science and social studies curriculum with a colleague and the assistant principal weekly;
 - d. Be on time for drop off and pick up of students;

- e. Not leave students unsupervised;
 - f. Participate in all grade/team meetings as scheduled, and,
 - g. Attend all faculty meetings on time.
7. On September 9, 2008, the Appellant met with the Principal and Vice-principal (Ms. Cascio) for a discussion about Parents' concerns and the Appellant's failure to comply with the Plan. At that time, the Appellant was advised that Ms. Karolskowski would be joining the Appellant for theme instruction and that Ms. Karolskowski would be the lead teacher.
 8. Despite the Plan, the Appellant had a tardiness problem that persisted throughout the 2008-2009 school year.
 9. The Appellant was late appearing for work or returning to work on: November 19, 2008; December 8 2008; December 11 2008; December 22, 2008; December 24, 2008; January 5, 2009; January 6, 2009; January 7, 2009; January 3, 2009; January 4 2009; January 5, 2009; January 20 2009; January 22, 2009; January 23, 2009; January 26 2009; February 4, 2009; February 19, 2009; March 9, 2009; April 20, 2009 and April 3, 2009.
 10. Without prior approval, the Appellant left the classroom or a meeting early on November: 12, 2008; November 18, 2008; November 19, 2008 and March 11, 2009.
 11. Despite the Plan, the Appellant had a problem appearing at faculty and other meetings and assignments, including meetings with the principal that persisted throughout the 2008-2009 school year.
 12. The Appellant failed to appear or refused to appear as assigned or instructed on: September 29, 2008; October 27, 2008; November 17, 2008 (refused to return to the classroom); November 26, 2008; December 1, 2008; December 10, 2008 (refused to

return to the classroom); December 11, 2008; December 12, 2008; January 14, 2009; January 15, 2009; February 10, 2009; March 13, 2009; March 18, 2009; March 19, 2009 and March 23, 2009.

13. Despite the Plan, the Appellant left children assigned to her unsupervised, either in the classroom, hallways or at recess on: December 8, 2008; December 11, 2008; December 12, 2008; March 19, 2009; March 20, 2009 and April 1, 2009.
14. The Appellant refused to work with her assigned co-teacher on: October 1, 2008; November 17, 2008 and taught the same plan as the co-teacher on November 18, 2008.
15. The Appellant failed to leave appropriate substitute plans and failed to submit lesson plans on: November 12, 2008; January 14, 2009; January 22, 2009; March 24, 2009, and refused to speak to the principal about the lesson plans on December 11, 2008 and March 23, 2009.
16. The Appellant failed to administer a required mathematics benchmark assessment test by the last day available for the test, December 5, 2008.
17. The Appellant was subject to classroom observations by the principal and others throughout her assignment at Chatsworth, none of which resulted in a favorable report.
18. The Appellant's performances during the observations were noted as showing incorrect instruction and out of sequence or lacking focus presentations, and considered to be unsatisfactory on: September 26, 2008; October 24, 2008; October 29, 2008; November 19, 2008; December 12, 2008; January 8, 2009; February 26, 2009; March 16, 2009 and March 30, 2009.
19. Based upon the Appellant's tardiness and leaving students unattended, failures and refusals to attend meetings and to meet with the principal, the Appellant received

