

ANGELA WAKHWEYA.,

Appellant

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-16

OPINION

INTRODUCTION

Dr. Angela Wakhweya (Appellant) appeals the decision of the Prince George's County Board of Education (local board) affirming her termination as Chief of the Office of School Health Policy, Service, and Innovation for deficient performance managing student immunization compliance. The local board initially filed a Motion to Dismiss, maintaining that Appellant failed to provide a statement of facts and of the relief sought. Appellant responded and requested leave to amend her appeal in order to challenge her termination. This Board granted the Appellant's request and the Appellant submitted her amended appeal. The local board filed a Motion to Dismiss, or in the alternative, Motion for Summary Affirmance. The Appellant responded to the Motion and the local board replied.

FACTUAL BACKGROUND

Appellant began working as the Chief of the Office of School Health Policy, Service, and Innovation for Prince George's County Public Schools (PGCPS) in November of the 2013-2014 school year. She was responsible for developing, implementing, and overseeing PGCPS's plan for immunizing students so that they would not be barred from attending school. PGCPS has more than 130,000 students attending 208 schools and centers. (Wakhweya Declaration, p. 12, 14). Getting students fully immunized had been a problem for the school system and, with the hiring of the Appellant, the problem of immunization compliance became her responsibility.

During the first year, Appellant identified a need for an electronic health records system to manage the immunization records. Appellant worked with the school system to purchase "a state of the art ... School Health Electronic Record (S.H.E.Re) system," which she stated would allow PGCPS "for the first time in decades, to accurately assess immunization compliance across our vast school system." (Wakhweya Declaration, p. 12, 14). According to the Appellant, approximately 200 school nurses received training in S.H.E.Re between November 2014 and January 2015. (Mtn. Ex. D).

Appellant's position required that she interact with senior officials at the Prince George's County Health Department (County Health Department), including Diane Young and Pam Creekmur. (Wakhweya Declaration, p. 1). Around the start of the 2014-2015 school year, on August 26, 2014, Appellant alerted Dr. Kevin Maxwell, Chief Executive Officer of PGCPD (CEO), to issues about communication with the County Health Department. (Record, Ex. 1). Dr. Maxwell interceded and, on August 27, 2014, told the Appellant that he spoke to Pam Creekmur, the County Health Officer, and that the County Health Department was "willing and able" to help with the immunization issue. *Id.* Dr. Maxwell then relayed Ms. Creekmur's request to know the number of students who did not have the required immunizations, as calculated by the S.H.E.Re system. Appellant replied that this information would not be available until the 2015-2016 school year. *Id.*

Appellant's communication issues with the County Health Department continued. Dr. Maxwell encouraged the Appellant to contact Diane Young, Associate Director of the Family Health Services Division at the County Health Department. On August 28, 2014, the Appellant indicated to Dr. Maxwell that her interaction with Ms. Young was "[m]uch less confrontational." *Id.* On October 10, 2014, per Ms. Creekmur's request, Dr. Maxwell directed the Appellant to use Ms. Young as her direct point of contact with the County Health Department. (Record, Ex. 2).

On October 22, 2014, Appellant informed Dr. Maxwell that permission slips for students to receive immunizations at school were "trickling in," that a call center was being set up with lists of noncompliant students, that "COAs, CRCs or PPWs [were] being deployed to help with calls and home visits to get permission slips," but that the "numbers have not shown that exponential drop [they were] expecting. . . ." (Record, Ex. 4). Appellant also stated that it was "not clear whether coordination of school-based personnel to help call or visit homes to get the permission slip[s] is occurring." *Id.*

On October 26, 2014, Dr. Maxwell arranged a meeting with Appellant. He stated, "I want to talk about teamwork and relationships. I have some worries on those two issues. Our ultimate long term success rests on those two things." (Record, Ex. 5).

On April 10, 2015, the Maryland State Department of Education (MSDE) and the Maryland State Department of Health and Mental Hygiene (now the Maryland Department of Health (MDE)) issued a memorandum to local superintendents and local health officers addressing important updates and reminders related to school immunization requirements for the 2015-2016 school year, including information on immunization non-compliance. The memo stated that "students out of compliance with the immunization requirements may not be admitted to or retained in school without evidence of an [immunization] appointment. The parent must present evidence of an appointment on DAY ONE of admittance/retention." (Emphasis in the original)(Amended Appeal, Appendix G). The memo continued to explain what constituted sufficient evidence of an appointment and that the appointment had to be within 20 days of admission to school.¹ *Id.*

¹ Twenty calendar days from day one of the 2015-2016 school year is September 14, 2015. (Wakhweya Declaration, p. 3).

