

ROBIN BINGHAM,
Appellant
v.
BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS
Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 17-33

OPINION
INTRODUCTION

Robin Bingham, the Appellant, appeals the decision of the Baltimore City Board of School Commissioners upholding her teacher evaluation rating of ineffective. The local board filed a Motion for Summary Affirmance to which the Appellant filed a Response. The local board filed a Reply.

FACTUAL BACKGROUND

Ms. Bingham has been employed in the Baltimore City Public Schools (BCPSS) for eleven years. She is certified in drama. She started teaching in Samuel Banks High School and later taught at Northwestern High School and Heritage High School. At some point, after getting her Master's degree, she was assigned to be the drama teacher at Edgecomb Circle Elementary School.¹ In the 2015-2016 school year, as a half-time teacher at Edgecomb from 7:30 a.m. to 12:30 p.m., she met once a week with 10 different classes.

Ms. Bingham developed a Student Learning Objective (SLO) for the 2015-2016 school year which focused on two of her classes, a third grade class with generally good drama/social skills and a second grade class with more challenging behaviors. (Motion, CEO Ex. 1, SLO #12). To measure attainment of the SLO, she planned to collect baseline data using a formative assessment of the students in each group to identify students' ability to cooperate, facility with body language, facial expressions, character specific voice, etc. (Motion, CEO Ex. 1, SLO #15). To measure student growth from November 4 to March 18 (the SLO window), she designed an assessment tool to measure progress in each area as demonstrated in a final class performance illustrating a particular short story. (*Id.* #20-23).

Ms. Bingham submitted her SLO for approval in October 2015. It was rated highly and was approved in November without change. She began working with her classes. She would see her SLO classes once a week from November thru March, likely 15 times or less. (Hearing Officer's Decision at 4).

¹ Ms. Bingham is currently a full-time teacher at Bay-Brooke Elementary. (T. 11 & 17).

On February 4, 2016, Ms. Bingham received a letter placing her on administrative leave with pay while an allegation of misconduct was investigated. She received a letter on March 15 telling her she could return to her school. She was on administrative leave for 6 weeks. There is minimal information in the record about the misconduct. It ultimately resulted in a three day suspension in May. (Motion, BTU Ex. 2)

When she returned to work on March 16 there were about 6 school days left before the SLO window closed and performance data was due. In that time period, she would meet with her SLO classes only once.

Ms. Bingham recalled talking with her principal the day after her return about the SLO performance data. She explained that because she had missed nearly half of the classes scheduled to prepare her students for the final performance, she was doubtful she would have any data to report. (Hearing Officer's Decision at 7, T. 46-47).

As part of the SLO process, BCPSS will grant an exemption from including the SLO component in the teacher's evaluation if the teacher is on approved leave for a "significant portion of the SLO window." (Motion, CEO Ex. 3). Ms. Bingham's administrative leave was considered approved leave. (T. 110). The SLO documents state that the teacher needs to initiate the request for the exemption. (Motion, CEO Ex. 3). Ms. Bingham did not initiate a request for exemption. She did not submit SLO data. As a result, according to the teacher evaluation rubric, she received 25 out of 100 points for the SLO component of the evaluation. That component was worth 35% of the score. Ms. Bingham was evaluated as ineffective solely on the basis of that component.

On appeal, the hearing officer recommended that the ineffective rating be sustained because Ms. Bingham failed to request an exemption and failed to submit the SLO data. The Hearing Officer concluded that the "teacher took the risk of receiving a minimum score on the SLO component of the Evaluation by not seeking answers to her concerns from others." (Hearing Officer's Decision at 21). Therefore, her request for a retroactive exemption and a recalculation of her evaluation score was denied.

The local board adopted the Hearing Officer's Decision. This appeal ensued.

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision is considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board in this case unless the decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

The Appellant argues that the local board's decision to deny her request for a retroactive exemption for the SLO requirement was arbitrary and unreasonable because it was contrary to sound education policy and because no reasoning mind could have reached that decision. The local board, on the other hand, argues that the decision was perfectly reasonable because the Appellant failed to follow the rules imbedded in the evaluation system, particularly: (1) a teacher must initiate a request for exemption; (2) without an exemption, a teacher must report SLO data;

(3) without data, a teacher will receive a score of 25 on the SLO component which will result in a rating of ineffective.

In this case, BCPSS has strictly applied the rules governing its evaluation system. In our view, when a decision like the one in this case results from an evaluation process in which rules are clear and applied strictly across the board to all teachers, such a decision could be found to be reasonable -- that is, not arbitrary or capricious or a violation of sound education policy. Yet, the record on this case reflects some confusion about the exemption rules and leeway in how they are applied.

First, we address the absolute requirement imposed in this case that the teacher initiate the request for an exemption. We turn to the testimony of Jerome Jones, Director of Labor Relations. Mr. Jones testified that his office would check the SLO data reporting system at the close of the SLO window to see if there were any teachers who failed to submit data. If so, they would "look and see if any of those folks were on leave." (T. 212-13). If a teacher was out more than 61 days, he/she would "get a default score on [the] overall evaluation" for the SLO.... "[W]e don't want to give a teacher who wasn't there a score of 25, because they just couldn't do it." (T. 213). That testimony tells us that some teachers out on leave for 61 days or more, even if they didn't initiate an exemption request, would automatically be exempted from the SLO process. The SLO component of the evaluation would be eliminated by default.

