

CRISCEDA CHUNG

Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-45

OPINION

INTRODUCTION

In this appeal, the Appellant challenges the decision of the Baltimore City Board of School Commissioners (“local board”) to terminate her from her position as a paraprofessional. The local board filed a Response to Appellant’s Appeal, maintaining that its decision is not arbitrary, unreasonable or illegal. Subsequently, Appellant filed a Memorandum in Support of Appeal.

FACTUAL BACKGROUND

Appellant began her employment with Baltimore City Public Schools in 1975. Appellant was a non-certificated Paraprofessional at Carver High School (“Carver”), where she worked with Special Education students during the 2009-2010 school year. Her termination is based upon her actions on May 25, 2010.

On May 25, 2010 at approximately 8:24 a.m., Student X, a female Special Education student with cerebral palsy, walked up the stairs to the second floor of Carver (where a video camera was positioned) and proceeded past two police officers and down the hall to her assigned classroom. Student X walked with a limp; however, she was steady on her feet. Appellant believed that Student X was having an emotional problem. Appellant and her group of students got off the elevator, and Appellant followed Student X down the hall and instructed Student X to stop. Student X looked back over her shoulder at Appellant and continued walking. Appellant passed the police officers without saying anything to them or motioning for assistance. Appellant quickly caught up to Student X; grabbed her arm; and Appellant and Student X began to struggle with one another. As they struggled, they moved down the hall and Appellant pushed Student X up against the wall or a row of lockers and Student X’s bookbag fell on the floor. The two police officers pursued the pair down the hall and assisted in breaking up the struggle, as a group of students gathered to watch.

Later on May 25, 2010, Police Officer, Michael Gordon wrote a statement describing the incident as follows, "...Ms. Chung walked up on her and grabbed her and [Student X] tried to pull away from Ms. Chung, who started struggling with the student, slinging the student up against the wall." Officer Gordon also notified Child Protective Services ("CPS") of the incident. CPS ruled out the allegation of abuse.

Following the incident, Gregory Eads, Investigator, began his investigation. Jerome Jones, Manager of Labor Relations of Baltimore City Public Schools, placed Appellant on paid administrative leave pending the outcome of the investigation. In Mr. Ead's Investigator's Report, he substantiated Appellant's misconduct. Mr. Eads interviewed Student X, who stated that Appellant grabbed her, pulled her clothes and pushed her down. Mr. Eads also interviewed the officers who observed the incident, several classmates and teachers of Student X. The teacher whom Appellant was assigned to assist stated that Appellant yells at the children and is too stern. Classmates of Student X reported that Appellant uses foul language and picks on them. Officer Evelyn Watson reported that on May 25, 2010, she observed Appellant in a fit of rage, forcibly grab Student X's left arm and place her right hand and arm in the throat area as she pinned Student X against the wall. The Office of Staff Investigations forwarded its findings of "substantiated" misconduct to the Office of Employee and Labor Relations.

On December 21, 2010, Mr. Jones held a pre-termination hearing with Appellant. Based upon the hearing, Labor Relations recommended that Appellant's employment be terminated.

On January 21, 2011, the designee of Andrés Alonso, Chief Executive Officer of Baltimore City Public Schools, sent Appellant a letter, terminating Appellant's employment and informing Appellant of her right to appeal.

Appellant appealed the decision. On August 23, 2011, the Hearing Officer heard the case. On December 9, 2011, the Hearing Officer recommended to the local board that Appellant be reinstated and awarded back pay. On January 11, 2011, the local board issued an order rejecting the recommendation to reinstate Appellant with back pay and upheld the termination.

On February 6, 2012, Appellant appealed the local board's decision to the State Board and argued that the local board did not articulate the basis for rejecting the Hearing Examiner's recommendation. Thereafter, on April 26, 2012, the local board provided a written explanation for its decision. On June 8, 2012, Appellant submitted her Memorandum in Support of Appeal.

STANDARD OF REVIEW

In *Livers v. Charles County Bd. of Educ.*, 6 Op. MSBE 407 (1992), *aff'd* 101 Md.App. 160, *cert. denied*, 336 Md. 594(1993), the State Board held that a non-certificated support employee is entitled to administrative review of a termination pursuant to §4-205(c)(4) of the Education Article. The standard of review that the State Board applies to such a termination is that the local board's decision is *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

ANALYSIS

Appellant argued that (1) The CEO failed to prove just cause to discharge Appellant, and (2) the decision to terminate Appellant's employment is unreasonable, arbitrary, and illegal. The Appellant, not the CEO, bears the burden of proof in her employment termination, because she was a non-certificated employee whose appeal rights for termination are governed by COMAR 13A.01.05.05D.

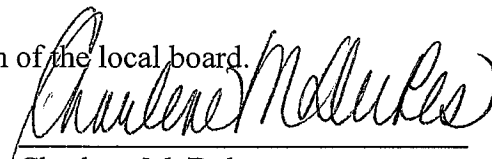
The standard of review of the local board's decision is a presumption of correctness. In order to rely upon this presumption, the local board must explain the reasoning behind its decision. *Mohan G. v. Montgomery County Bd. of Educ.*, MSDE Op. No. 08-15 (2008). Initially, the local board failed to do so. However, following a request for an explanation by Appellant, the local board provided a detailed explanation of its reasoning on April 26, 2012.

The local board has asserted that its decision to reject the Hearing Officer's recommendation to reinstate Appellant was neither unreasonable nor arbitrary. Under COMAR 13A.01.05.05B, a decision may be arbitrary or unreasonable if it is one or more of the following: (1) It is contrary to sound educational policy; or (2) a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.

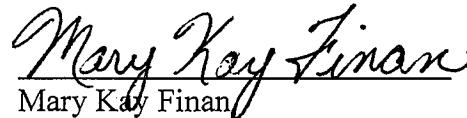
The local board found that Appellant was physically aggressive towards a special education student who was walking down a hallway and not causing any problems. The local board based its factual findings in part upon the officers' testimony at the hearing and on the videotape. The videotape shows that Appellant initiated the physical altercation. The employment termination of a paraprofessional who initiated a physical altercation with a special education student is well in keeping with educational policy and a reasoning mind easily could reach the conclusion to terminate the employment of an individual who acted in this manner.

CONCLUSION

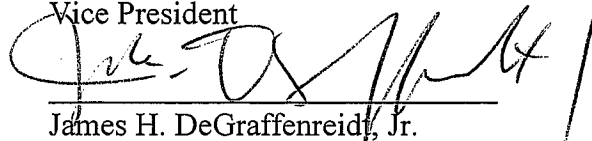
For all these reasons, we affirm the decision of the local board.



Charlene M. Dukes
President



Mary Kay Finan
Vice President



James H. DeGraffenreid, Jr.

S. James Gates, Jr.
S. James Gates, Jr.

Absent

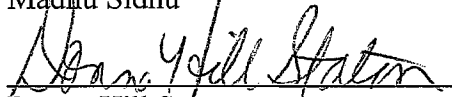
Luisa Montero-Diaz



Sayed M. Naved

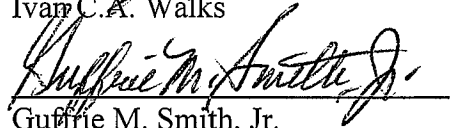
Madhu Sidhu

Madhu Sidhu



Donna Hill Staton

Ivan C.A. Walks



Guffie M. Smith, Jr.

Absent

Kate Walsh

October 31, 2012