

KAREN TERRELL

Appellant

v.

HOWARD COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-42

## OPINION

### INTRODUCTION

We consolidated two appeals filed by the Appellant contesting separate decisions of the Howard County Board of Education (local board). In the first appeal, Appellant challenges the local board's decision upholding a one-day suspension without pay. In the second appeal, Appellant challenges the local board's decision to uphold her termination from employment. The local board filed Motions for Summary Affirmance maintaining that its decisions are not arbitrary, unreasonable, or illegal. The Appellant responded to the local board's motions and the local board replied.

### FACTUAL BACKGROUND

Appellant was employed as a Driver Instructor for the Howard County Public School System (HCPSS) Transportation Office for approximately eleven years. (Local Board Opinion). Appellant has a lengthy employment history with numerous work performance problems, including issues with attendance, failure to meet deadlines, punctuality, and other issues. Below is a summary of this history:

- March 19, 2009 – Meeting with David Ramsay, Appellant's immediate supervisor at the time, to discuss Appellant's work problems.
- March 24, 2009 – Meeting with David Drown, previous Director of Transportation,<sup>1</sup> and Mr. Ramsay to follow up on work issues that were discussed on March 19.
- March 26, 2009 – Memorandum from Mr. Drown placing Appellant on an action plan to improve her performance of her job duties. He specified a need for improvement in various areas, including the delivery of instruction to bus drivers and assistants in the classroom and behind the wheel, formal observations of school bus drivers and assistants, and improving the existing program in order to improve instruction for bus driver training.

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<sup>1</sup> Mr. Drown held the position of Director of transportation until June of 2011, at which point Mr. Ramsay became the Director of Transportation.

- August 27, 2009 - Meeting with Mr. Drown regarding Appellant's performance issues. Topics covered included driver observations, management of task completion, and the development and submission of lesson plans.
- September 8, 2009 – Memorandum from Mr. Drown following up on August 27 meeting. Mr. Drown advised Appellant regarding the required content of her lesson plans and directed Appellant to submit a lesson plan to Mr. Ramsay.
- September 10, October 30, and December 3, 2009 – Meetings with Mr. Ramsay to discuss required edits and progress of lesson plan that was submitted.
- December 3, 2009 – Meeting with Mr. Ramsay to address the unsatisfactory lesson plan she submitted and to inform Appellant that she was behind in the timeline to have pre-service lesson plans completed. Mr. Ramsay directed Appellant to submit revised plan by December 18.
- December 18, 2009 – Memorandum from Mr. Ramsay regarding Appellant's failure to submit lesson plan by deadline. Mr. Ramsay advised Appellant that she was not meeting the objectives of her performance plan, lacked a positive attitude, and was indifferent to completing lesson plans.
- January 21, 2010 - Letter of reprimand from Mr. Drown for Appellant's failure to submit appropriate lesson plans for the bus driver pre-service training program. Mr. Drown directed Appellant to resubmit the lesson plan by January 28, 2010. He also advised Appellant that her continuous submission of substandard work and missed deadlines could result in dismissal.
- 2009-2010 annual evaluation - Appellant received an overall rating of unsatisfactory. This evaluation was nullified by an arbitrator on May 12, 2011, because of a technical failure to deliver the evaluation in the time specified in the Negotiated Agreement. However, the Arbitrator's ruling did not address the substance of the evaluation.
- January 4, 2011 – Memoranda from Mr. Ramsay regarding concerns about leave usage, punctuality, overdue assignments, and failure to meet deadlines.
- February 11, 2011 – Meeting with Mr. Ramsay addressing issues with Appellant's lesson plan, work schedule and absences.
- February 18, 2011- Incident regarding rescheduling of February 16 meeting.
- Late February 2011 - One-day suspension without pay
- 2010-2011 Annual Evaluation – Appellant received an overall rating of unsatisfactory.
- July 20, 2011- Mr. Ramsay terminated Appellant from employment based on Appellant's unsatisfactory evaluations, two warning memoranda from January 2011, a letter of reprimand on January 21, 2010, a suspension without pay on February 22, 2011, and several other incidents of poor performance.

(Termination, Attachments to Superintendent's Response).