Of course, Ms. Bingham was not on leave for 61 days. She was on leave for 39 days. Yet, given that she was a half-time teacher who met with her SLO classes only once a week, that 39 days translates to missing almost half of her classes with the SLO students (6 of 15 classes). That is a greater percentage of classes a full-time teacher would miss if she were out on leave for 61 days. And, under Ms. Bingham's schedule after she returned from leave, she only had one opportunity to meet her SLO classes before the student performance data was due to be reported on March 24. (T. 24).

Ms. Papia, Director of Employee Effectiveness, testified that an SLO exemption could be granted to a teacher who missed "one-third of the window." (T. 66-67), But, "Even if it wasn't fully one-third of the SLO window, if it overlapped the deadline, we would also allow for those exemption requests." (T. 67). Ms. Papia testified that, given Ms. Bingham's schedule, it appeared that she had missed one-third of the SLO window. (T. 107-109). She further testified that if Ms. Bingham had requested an exemption it would have been granted. (T. 117).

Like Mr. Jones, Ms. Papia testified that her office ran "a couple of checks" when they saw that a teacher had not submitted SLO data.

A. So, some of the things we did based on the data we have available to us, we looked -- so for people who had not fully completed or submitted their data, a couple of checks that we ran to look at if they had a school work change somewhere, and so we wanted to find out, okay, maybe there was an assignment change and it would be an exempt, or if they were part of the list of the people with leaves that had been processed through our leave specialist, that completely overlapped any of like the deadline windows, and so we checked for folks like that.

Ms. Bingham didn't come up through those checks for us in terms of why she may not have submitted an exemption request or her student data.

(T. 107).

Although it is not entirely clear from Ms. Papia's testimony, it seems that the SLO system check did not include those teachers who were placed on leave through the labor relations office rather than through what Ms. Papia called "our leave specialist", apparently the personnel system. (T. 108).

The system in place for identifying teachers who could be exempted (apparently even without a request) was not designed to catch Ms. Bingham's circumstances. (T.196). How the system worked does call into question whether the strict application of the rule that an exemption cannot be granted unless it is initiated by the teacher is fair and reasonable. It appears those teachers with a particular length and pattern to their leave and whose leave was granted through the personnel system rather than the labor relations system did not need to request an exemption.

Even if it were fair to apply the rule strictly to Ms. Bingham, making her responsible for initiating the exemption process, we have considered whether the way to initiate a request midyear was clear. Ms. Bingham testified that she talked with her principal about her problem in submitting the SLO data. On cross-examination she testified:

Q. And what did you say to the principal when you spoke to her?

A. I spoke to her about both the SLO and the final observation, which was also due that week, I believe.

Q. What did you say to her about that?

A. I asked her, I explained to her that I didn't know how I was going to submit this SLO because I had missed nearly half the times I would be able to meet with the students in order to complete it.

Q. And what did she say to you?

A. She didn't know what to advise me.

Q. She told you she didn't know what to tell you?

A. Uh-huh, yes.

(T. 46-47).

It may well be that the principal did not know how to advise Ms. Bingham. Yet, throughout the testimony, there is reference to the important role a principal plays in the SLO exemption process. They were trained on when exemptions could be granted. Along with SLO ambassadors, they were to be a source of information for teachers. (T. 99-100). They were the ones who approved or denied the exemption requests.

There may be reasons the mid-year exemption process was not fully understood. For example, the Hearing Officer in this case went through each of the school system's exhibits

about the exemption process with Ms. Papia and noted that the three exhibits described in some detail that the exemption request must be initiated by the teacher early in the school year. Only one exhibit mentioned the mid-year exemption. (T. 109-110). That one exhibit states only, “If circumstances change midway through the year and a teacher believes that he or she meets the criteria for SLO exemption, he or she should request that the Exemption Request be initiated by the SLO Ambassador.” (Motion CEO, Ex. 3). That statement undercuts the local board’s position that only the teacher could initiate the request. It also indicates a lack of clarity about the process.

Ms. Bingham’s principal did not recall any conversation with Ms. Bingham after her return from leave in which Ms. Bingham discussed SLO data or asked for an exemption. (T. 152, 174-175). She testified, however, that she would not have approved an exemption request for Ms. Bingham. (T. 178-179). She did not believe that Ms. Bingham missed one-third of the days in the SLO window. (T. 164, 179). She was clear that, in her view, Ms. Bingham should have been doing interim SLO data gathering and that she had enough time to do so prior to being put on administrative leave. (T. 165-167).

It appears to us that even if Ms. Bingham had asked her principal about an exemption, she would not have been given correct advice. Her principal did not fully understand the criteria for granting an exemption - - missing one-third of the SLO window. Further, the principal failed to understand that the assessment of the SLOs at issue was based on a final performance toward the end of the SLO window and that Ms. Bingham’s leave made that performance impossible to present and evaluate in a way that was fair to the students and their teacher. As Mr. Jones testified in the evaluation system as it existed, “[W]e don’t want to give a teacher who wasn’t there a score of 25, because they just couldn’t do it.” (T. 213). That testimony reflects a system that was intended to be fair and flexible, not unbending and tied strictly to rules.

Inconsistent application of rules that are not fully explained and understood by those who apply them or are affected by them are indicators to us of arbitrariness in the decision-making. We do not fault Baltimore City Public Schools for intending their evaluation system to be fair and flexible. We conclude, however, that in this case the decision makers lost sight of that intent. We find that the evaluation of Ms. Bingham as ineffective was arbitrary and that she should be granted an exemption retroactively.

CONCLUSION

For all the reasons stated, we reverse the decision of the local board in this matter.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin Hartings

Stephanie R. Iszard

Rose Maria Li

Michael Phillips

Irene M. Zoppi Rodriguez

David Steiner

September 19, 2017