TONY JONES,

Appellant

v.

BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-28

REVISED OPINION

INTRODUCTION

Appellant challenges the decision of the Baltimore City Board of School Commissioners ("local board") terminating him from his position with the school system for misconduct. The local board responded to the appeal, maintaining that its decision is not arbitrary, unreasonable or illegal and should be upheld. Appellant responded and the local board replied. The Appellant filed an additional response.

FACTUAL BACKGROUND

Appellant held the position of Office Assistant II at William C. March Middle School at the time of the events that led to his termination.

At some point in March or April of 2010, Katrina Trotman, one of the school police officers at March Middle School, observed a suspicious interaction between the Appellant and a 7th grade male student, Student X. Officer Trotman reported that Appellant told Student X to return to class but Student X was reluctant to do so. Appellant then took Student X's hand, told him to return to class, turned him around so that the student was facing away from the Appellant, pulled the student close in a bear hug manner, and in the same motion Appellant thrust his pelvis toward the student.[1] (Trotman Statement). Officer Trotman also noticed that Appellant often had male students hanging out in in his office, which was next to the main office. Officer Trotman conveyed her concerns to her partner, Julius Seay, who said that he had also noticed male students hanging out at Appellant's office. Upon inquiry, the secretary in the main office told the officers that male students were often in Appellant's office but mostly Student X was there. (Trotman and Seay Statements). Based on this information, the two officers decided to investigate.

At various times the officers would see the Appellant and Student X together in the building, but they were unsuccessful in figuring out if anything suspicious was going on. On May 21, 2011, the secretary in the main office contacted the officers to advise them that the

[1] Officer Trotman did not report this information to the principal until May 21. (T.37-38).

Appellant had signed Student X out for early dismissal. The officers checked the sign out log and confirmed this fact. They then observed the security camera monitors and determined that the Appellant and Student X went into a room on the 2nd floor that was used as a storage space.[2] Upon further investigation, the officers discovered that the blinds to the room were closed and the lights were off. In order to verify that the Appellant was in the room, the secretary called the Appellant on the radio to have him come to the main office. The officers observed the Appellant leave the room. The officers knocked on the door but nobody answered. The door was locked so they tried the master keys for the school, but none of them worked on the lock. They knocked again but nobody answered. Officer Seay stood by the door of the office while Officer Trotman contacted Student X's grandmother who worked in the building. Officer Seay observed the Appellant return to the room. The grandmother reported that Student X had no reason to leave for early dismissal. The officers then waited by the room until the Appellant and Student X exited. (Trotman and Seay Statements; T.15-22, 49-51).

When the Appellant and Student X exited the room, the officers took Student X immediately to the security office. They inquired why Student X was not in his last period class and he stated that the Appellant was his last period teacher. The officers contacted the individual who was supposed to be Student X's last period teacher, but he stated that Student X had not been coming to his class for a few months because Student X's class had changed. (T.23-24, 52-53). The officers then contacted Child Protective Services (CPS) and Student X's parents. Student X said he was willing to tell them the truth about what was going on but that he wanted to do so at home. (Trotman and Seay Statements).

The officers went to Student X's house to talk with him. Student X was there with his mother and father, Baltimore City Police, and a CPS worker. Student X stated that he had been going to the room on the second floor with the Appellant for approximately 2--3 months. He further stated that while in the room, the Appellant would kiss him and take his hand and make him touch the Appellant's thigh and private area. (Trotman and Seay Statements; T.29). Student X also stated that Appellant had given him a laptop, had set up an email account for him, and had sent him texts and love songs by email, which he showed to the officers. (T.29-31, 54-55). Baltimore City Police then took over the case. (T.32).

At some later point in time, Angela Matthews, Principal of March Middle School, found a jug filled with urine in the 2nd floor room. When asked about it, Student X stated that the Appellant did not allow him to leave the room so he would have to relieve himself in the jug. (T.36, 42).

On May 24, 2010, Jerome Jones, Labor Relations Associate, placed the Appellant on administrative leave status with pay, pending further notice. The letter from Mr. Jones stated

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[2] Officer Trotman testified that they did not actually observe Appellant and Student X enter the room because the door to the room is located in a security camera blind spot. They were able to discern where the Appellant and Student X went based on the view of the area by multiple cameras and the fact that the Appellant had disappeared from sight after reaching the area by the door to the room. (T.39).

that during the period of administrative leave, the Appellant was not to have any contact, either in person, by phone, email, or any other electronic means of communication, with any students or staff from the school, except for the principal, Angela Matthews. (Jones Letter, 5/25/10).