#### **I. One day suspension without pay**

On February 16, 2011, Appellant was scheduled to meet with Mr. Ramsay to discuss work performance issues. Fifteen minutes prior to the scheduled meeting, the Appellant informed Mr. Ramsay that her union representative was unavailable for the meeting. Mr.

Ramsay requested that Appellant have the union representative call him so that they could reschedule the meeting. (Ramsay Letter, 2/22/11).

On February 18, 2011, Mr. Ramsay asked Appellant to come into his office. He did so because he wanted to reschedule the February 16<sup>th</sup> meeting and to address the issue of the union representative's failure to contact him. (*Id.*). Mr. Ramsay described what ensued as follows:

When I requested that you come into my office you became loud and aggravated in front of other staff members. You implied that whatever I was going to say would be a "lie." I then asked Mr. Stull [Assistant Supervisor for Transportation] to come to my office so that he could observe the meeting. When Mr. Stull arrived you stated "I get to choose who I want in the meeting" and "Dwight is not the one that I want." I then informed you that the meeting was not a disciplinary meeting and that Mr. Stull was an observer. I also informed you that I had the prerogative to invite whomever I deemed necessary to a meeting. You then responded "that's ok, you go ahead and loose (sic) it" and "you're lying to me again." After the last comment was made I concluded our meeting.

(*Id.*). Mr. Ramsay described the Appellant's behavior as hostile, angry and belligerent. (Ramsay Affidavit). Mr. Stull observed that the Appellant was very angry and verbally aggressive towards Mr. Ramsay, and that she called Mr. Ramsay a liar several times. (Stull Affidavit). Appellant states that it was Mr. Ramsay who behaved unprofessionally and raised his voice. She also states that she repeatedly requested union representation while she was in his office. (Appellant's Affidavit).

Thirty minutes after the incident, Mr. Ramsay met again with the Appellant and advised her that she was being placed on administrative leave with pay for disrupting the office until a follow up meeting could be scheduled. (Ramsay Affidavit).

On February 23, 2011, Mr. Ramsay conducted a disciplinary meeting with Appellant, her union representative, and her attorney. Mr. Ramsay addressed Appellant's behavior on February 18<sup>th</sup> and her continued poor work performance despite the professional staff development support services that had been made available to her. (Ramsay Letter, 2/22/11). Mr. Ramsay suspended Appellant for one day without pay based on these issues. (*Id.*).

On March 31, 2011, Appellant appealed the one-day suspension to Theresa Alban, the Chief Operating Officer and Superintendent's Designee. (Appeal to COO). By letter dated April 26, 2011, Dr. Alban upheld Mr. Ramsay's decision imposing the one day suspension. (Alban Letter).

On July 20, 2011, Appellant appealed the decision to the local board arguing that her suspension did not follow the model of progressive discipline and that her rights to union representation were violated. (Appeal to Local Bd.).

On November 17, 2011, the local board upheld the decision of the Superintendent's Designee. The local board found that Appellant failed to conduct herself in a courteous and professional manner on February 18<sup>th</sup>. The board also found that Appellant had a history of performance problems, including difficulty preparing satisfactory lesson plans for the training she performs as an essential function of her job. The local board considered the totality of the circumstances and concluded that the one-day suspension was warranted. The local board further found no indication that Appellant was denied her right to union representation or that she had been suspended for exercising her right to representation. (Local Board Opinion).

This appeal to the State Board followed.

## **II. Termination**

On May 31, 2011, Appellant received her annual evaluation for the 2010-2011 school year. In this evaluation, Appellant received an "unsatisfactory" rating in the following seven categories: Relationships with Students, Staff, and/or Parents; Quality of Work; Communication Skills; Organizational Skills; Attendance and Punctuality; Judgment; and Attitude. She received a "needs improvement" rating in the following three categories: Quantity of Work; Resourcefulness; and Initiative. She received a "satisfactory" rating in only one category, Job Knowledge. Appellant's overall evaluation rating was "unsatisfactory". (Motion, Ex. 1).