- reprimands on: November 26, 2008; December 1, 2008; December 10, 2008; January 14, 2009; January 15, 2009; January 22, 2009; March 13, 2009; March 19, 2009; March 25, 2009; April 1, 2009 (there were three instances on April 1, 2009), and April 3, 2009.
20. On January 14, 2009, the principal and vice principle completed an Evaluation of Teacher Progress form. The Appellant received ratings of "does not meet standards" in thirteen of the twenty categories, which caused the Appellant to be rated as overall unsatisfactory.
 21. As a result of the overall unsatisfactory evaluation, by warning letter issued February 25, 2009 by the Area Assistant Superintendent, William Lawrence, the Appellant was admonished to address the identified areas of weakness and to demonstrate improvement to a satisfactory evaluation.
 22. Despite being notified numerous times, including March 11, 2009, March 17, 2009, March 19, 2009, April 2, 2009 and April 15, 2009 of class field trip that she was required to attend, the Appellant refused to participate in any meetings about the trip and did not advise administrative staff that she was not participating in the field trip until April 16, 2009, when staff asked her if she was going.
 23. On April 16, 2009, when the principal and vice-principal visited Appellant's classroom concerning the upcoming field trip, the Appellant became agitated and, among other things, screamed "You don't like me because I am Black. You don't like me because I have a disability and that is illegal. It is always my fault. You are always harassing me."
 24. The Appellant's conduct, including tardiness, poor classroom evaluations, refusals to attend meetings or meet with the principal, and leaving children unattended throughout

the 2008-2009 school year, was not attributable to her disabilities or limitations from the automobile accident.

25. Following a meeting on June 3, 2009, about the Appellant's continued employment, by detailed memorandum dated July 6, 2009, the Superintendent's Designee, William Lawrence, recommended Appellant's termination for "insubordination and willful neglect of duty in accordance with §6-202 (a) (ii) [sic], (iii), and (v) of the Education Article of the *Annotated Code of Maryland*."

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 "insubordination" and "willful neglect of duties." Md. Code Ann., Educ. § 6-202(a)(1) (2008). It further states that the individual "may appeal from the decision of the county board to the State Board." Md. Code Ann., Educ. § 6-202(a)(4). Under COMAR 13A.01.05.07A, the State Board "shall transfer an appeal to the [OAH] for review by an administrative law judge" under circumstances including an "appeal of a certificated employee suspension or dismissal" pursuant to section 6-202 of the Education Article. Under COMAR 13A.01.05.05, the standard of review for dismissal actions involving certificated employees is *de novo*: "[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." I read that to mean that I am to make a new decision, that is, a *de novo* determination based upon the record created before the matter came to me. I do not read it to mean that I am to conduct a *de novo* hearing, starting everything anew. COMAR 13A.01.05.07C allows for the exclusion of additional evidence that is unduly repetitious of that already contained in the

record. Additionally, COMAR 13A.01.05.04C provides for the appellant to 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. The local board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05F.

Accordingly, on behalf of the State Board and on the record before me, I am exercising my independent judgment and discretion in a *de novo* decision to determine whether the Local Board established by a preponderance of the evidence that the Appellant was insubordinate or negligent in the performance of her duties, and if so whether termination of her employment is an appropriate sanction. Procedurally, I note that at the time of the hearing before me, the Appellant wished to introduce additional evidence into the record. Although the exhibit list was filed late according to my Prehearing Order, the Appellant insisted, without elaboration, that the documents that she wished to introduce were relevant. Nonetheless, she could not present any information concerning why, if it were relevant, the documents had not been presented before or to the Local Board. Simply put, even assuming that the previously undisclosed documents were relevant and not repetitious, the Appellant presented no reasons, much less good reasons, as are required by COMAR 13A.01.05.04C for such late admissions to supplement the record. I declined to accept additional information and made a *de novo* decision on the existing record. COMAR 13A.01.05.05F(2).

Interestingly, throughout the entire record, the Appellant did not dispute or offer evidence to refute the BC-BOE's evidence. She primarily alleged, although without evidence, that she was being denied some form of accommodation or discriminated against. My initial impression upon review of the highly detailed and exhaustive record presented leads me to conclude that the Appellant was an employee who, at least in the latter years of her employment, simply did what she wanted to do, or did not do what she did not want to do. Then, when confronted, she claimed

needed accommodation, lack of accommodation or discrimination as an excuse. However, there has been no documented or even claimed disability from the automobile accident that would warrant anything other than the accommodations that the Appellant requested and which were provided. My subsequent in depth review of the entire record does not change my initial impression. Indeed, even during the appeal process, the Appellant did not follow instructions or requirements as directed. That continued into the hearing.