On April 13, 2015, Appellant texted Dr. Maxwell about potential implementation of a plan for the County Health Department to utilize school based health centers to immunize students using school nurses. Appellant described the plan as follows:

Gist of exit plan:

Health dept (Pam and Diane) have agreed to get out of providing health services through wellness centers

They agree to our working with an FQHC as the umbrella organization

We, PGCPS, can take the lead in coordinating the transition with close coordination with them and put a 1-2 pager draft outline of a transition by Wed

They will support our application for MSDE SWBC funds in May and they will not apply/need to ensure DFS is on board as funds funnel thru them

July 1 is the transition date with my working with Christian, Procurement, legal and Finance to determine FQHC or RFP process within the next 2-4 weeks.

No need to disturb your Wed as I know y r fully booked. Can work with Christian and [Shauna] if you r ok with the outline above or do you need more info. . .”

(AW 015-017). Dr. Maxwell responded by text that he was “okay with the outline [Appellant] provided” and she should work with the appropriate people, but that budget could be an issue. (AW013-018).

In spring 2015, the Appellant initiated partnerships with the County Health Department, the State Health Department and the Mary Center. At that point, the Appellant’s plan to deal with the immunization problem involved operating free clinics over the summer to help immunize students; entering into a Memorandum of Understanding (MOU) with the County Health Department to open a clinic at the International Students Counseling Office (ISCO); entering into a MOU with the Mary Center, which has the cultural competency to work with international students and has a mobile clinic to reach students at schools; and getting approval for school nurses to immunize students. A series of emails from July 2015 to August 2015, chronicles some of the efforts Appellant made to set up the immunization clinics using school nurses, in particular to address the international student and student immigrant populations. (Appellant’s Declaration, Appendices K and L).

The emails also indicated that there were issues regarding the MOUs between the agencies, as well as concerns surrounding liability and the school nurse job description. (Appellant’s Declaration, Appendices K and L). The MOUs required extensive review by PGCPS Office of General Counsel. In addition, the school nurse job description needed revisions to allow the nurses to administer the immunizations. This required input and approval from Human Resources, school nurse staff and the unions.

In a June 8, 2015, a text exchange between the Appellant and Dr. Maxwell, Dr. Maxwell, who was still interceding on behalf of the Appellant with the County Health Department, reminded the Appellant to have “collaborative conversations” with the Health Department personnel and to “not [issue] directives”. (Motion, Ex. 6). On June 11, 2015, Appellant texted Dr. Maxwell that 2,500 students were non-compliant with the immunization requirements and 1,000 student immunization records were missing. (Motion, Ex. 8).

On June 18, 2015, Dr. Maxwell met with Appellant, “to discuss ongoing concerns” about her performance, particularly her “challenges with developing and maintaining key relationships with stakeholders and coworkers.” (Motion, Ex. 7). Dr. Maxwell issued a formal Memorandum, dated June 29, 2015, which detailed Appellant’s performance problems, including her internal and external relationship deficiencies, such as her interactions with subordinates, executive cabinet members, and interagency officials. Dr. Maxwell noted that Appellant “had multiple staff people transfer from [her] office and complain about [her] treatment of them” and that she had a reputation regarding her negative interactions.² He reminded the Appellant that the employees who report to her must be treated with respect and in accordance with policies and procedures, and in accordance with the negotiated agreements. *Id.*

Dr. Maxwell also expressed concern over Appellant’s interactions with executive cabinet members.³ He explained one example as follows:

After the Board meeting held at Suitland on March 26, 2015, you complained to me that members of my Cabinet were not supporting you. Moreover, you asserted that a Budget Analyst was trying to sabotage you and requested a different Budget Analyst. After discussions with others, it was explained that you were harassing these members with multiple emails and text messages during the meeting demanding a response without regard for their other priorities. The Budget Analyst had some concerns with respect to your proposal that he discussed with legal. This cannot be characterized as sabotage.

It should be noted that, during your conversation, you stated that the Director of Budget agreed with your assertions that the Budget Analyst had provided you poor customer service. In fact, you urged me to speak with him. The Director of Budget did not agree with your interpretation of the conversation or that you had been provided with poor customer service.

Id.

² Appellant contends that one employee “was extremely fragile after a difficult relationship with a former supervisor,” that Appellant had a “great” relationship with another employee, and that a third employee had gone absent without notice and thus, Appellant’s written reprimand of her was acceptable. (Wakhweya Declaration, p. 10).

³ Appellant contends that she had “cordial, respectful and professional relationships with all cabinet members.” (Wakhweya Declaration, p. 10).

