

ALLEN WRIGHT,

Appellant

v.

BOARD OF EDUCATION OF
CHARLES COUNTY,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-24

OPINION

INTRODUCTION

In this appeal, the Appellant challenges the decision of the Charles County Board of Education (local board) to terminate him from his teaching position for misconduct in office and immorality based on his conduct involving sexual encounters with an instructional assistant on school grounds. Appellant served as a hiatus instructor at General Smallwood Middle School (General Smallwood) from the 2006-2007 school year through the 2010-2011 school year. Just prior to the Superintendent's termination recommendation, Appellant had received a promotion to the position of vice principal position at General Smallwood for the 2011-2012 school year.

As is required in certificated employee termination cases, the State Board referred this case to the Office of Administrative Hearings (OAH) for proposed findings of fact and conclusions of law by an Administrative Law Judge (ALJ). COMAR 13A.01.05.07A(2). The ALJ issued a decision proposing that the State Board uphold the termination of Appellant. Appellant filed exceptions to the ALJ's decision with the State Board and the local board responded.

FACTUAL BACKGROUND

The parties stipulated to the following facts during the hearing before the local hearing examiner:

1. Appellant was employed as a certificated employee by the Board of Education of Charles County from the 2006-2007 school year through the 2010-2011 school year.
2. Appellant was assigned to General Smallwood Middle School as a hiatus instructor (a certificated position) for the 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011 school years. He was selected to serve as a vice principal at General Smallwood Middle School for the 2011-2012 school year, immediately prior to the Superintendent's recommendation for his termination.

3. RL was an instructional assistant assigned to General Smallwood Middle School for the 2010-2011 school year. (RL is not currently a school employee for the 2011-2012 school year).
4. The Superintendent would have provided information at the hearing that in the fall of 2010, the Appellant began to show RL unwanted attention, including making inappropriate statements and requesting dates. The Appellant would have provided information at the hearing that he and RL struck up a friendship during the 2010-2011 school year, and that their relationship turned into a mutual sexual attraction. Either way, the parties agreed that the relationship resulted in consensual sexual encounters.
5. On six separate occasions between May 10, 2011, and June 8, 2011, the Appellant and RL had sexual intercourse in the Appellant's classroom/office at General Smallwood Middle School. Each sexual encounter occurred on a school day at the school, after school hours
6. Eventually, RL's husband found out about the sexual encounters and notified the administration at the Jesse L. Starkey Administration Building. Representatives from the Division of Human Resources conducted an investigation and met with the Appellant for his response to the accusations. The Appellant admitted to the sexual encounters at the school and offered no excuses acceptable to the representatives from Human Resources.
7. The Appellant was informed in a July 8, 2011, letter that the Superintendent's designee would be recommending his termination to the Board of Education for misconduct in office, insubordination, and immorality. The recommendation was presented to the Board at its August 9, 2011 board meeting.
8. On July 14, 2011, the Appellant sent the school system an "official notification of my resignation from Charles County Public Schools, effective July 15, 2011." At its August 9, 2011, Board meeting, the Board rejected that offer to resign.
9. Through his actions, the Appellant violated Board Policy 4820 and the expectations of the school system as set forth in the CCPS Employee Manual, which expressly prohibits "immoral conduct or indecency on system property."
10. The Appellant committed actions which constituted misconduct in office and immorality under Section 6-202 of the Education Article, and committed actions which the Superintendent believed constituted insubordination.
11. At all times the superintendent followed the law and Board Policy.
12. The parties also agree that the only outstanding issue now before the Board of Education concerns the appropriate discipline to be handed down by the Board.

(Ex.4, Stipulated Facts).