For example, despite being notified and given detailed instructions by the OAH concerning the scheduled telephone prehearing conference, the Appellant did not provide the OAH with a telephone number. It wasn't until the date of the telephone prehearing conference, October 12, 2010, that I was provided a working telephone number for the Appellant from the BCPS' counsel. Upon reaching the Appellant via that number, she was clearly surprised and unprepared. When I advised her of the hearing dates, the Appellant noted that she may need accommodation because of her pregnancy. However, there was no evidence of any prenatal complications and she did not mention what accommodations she might require.

Despite being advised orally at the telephone prehearing conference and in writing by the October 13, 2010 Prehearing Conference Report and Scheduling Order concerning filing deadlines, the Appellant filed her proposed stipulations and document list late. Nonetheless, she requested, because of being seven and one half months pregnant, "one accommodation during the hearing, and it is that I be granted a time controlled, factual and concise trail (sic)." Even though I stated that written closing would be permitted, and that it should be in the form of argument and could not include exhibits, the Appellant attempted to submit exhibits with her closing arguments. I have disregarded those submissions.

Although I can make credibility assessments based upon testimony and other evidence in the case record and from the transcripts, since there was no testimony before me, I am generally unable to make demeanor based credibility assessments of those who did not testify before me. Nonetheless, in this case, based upon my personal interaction with the Appellant throughout the hearing process, beginning with the telephone prehearing conference, through the submission of closing arguments, I found her to be consistently unprepared, lacking focus and often off point. My assessment corresponds quite closely with the classroom observations of the Appellant made and documented by the principal and vice-principal during the 2008-2009 school year.

The County Board argues that the record shows, by a preponderance of the evidence, that it was justified in terminating the Appellant for insubordination and willful neglect of duty. The Appellant argues that all of the documents in the case record contain false statements, that she is disabled and that she is being discriminated against because of race and disability.

Section 6-202 of the Education Article provides the framework under which a teacher may be suspended or dismissed. Section 6-202(a) states:

(1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:

- (i) Immorality;
- (ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of § 5-704 of the Family Law Article;
- (iii) Insubordination;
- (iv) Incompetency; or
- (v) Willful neglect of duty.

Section 6-202 of the Education Article does not define insubordination. However, insubordination in regard to the Education Article has been defined as a "conscious, willful and recalcitrant rejection of authority of a supervisory office." *Resetar v. State Board of Education*, 284

Md. 537, 562 (1979). In *Resetar*, a teacher used language that was derogatory and racially offensive after being warned numerous times not to use such language. In issuing opinions, the MSDE has defined insubordination variously as “repeatedly refusing to follow directions,” “a willful disregard of expressed or implied directions... refusal to obey reasonable orders.” *Pepperman v. Board of Education of Montgomery County*, 7 Op. MSBE 555 (1997); *Cureton v. Montgomery County Board of Education*, MSBE Op. No. 10-21 (May 25, 2010), respectively. In this case, the Appellant refused to attend meetings that she was supposed to attend, refused to meet with the principal when requested or directed, refused to work with Ms. Karolskowski, another teacher, left children unattended, and continued to behave in this manner over a period of months, despite warnings and reprimands. It is not only the individual acts of refusing to attend required meetings, refusing to talk to the principal when directed and leaving children unattended, that was insubordinate, especially when the actions were in violation of the assistance plan, it is the repeated and continuous nature of the actions, after warnings and reprimands, without any justification or explanation, that compounds the insubordination. Clearly, the County Board properly terminated the Appellant for insubordination continuing through the 2008-2009 school year.