By letter dated July 20, 2011, Mr. Ramsay informed Appellant that he was terminating her employment based on the following:

- The 2010-2011 school year unsatisfactory evaluation;
- Two warning memoranda on January 4, 2011;
- A suspension without pay on February 23, 2011;
- A letter of reprimand on January 21, 2010;
- A memorandum of concern on December 18, 2009; and
- A "needs improvement" rating in the category on attitude in the 2008-09 evaluation.

(Ramsay Letter).

On July 25, 2011, Appellant appealed the termination to Raymond Brown, Chief Operating Officer. (Neville Letter). In August 2011, Mr. Brown met with Appellant and her union representative so that Appellant could present her case. They also discussed whether Appellant was going to accept the "Second Chance Agreement" offered by the school system to place her in a custodial position in the Building Services Department in lieu of termination. Discussions regarding the agreement lasted several months to no avail. On January 13, 2012, Mr. Brown upheld the decision to terminate Appellant's employment. (Brown Letter).

Appellant appealed to the local board, contending that her termination was not supported by proper cause. (Appeal). The local board upheld Mr. Brown's decision citing the evidence in the record of Appellant's incompetence and insubordination as defined in local board policy. (Local Board Decision).

## STANDARD OF REVIEW

The standard of review in appeals concerning the suspension and termination of non-certificated employees is that the local board's decision is considered prima facie correct and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

## ANALYSIS

The Appellant appealed the local board's decision affirming her suspension and the decision affirming her termination from employment with the school system. We address each appeal below.

### **I. One-day suspension without pay**

#### *a. Was Appellant's right to union representation violated?*

Appellant claims that her right to union representation was violated on February 18, 2011, because Mr. Ramsay did not allow her to have union representation present when he met with her. There is evidence in the record, however, that Mr. Ramsay's attempt to speak with the Appellant on February 18<sup>th</sup> was an attempt to reschedule the February 16<sup>th</sup> meeting regarding Appellant's performance issues in order to accommodate her desire for union representation. As Appellant's supervisor, Mr. Ramsay had a legitimate basis to talk to her about rescheduling the meeting. Union representation was not required for such a conversation. The disciplinary meeting was ultimately held on February 23, 2011, at which time Appellant had both her union representative and her attorney present. Thus, no violation occurred.

#### *b. Did her supervisor violate Progressive Discipline policy?*

Appellant argues that the local board failed to follow its policy of progressive discipline. She maintains that she should have received a reprimand rather than a one day suspension.

The local board's provisions on progressive discipline are set forth in Policy 7030 (Employee Conduct and Discipline). It states:

Progressive discipline used in the HCPSS encompasses the following kinds of disciplinary action, any of which are available and will be used in accordance with the circumstances of the situation. The specific actions taken will be based on the circumstances involved in the case.

The specific actions are: (1) oral warning; (2) written warning; (3) letter of reprimand; (4) suspension; and (5) dismissal. (7030.IV.J). The implementation procedures for Policy 7030 state that not all steps of the progressive discipline policy need to be selected before more serious actions may be used. (7030-PR).

It is clear that the local board's progressive discipline policy is not applied in an automatic lock-step manner. Disciplinary responses can vary depending on the particular circumstances and lesser responses need not be applied before more serious measures are taken. Therefore, the fact that Appellant received a one day suspension and not a reprimand or lesser penalty is not a violation of the progressive discipline policy.

*c. Is the one-day suspension without pay supported by the record?*

Appellant claims that there is insufficient evidence to support her suspension.

Board Policy #7030 authorizes employee discipline for incompetence and insubordination. The policy defines incompetence as “[l]acking in knowledge, skills, ability or failing to adequately perform the duties of an assigned position. It defines insubordination as the “[f]ailure to follow a valid directive from a person in a position of authority.” (Policy 7030.IV). (Board Policy 7030).