That same day, there was an email from Student X's email account to the Appellant's email account. The email states:

> tony i know that you are mad at me right now. but give me a chance to explain. when the police called me into their office they kept on asking me about what bad things you might be doing. I felt like i had to say what they wanted me to say so that i could leave. they called my grandmother over and told her what i said. i did not want to seem like a liar so I continued with what i said.
>
> you have been the only one who understands what i have been going through. i learned a lot from the talks we have had eachtime. i know that you never touched me at all but once i told the first lie i had to could not go back on it. i don't want you to be angry with me. please keep your promise and do not tell my mother or father about my time with carl. i don't think they would understand if they knew the truth about that.
>
> please forgive me i will try to make this right somehow!

When questioned by Officer Trotman about the email, Student X stated that Appellant had sent the email from the student's account. (T.34-35). Officer Trotman did no further follow up to determine from where the email originated. (T.41).

On July 26, 2010, the local department of social services (DSS) issued a finding that child sexual abuse was "indicated" with regard to the Appellant and Student X.[3] Based on the "indicated" finding, by letter dated August 3, 2010, Appellant was placed on suspension without pay. The Appellant appealed the DSS finding to the Office of Administrative Hearings (OAH). Meanwhile, the school system continued with its own internal investigation.

On July 28, 2010, Ms. Matthews advised the Appellant that she had learned from the Baltimore City Police that there was insufficient evidence for a criminal prosecution. Nonetheless, she informed the Appellant that his conduct failed to conform to school rules and procedures in the following ways.

- Being in an off limits location alone with a minor student;
- Re-keying an unauthorized space without knowledge of administrator;

[3] The local department of social services can find that the child sexual abuse is indicated, unsubstantiated, or ruled out. COMAR 07.02.07.11.

- Deliberately disobeying a directive about securing an office space for himself;
- Manipulating a student's schedule and lying about student's whereabouts;
- Intentionally keeping student from attending assigned class in an unsupervised location; providing urinal containers for student's use to insure that student would not leave the area until his return;
- Falsifying attendance and grades for assigned classes for an entire semester;
- Deliberately misleading a teacher as to student's whereabouts;
- Giving gifts to student without knowledge of parents; and
- Giving student a computer, setting up an e-mail account for the student, and continuously contacting student after school hours.

On April 4, 2011, the Administrative Law Judge (ALJ) ruled that the DSS finding was "unsubstantiated."[4] (Edwards Letter, 6/8/11). On April 26, 2011, Jerome Jones met with the Appellant and advised him that he would remain on unpaid suspension while the school system finalized its investigation to determine whether or not the Appellant engaged in any misconduct.[5] (Jones Email, 4/26/11).

On May 4, 2011, Tony Robinson, Labor Associate, scheduled a *Loudermill* hearing with the Appellant and his union representative. Thereafter, on June 8, 2011, Tisha Edwards, Chief of Staff, advised the Appellant that he was being terminated for misconduct, effective June 10, 2011, based on the following:

- On May 21, 2010, you and a student were observed coming out of your locked office by two school police. This was at a time when the student should have been in his last period class.

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[4] Among other things, the Appellant maintained that the DSS investigator was inebriated while conducting his interview, that the investigator failed to contact witnesses, and that Student X refused to testify at the DSS hearing. On further appeal, the Circuit Court affirmed the ALJ's decision.

[5] There is cursory mention in some of the documents that the school system proceeded to review the Appellant's suspension without pay while the DSS appeal was ongoing. There are statements in an email from Neil Ross, Appellant's union representative, that the matter was reviewed by a hearing officer and that the local board issued a decision upholding the hearing officer's recommendation that if the allegations regarding child sexual abuse were not proven, the Appellant would be reinstated to his employment and made whole through the payment of back pay. (*See* Ross Email and Jones Email, 4/26/11). Documents pertaining to a hearing officer or local board decision on the suspension without pay were not made a part of the record in the termination case.

- You admitted you gave the student a laptop computer although you denied setting up a Facebook page and e-mail on the computer.
- You had knowledge of and facilitated the student missing his last period class for a three month period.
- You also admitted to signing early dismissal slips for the student without permission from the parent or grandparent.