As with insubordination, Section 6-202 of the Education Article does not define “willful neglect of duty.” However, aside from a layman’s common sense explanation of what it means, willful neglect of duty in regard to the Education Article has been defined by the MSBE as “a willful failure to discharge duties which are regarded as general teaching responsibilities,” *Margaret R. Crawford v. Board of Education of Charles County*, 1 Op. MSBE (1976); *Steward v. Baltimore County Board of Education*, MSBE Op. No. 05-15 (2005). In *Moore v. Baltimore City Board of School Commissioners*, MSBE Op. No. 04-03 (2003), that appellant had been given an assistance

plan but did not follow it. The MSBE found that failing to follow the assistance plan was willful neglect of duty.

In this case, the Appellant had an assistance plan from the outset of her tenure at Chatsworth, and she failed to follow it from the beginning. The Appellant continued to ignore the assistance plan throughout the 2008-2009 school year, most notably by refusing to attend meetings, refusing to work with her co- teacher, leaving students unattended, and consistently being tardy or failing to adhere to established time schedules. The Appellant did not document or even suggest that her inappropriate behaviors were related to any physical impairment or accident related disability. While I recognize that the classroom observations could be a matter of a subjective determination by the principal and vice principal, lateness, failure and refusal to attend meetings, refusal to work with another teacher, refusal to meet with the principal and leaving children unattended are not subjective determinations. The incidents either happened or they did not. The Local Board proved that the incidents happened, as alleged and that they were regarded as general teaching responsibilities. The Appellant presented no evidence to the contrary. The Appellant repeatedly failed to fulfill her duties and obligations as a teacher. If ever there were a model for willful neglect of duty, the Appellant's conduct would be it. Clearly, the County Board properly terminated the Appellant for willful neglect of duty.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law that the County Board has proven that the Appellant was insubordinate and willfully neglected her duties as a teacher, and that the Appellant's termination was proper Md. Code Ann., Educ. § 6-202(a); COMAR 13A.01.05.05F.

PROPOSED ORDER

I **PROPOSE** that the decision of the Baltimore County Board of Education terminating the Appellant for insubordination and willful neglect of duty be **UPHELD**.

February 24, 2011
Date Decision mailed

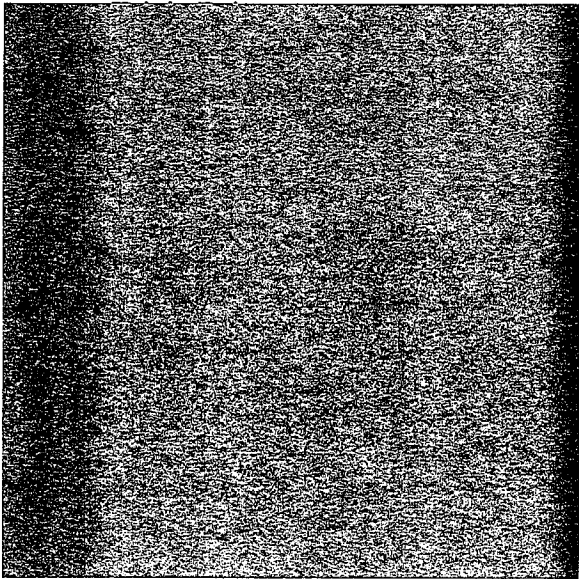
A. J. Novotny, Jr.
Administrative Law Judge

119811

NOTICE OF RIGHT TO FILE OBJECTIONS

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

Copies mailed to:



TRICIA BRISSETT,

APPELLANT

v.

BALTIMORE COUNTY BOARD OF

EDUCATION

* BEFORE A. J. NOVOTNY, JR.,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE OF

* ADMINISTRATIVE HEARINGS

* OAH CASE NO.: MSDE-BE-01-10-29985

* * * * *

Exhibit List²

DOCUMENTS

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3. Employment Discrimination/Harassment Complaint Form

Superintendent's Exhibits

1. July 6, 2009 Recommendation of Termination (with attachments A-P)
2. Undated Grievance from Tricia Brissett
3. January 14, 2009 Mid Year Evaluation
4. February 25, 2009 Warning Letter, Class II Status
5. Superintendent's Rule 4418
6. Board of Education Policy 4002, Precepts, Beliefs and Values
7. Board of Education Policy 4008, Obligations of Employees of the Board of Education of Baltimore County

² For ease of locating documents, I duplicated the format and layout of the document index attached to the exhibit folder submitted by the County Board.