We concur with the local board that Appellant was both incompetent and insubordinate. Appellant's incompetency was evident in her inability to satisfactorily carry out her job responsibilities, including the inability to properly prepare lesson plans, an essential function of her job. (Ramsay's Letter, 3/2/2011). There were also other issues, such as untimely task completion, problems with punctuality, leave usage and attitude to name a few. Appellant was counseled on numerous occasions regarding her work expectations and unsatisfactory work performance by Mr. Drown, the previous Director of Transportation, as well as by Mr. Ramsay. She was also provided opportunities for assistance in order to improve her performance, but Appellant was unable to do so. With regard to Appellant's conduct during Mr. Ramsay's February 18<sup>th</sup> attempt to speak with her to reschedule the missed meeting, Appellant's refusal to speak with him and her aggressive behavior was insubordinate and disruptive. Although Appellant disagrees with the facts pertaining to her unsatisfactory behavior and insubordinate actions, her disagreement is not a sufficient reason to disregard the evidence. Particularly in light of the evidence by Mr. Stull who witnessed the interaction and corroborated Mr. Ramsay's view of the events that transpired. The evidence is, in our view, sufficient to support the suspension.

Appellant also claims that her suspension was illegal because it was issued in retaliation for her exercise of her rights as a union member which are protected under §6-512 of the Education Article. There is no support in the record for this assertion. Rather, as stated above, the evidence shows that she was suspended for her behavior on February 18 and for her unsatisfactory performance.

## II. Termination

Appellant maintains that the local board lacked just cause to terminate her employment.

As already stated above, HCPSS Policy 7030 sanctions employee discipline for incompetency. Appellant's employment history contains ample reasons to support her termination. It is replete with evidence of unsatisfactory performance, despite repeated warnings and assistance to the Appellant to improve over several years. These performance problems culminated in her 2010-2011 year end overall unsatisfactory evaluation rating. The reasons advanced in Mr. Ramsay's July 20, 2011 termination letter, as supported by the record in this case, establish just cause for Appellant's termination based on incompetency

In an attempt to deflect the incompetency claim, Appellant argues that lesson planning was not one of her job requirements. Yet the job description for her position states that one of the essential functions of the job is to provide classroom training for school bus drivers and assistants. Mr. Drown and Mr. Ramsay explained that Appellant needed to develop lesson plans in order to effectively deliver such training. They explained what those lesson plans should contain and offered continuous assistance to the Appellant. In addition, Appellant had prior experience in instructing training classes prior to joining HCPSS.

Appellant also maintains that the termination decision was motivated by Mr. Ramsay's personal bias against her rather than by a lack of satisfactory performance on her part. There is no evidence to support this claim. Mr. Drown, the prior Director of Transportation, had also notified Appellant of her performance problems. Counseling and reprimands on these issues persisted for several years. Moreover, in 2009, in response to Appellant's complaints of alleged harassment by Mr. Ramsay, the HCPSS Coordinator of Equity Assurance conducted an investigation and found no biased or differential treatment by Mr. Ramsay. There is evidence, however, of Appellant's unsatisfactory performance. As the local board noted, "it is difficult to overlook [Appellant's] overdue assignments, the memoranda reminding her of her failed responsibilities, and the tasks she failed to perform as part of her annual performance plan."

## CONCLUSION

Because we find that the local board's decision was not arbitrary, unreasonable or illegal, we affirm the local board's decisions to suspend Appellant for one day without pay and to terminate her from her employment with the school system.

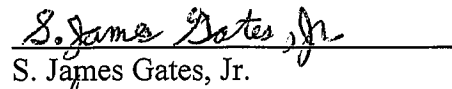


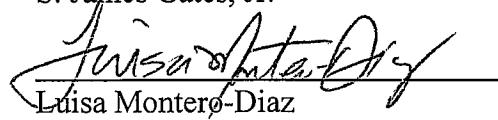
Charlene M. Dukes  
President



Mary Kay Finan  
Vice President

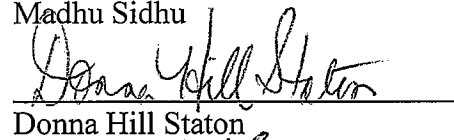
  
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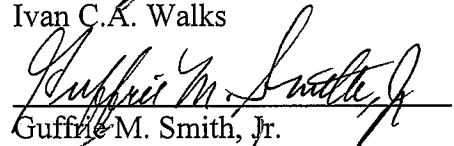
  
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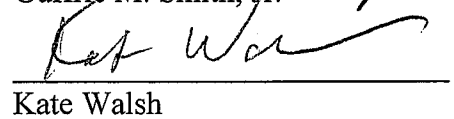
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September 25, 2012