The local hearing examiner found that the superintendent's decision to terminate the Appellant was an arbitrary sanction. He stated that "[a]s inappropriate as Appellant's behavior might be, as offensive as his lapse in judgment might be, the Superintendent has not met the burden of showing that Appellant's misconduct bears on his fitness to teach to the extent that he is unfit to teach." (Ex.7, Hearing Examiner Recommendation at 10). The hearing examiner recommended that the local board reprimand the Appellant in writing, revoke his selection as vice principal, and extend his suspension without pay until the last day of the first trimester of the current school year. *Id.*

The local board rejected the Hearing examiner's recommendation, concluding that termination was the appropriate sanction. The local board reasoned that the Appellant's conduct adversely impacted his fitness to teach in that his indecent behavior occurred on school property, was not confined to a single event, and that the conduct was preceded by unwanted comments and sexual attention directed at an instructional assistant. (Ex.8).

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) & (2). After considering the evidence *de novo*, the State Board may affirm, reverse, modify, or remand the ALJ's Proposed Decision.

ANALYSIS

Section 6-202 of the Education Article provides that a local board may suspend or dismiss a teacher for immorality, misconduct in office, insubordination, incompetency, or willful neglect of duty. The Appellant stipulated to the fact that his conduct constituted misconduct in office and immorality under §6-202. Thus, the only issue before this Board is whether termination was the appropriate sanction. The State Board's broad powers include the modification of a penalty imposed on school system personnel by a local board. *Board of Educ. of Howard County v. McCrumb*, 52 Md. App. 507, 514 (1982).

The ALJ concluded that termination was appropriate here and recommended that the State Board uphold the local board's decision. In reaching this decision, the ALJ noted the case of *Resetar v. State Bd. of Educ.*, 284 Md. 537, 561 (1979), in which the court found that, to warrant the sanction of termination, the conduct at issue "must bear upon a teacher's fitness to teach in such a manner as to render him unfit for the performance of his duties." The Court also stated in *Resetar* that each termination case must be judged on its own set of facts, taking the factual setting and circumstances of the misconduct into consideration. *Id.* at 562. It further noted that while it is appropriate for an agency to take an employee's previous disciplinary record, or lack thereof, into account when determining whether termination is warranted, there

may be situations in which dismissal for a single act of misconduct by a teacher with a clean record might be justified. *Id.* at 562-563.

The ALJ evaluated the appropriateness of the penalty in this case as follows:

It is undisputed that the Appellant had no prior disciplinary issues while employed by the school system. It is also undisputed that the Appellant's performance evaluations from 2006-2007, 2007-2008 and 2010-2011 had ratings of highly effective and satisfactory. However, it is also undisputed that the Appellant had six sexual encounters with an assistant teacher in his classroom/office after school hours. It is undisputed that the Appellant's conduct constitutes misconduct and immorality in office. Based on these undisputed facts, I find that the Appellant's conduct proves to be an enormous lapse in judgment that deems him unfit to teach. There is precedence in Maryland where termination of a teacher has been upheld based on the nature of the misconduct and there was no evidence of impact in the community or on other teachers. The conduct of the Appellant in this matter is enough to show that he does not possess the requisite character, judgment and common decorum to teach students in a public school setting.

(ALJ Proposed Decision at 13). We concur.

Appellant's Exceptions

The Appellant sets forth four exceptions to the ALJ's decision without any additional argument. We address each exception below.

1. *Appellant generally excepts to the Decision to the extent that it suggests that the Appellant's termination was justified.*

As explained above, Appellant had sexual encounters with another school system employee in the Appellant's classroom/office on school grounds after school hours. This behavior was not a one time occurrence, but rather a pattern of behavior in which the conduct took place on multiple occasions. Appellant's engagement in such behavior on school premises after school is egregious and demonstrates a breakdown in his ability to exercise good judgment and make sound decisions in the school setting. Therefore, termination in this instance is justified.