8. Conference Notes
 - A. September 15, 2008
 - B. September 26, 2008
 - C. October 1, 2008
 - D. October 3, 2008
 - E. November 12, 2008
 - F. December 8, 2008
 - G. January 14, 2009 (Mid Year Evaluation)

9. Assistance Plan, November 5, 2008

10. Weekly Reports
 - A. November 17, 2008
 - B. December 1, 2008
 - C. December 8, 2008
 - D. December 15, 2008
 - E. January 5, 2009
 - F. January 12, 2009
 - G. January 19, 2009
 - H. January 26, 2009
 - I. February 2, 2009
 - J. February 9, 2009
 - K. February 16, 2009
 - L. March 2, 2009
 - M. March 9, 2009
 - N. March 16, 2009

11. Letters of Reprimand and Warning
 - A. November 26, 2008
 - B. December 1, 2008
 - C. December 10, 2008
 - D. January 15, 2009 re: Faculty Meetings
 - E. January 15, 2009 re: Attendance
 - F. January 22, 2009
 - G. March 13, 2009
 - H. March 20, 2009
 - I. March 25, 2009
 - J. April 1, 2009
 - K. April 1, 2009 re: Meeting
 - L. April 1, 2009 re: Faculty Meeting
 - M. April 1, 2009 re: Supervising Students
 - N. April 3, 2009 re: Length of School day
 - O. October 27, 2008 re: Memo of Warning, Team Meeting

12. Formal Observation Reports

- A. September 26, 2008
 - B. October 24, 2008
 - C. December 12, 2008
 - D. January 8, 2009
 - E. February 26, 2009
 - F. March 30, 2009
13. Informal Observation Notes and Memos
- A. October 29, 2008
 - B. November 11, 2008
 - C. November 19, 2008
 - D. March 4, 2009
 - E. March 15, 2009
14. Incident Reports, April 16, 2009
- A. Nancy Casalena (2 pages)
 - B. Debi Cascio
15. January 7, 2009 – January 5, 2009 Electronic Mail Messages
2. Transcript of Hearing Held on January 29, 2010

Appellant's Exhibits

4. E-Mail from Jordan Birnbaum to Ms. Cascio, 4/3/09, with Copy to Ms. Brissett

Superintendent's Exhibits

16. May 9, 2009 memo from Tricia Brissett to Ray Suarez
17. May 11, 2009 letter from Tricia Brissett to Ray Suarez
18. November 13, 2009 letter from Nancy Casalena to Tricia Brissett
19. November 25, 2008 email from Tricia Brissett to Nancy Casalena
20. Undated Grievance from Tricia Brissett, with handwritten notes
21. August 27, 2008 letter from Bobette Watts-Hitchcock to Tricia Brissett
22. Southwest Area Office File, Tricia Brissett, 2006-2007 School (Marked) Year; 2007-2008 School Year
23. Evaluation Report, Tricia Brissett, 2006-2007 School Year (Marked)
24. Homeroom Details Report

25. Chatsworth School, Observation Schedule, 2008-2009 School Year
3. Closing Arguments on Behalf of Appellant, March 19, 2010
4. Superintendent's Post-Hearing Memorandum, March 19, 2010
5. Findings of Fact, Conclusions of Law and Recommendation of Hearing Examiner Jeffrey Griffith, Esquire, April 26, 2010
6. Transcript of Oral Argument before the Board of Education of Baltimore County, June 10, 2010
7. Opinion and Order of the Board of Education of Baltimore County, June 10, 2010