Dr. Maxwell further remarked that Appellant had “ongoing issues with members of the County Health Department” that made “it difficult for [PGCPS] to achieve [its] goals.”⁴ (Motion, Ex. 7). He explained that Appellant had exacerbated the situation in a recent email exchange with the County Health Officer that was “petty and vindictive.” Dr. Maxwell advised the Appellant of the importance of maintaining an “open line of communication with officials in county government.” *Id.* Dr. Maxwell advised Appellant, “[I]t is imperative that your interpersonal and communication skills [must] be significantly improved.” He warned that if concerns persisted into the fall, “a different course of action will be necessary.” *Id.*

On or about June 23, 2015, the Appellant reported to the Executive Cabinet that out of the 126,912 (99.40%) student immunization records that had been entered into the S.H.E.Re system, 2,297 (1.9%) of the students were non-compliant and 764 (.59%) student immunization records were still missing. (Motion, Ex. 9). The Appellant also shared with the Executive Cabinet a plan and timeline for immunization compliance for the 2015-2016 school year. (Appellant’s Declaration, Appendix I). The information highlighted the fact that non-compliance exclusion letters had been sent home with students at the end of the 2014-2015 school year and that several vaccination clinics had already taken place and vaccinated approximately 300 students. It also noted that certain school-based personnel would be making calls and home-visits to non-compliant students over the summer, that a back to school fair vaccination clinic would be taking place over the summer possibly with transportation for students, and that immunization data entry into the S.H.E.Re system would continue throughout the summer. Appellant also noted that she was trying to arrange additional school-based vaccination clinics from July through August with a possible transportation option and the distribution of immunization flyers in English, Spanish and French and possible marketing to the Spanish media. *Id.*

In contrast with the Appellant’s June 23rd report, in a July 29, 2015 email, Appellant informed Ms. Young, Appellant’s contact at the County Health Department, that PGCPS was tracking 5,000 non-compliant students. (Motion, Ex. 10).

In PGCPS, school nurses are 10-month employees. They returned to the school buildings on August 24, 2015, one day before students arrived, and officially began inputting student immunization data for new students into the S.H.E.Re system. On August 24, 2015, Appellant responded to questions seeking clarification regarding how to handle students not in compliance with the immunization requirements on the first day of school. (Wakhweya Declaration, p. 6). That same day, Appellant sent an email directed to principals, assistant principals and school nurses stating, “Out of abundance of caution and knowing how vast our school system is, we are NOT excluding any child on Day 1... but rather on Day 11, 21, 31 per attached.” (*Id.*, p. 6, Appendix O). The Memorandum attached to the email explained the specifics of the school exclusions. *Id.*

On September 2, 2015, at the School Opening and Closing meeting, Appellant presented the state of non-compliance in the top 15 schools to the Executive Cabinet. She informed senior staff that there were “approximately 3,000 non-compliant students in [PGCPS]’ top elementary, middle and high schools, with potentially a large number beneath that as school nurses re-enter schools . . . and ramp up their data entry efforts.” (*Id.*, p. 7). A smaller group met with the Appellant after the School Opening and Closing meeting ended. (Record, Talley Affidavit, Ex.

⁴ Appellant contends that the “County Health Officer refused to meet with [her] or communicate.” (Wakhweya Declaration, p. 10).

12). Appellant recalls that Dr. Monica Goldson, Chief Operating Officer, “demanded that Appellant produce accurate figures.” On September 3, 2015. Appellant reported to Dr. Maxwell and members of the Executive Cabinet that there were 7,339 non-compliant students and that 7,151 student immunization records were missing. (Wakhweya Declaration, p. 9). Appellant reported this information to Dr. Maxwell and to members of the Executive Cabinet, although she was not sure of the exact numbers. *Id.*

Dr. Adrian Talley, Executive Director of Student Services, took over the charge from Dr. Wakhweya to organize PGCPs staff to identify and contact parents of students who lacked the required immunizations and to provide them with information on clinics and other resources they could access to obtain the required immunizations. (Motion, Ex. 14). He marshaled resources from within and outside of PGCPs. He received several reports a day to update the immunization status in order to measure the effectiveness of the measures taken. *Id.*

On September 3, 2015, Robert Gaskin, Chief Human Resources Officer, placed the Appellant on administrative leave, with pay, “pending the review of concerns regarding [her] failure to ensure Prince George’s County Public Schools’ compliance with state immunization requirements.” (Motion, Ex. 16). Appellant went on medical leave that same day. (Wakhweya Declaration, p. 10).

In correspondence dated September 18, 2015, Dr. Cheryl DePinto, Medical Director of the Office of Population Health Improvement at MDH, wrote the following:

I think we can all agree the school [immunization] compliance situation among [PGCPs] students is quite significant and concerning. During our recent collaborative process, several of us have stated that this [cannot] be repeated next year. To that end, I think it is important for us to better understand the causes of this year’s situation and ways it can be avoided next year, and to develop a plan to implement more effective strategies to improve student [immunization] compliance.