2. *Appellant specifically excepts to the Decision in that it states that the question at hand is whether the Board provided sufficient evidence to prove that Appellant's conduct deems him unfit to teach; yet it goes on to reason that no evidence is needed in certain circumstances.*

The ALJ found that the crux of this case hinged on whether the local board provided sufficient evidence to prove that the Appellant's conduct deemed him unfit to teach. Appellant's suggestion, however, that the ALJ reasoned that no evidence regarding fitness to teach was necessary is incorrect. Rather, the ALJ determined that in some cases, the conduct alone is sufficient evidence that the teacher is unfit to teach, without a showing of collateral evidence of the impact of the teacher's conduct on students, fellow teachers, and the community. The ALJ explained that, in this case, the Appellant's decision to have six separate sexual encounters with a married co-worker in his classroom/office after school hours, in and of itself, so thoroughly undermined any confidence the local board might have had that Appellant possessed the requisite character, judgment, and common decorum necessary to teach students that it impacted the Appellant's fitness to teach.

3. Appellant specifically excepts to the Decision in that it reasons that Brown v. Baltimore City Bd. of Sch. Comm'rs and Harmon v. Baltimore City Bd. of Sch. Comm'rs are analogous to the instant case when Brown's behavior of slapping a student was criminal, and Harmon's behavior of falsifying documents was arguably criminal.

The ALJ cited the State Board's decisions in *Brown v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 09-31 (2009) and *Harmon v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 04-14 (2004), for the proposition that a teacher's misconduct may undermine the teacher's character and professional judgment to the extent that the conduct belying the misconduct charge itself may support a finding that the teacher is unfit to teach.

The Appellant argues that the conduct in those cases was criminal or arguably criminal and, therefore, distinguishable from the conduct in the case at hand. In *Brown*, the local board terminated the Appellant for slapping a student across the face. In *Harmon*, the local board terminated the teacher for falsifying bereavement leave forms. The ALJ recognized that the facts of those cases were distinguishable but that the notion that a teacher's judgment bears on the ability to teach was equally applicable to this case.

Although the Appellant would like this Board to find that proof of Appellant's unfitness to teach may only be accomplished through the introduction of collateral evidence that shows his misconduct will impact his future classroom performance, students, staff or the community, we decline to do so. To hold such a position would render local board's powerless to discharge teachers for misconduct that is kept secret, no matter how offensive or abhorrent.

4. Appellant specifically excepts to the Decision in that it fails to give due weight to the fact that Appellant had demonstrated that he was fit to teach. Specifically, he was found to be a highly effective and satisfactory teacher who was recently selected for a promotion. Despite all this evidence, the Decision upholds his termination when no evidence was presented to show that he was unfit to teach.

The Appellant maintains that the ALJ failed to give due weight to the evidence he presented regarding his fitness to teach.

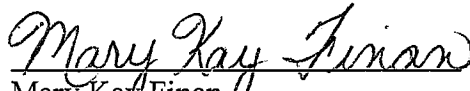
The ALJ reviewed the record which included the evidence concerning Appellant's performance ratings, clean disciplinary record, and promotion, all of which were mentioned in the proposed decision. (Proposed Decision at 3, 13). The ALJ gave weight to the record evidence and determined that despite that evidence, Appellant's conduct was "an enormous lapse in judgment that deems him unfit to teach." (*Id.* at 13). He concluded that the Appellant's conduct was sufficient to show that he did not possess the requisite character, judgment and common decorum to teach students in a public school setting. (*Id.*). We agree.

CONCLUSION


After hearing oral argument on the Exceptions, we find that the Charles County Board of Education has shown by a preponderance of the evidence that termination was a proper penalty for the acts of misconduct in office and immorality. Accordingly, we adopt the ALJ's Proposed Decision as our own.

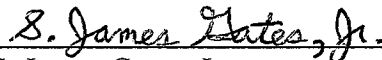


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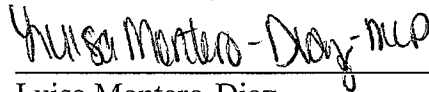

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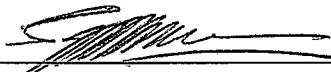

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S. James Gates, Jr.



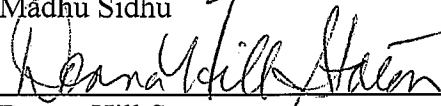
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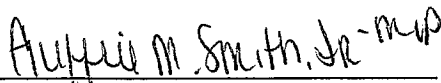
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April 23, 2013