(Edwards Letter, 6/8/11).

On June 24, 2011, Appellant appealed to the local board. The local board assigned the case to Hearing Officer, Dana Moore, for review. Hearing Officer Moore conducted an evidentiary hearing on July 18, 2012. She found that Appellant had committed the following acts:

- Secretly converted the 2nd floor room into an office for himself and changed the door locks without authorization from anyone;
- Without authorization, secretly manipulated Student X's class schedule and signed early dismissal slips to cause the student to be available to meet during a time when the student was supposed to be in his last period class;
- Used the 2nd floor room for inappropriate secret meetings with Student X for a period of three months in violation of BCPS Policy GBEBB on staff conduct with students and improper fraternization;
- Gave Student X a laptop computer in violation of BCPS Policy GBEBB.

Hearing Officer Moore concluded that Appellant had engaged in various acts of misconduct and recommended that the local board affirm the CEO's termination. (Moore Decision, pp. 11- 13). The local board affirmed the recommendation and upheld the termination. (Local Board Order).

This appeal ensued.

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

Appellant asserts that there was no evidence to support the charge of misconduct. As Hearing Officer Moore and the local board found, however, there is sufficient evidence and testimony contained in the record of this case to support the termination decision. Hearing Officer Moore stated:

> Counsel for the CEO had established that without authorization, Tony Jones, Appellant, changed locks on a second floor storage room at March Middle School. He then turned the storage room into an office for himself. Appellant did this without the knowledge or authorization of the school principal. Appellant then used that room to hold highly inappropriate secret meetings with a March Middle School student for a period of three months. Appellant manipulated the student's schedule and signed early dismissal slips in order to cause the student to be available to meet with him during a time when the student was supposed to be in his last period class. Appellant did this without the knowledge or authorization of the student's parents or, any member of the school administration.

(Moore Decision, p.12). We have reviewed the record and concur that the evidence supports those factual findings and that those findings support the conclusion that the Appellant committed misconduct in office.

The Appellant maintains that his testimony during the hearing proves that he did not engage in the alleged misconduct.[6] Indeed the Appellant had explanations for nearly every allegation against him. Hearing Officer Moore did not find the Appellant to be a credible witness, however. She stated that Appellant "denied even the most irrefutable facts, making him an utterly untrustworthy and unbelievable witness." It is well established that determinations concerning witness credibility are within the province of the 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 board's province to resolve conflicting evidence; where conflicting inferences can be drawn from the same evidence, it is for the board to draw the inferences). Thus, it was appropriate for Hearing Officer Moore to weigh the issue of witness credibility in evaluating the testimony that was presented during the hearing. She found the witnesses for the CEO to be more believable than the Appellant. We defer to the credibility assessments of Hearing Officer Moore who observed the witnesses firsthand.

[6] Appellant's testimony during the hearing was the only testimony he presented to support his claim that there was insufficient evidence to support the CEO's termination decision.

The Appellant also maintains that Hearing Officer Moore should have considered the testimony of witnesses from his DSS appeal and findings that the ALJ made in that case. That case was an appeal of the DSS's finding that child abuse was "indicated". It was not a hearing on the misconduct/termination decision and the local board was not a party to that case. Accordingly, the witness testimony and ALJ determinations from those proceedings do not have probative value on the termination decision under review in this case.[7]

Appellant also maintains in his appeal to the State Board that he was due wages for performing the functions of a "Dean of Operations" while he was an Office Assistant, that he was entitled to royalties for a logo that Appellant allegedly designed, and that he suffered a work related injury. These matters were not part of the termination decision and we, therefore, decline to address them here.

CONCLUSION

For the reasons stated above, we find that the Appellant has failed to satisfy his burden of showing that the local board's decision was arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's decision upholding Appellant's termination.

Charlene M. Dukes
President

Mary Kay Finan
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James H. DeGraffenreidt, Jr.

S. James Gates, Jr.

Luisa Montero-Diaz

Sayed M. Naved

Madhu Sidhu

[7] We note that of the witnesses who testified in this case, only two witnesses, Officer Trotman and the Appellant, also testified during the hearing before the ALJ. (T. 156).

Donna Hill Staton

Guffrie M. Smith, Jr.

Linda Eberhart

May 21, 2013