(Motion, Ex. 15).

By letter dated October 1, 2015, Mr. Gaskin, advised Appellant of a meeting date to discuss her job performance. (Motion, Ex. 17). Mr. Gaskin stated, in part:

On September 3, 2015, you were placed on administrative leave with pay due to a number of serious questions raised regarding your job performance. Those concerns specifically related to your leadership as the Chief of Health Services of the Prince George’s Public Schools during the recent student immunization crisis. This has caused an erosion of the CEO’s confidence in your ability to remain as the Chief of Health Services for Prince George’s County Public Schools.

Id.

On December 4, 2015, Appellant returned from medical leave and was terminated immediately. That same day, Mr. Gaskin issued to the Appellant a termination letter. (motion, Ex. 18). The letter states, in part:

[Dr. Maxwell] learned that you received a memorandum from the Maryland State Department of Health and Mental Hygiene in April 2015, in which school systems were directed to exclude any student who had not complied with immunization requirements on the first day of school. . . . [I]t was your responsibility to serve as a conduit to relay the information . . . to the relevant PGCPs staff. You did not do so; instead, after receiving the memorandum from the State Department of Health and Mental Hygiene, you sent a memorandum to PGCPs staff that directed them to permit non-compliant students into schools on the first day of school. Your memorandum to staff was in direct contravention to a State mandate, and you lacked authority to issue a contradictory mandate to PGCPs staff. Again, you failed to share any of this information with your direct supervisor.

* * *

[D]espite the fact that thousands of children who remained out of compliance with State vaccination requirements were attending school in contravention of a State mandate, you did not notify the CEO's office of the problem so that those students could be immediately excluded from school.⁵ Instead, the CEO's office learned in September of the alleged efforts that you were making to secure partnerships with the Prince George's County Health Department to reduce the number of non-compliant students. Upon further investigation, it was discovered that your efforts to partner with the . . . Health Department were not fruitful, because 1) you failed to interact with . . . Health Department staff in a professional and respectful manner; 2) you were not forthcoming with the . . . Health Department about the approval status of a [MOU] between the two agencies; 3) your efforts were untimely; and 4) the [MOU] made a unilateral change to the job descriptions of the school nurses, in violation of the law.

When the CEO learned the scope of the issue, he had to mobilize several members of his executive staff in order to fix the problem. All of these staff members spent substantial amounts of time to rectify the immunization compliance issue for PGCPs. As the Chief of the Office of School Health Policy, Services, and Innovation, it was your responsibility to oversee immunization compliance on behalf of PGCPs.

⁵ Appellant contends that the CEO was informed of the number of non-compliant students. (Wakhweya Declaration, p. 12).

In order to determine the appropriate discipline to use in this case, a review of your prior performance was necessary. During the 2014-2015 school year, your actions placed PGCPs in a similar state of non-compliance (where 3,000 students faced exclusion from school due to similar failures from your office). As a result of the non-compliance in 2014, you requested (and were given) substantial resources to address the problem so that it would not happen again. Not only did the same problem arise again during this school year, it was multiplied; at the beginning of the 2015-2016 school year, there were at least 7,000 students who were out of compliance with state immunization requirements. The fact that your actions led to PGCPs being out of compliance with State guidelines in two successive years cannot be overlooked.⁶

Id. Mr. Gaskin noted that he had requested multiple times that the Appellant meet with him to discuss her deficiencies, but that the Appellant refused to attend any of those meetings. He also stated that “the Chief Executive Officer of Schools has lost faith in your ability to competently perform the position of the Chief of the Office of School Health Policy, Services, and Innovation.” He further stated that Appellant’s actions “constituted conduct that reflects unfavorably on PGCPs” and Appellant’s “failure to notify [her] immediate supervisor of a compliance issue that was immediately under [her] purview constituted misconduct.” *Id.*

On December 15, 2015, Appellant appealed her termination to the local board. On March 20, 2018, the local board upheld Appellant’s termination stating that it agrees “with the CEO’s arguments and finds that the record overwhelmingly demonstrates that the CEO’s decision to terminate the Appellant was based in full regard of the facts and circumstances related to the immunization crisis and other internal and external performance issues.” (Local Bd. Decision at 9). The local board further stated that “it was not unreasonable to terminate an administrator who failed to remedy an issue that should have been foreseeable and addressed by the development of an effective plan.” *Id.*

This appeal followed.

STANDARD OF REVIEW

A non-certificated employee is entitled to administrative review of a termination pursuant to 4-205(c)(3) of the Education Article. *See Goines v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 17-16 (2017). Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be 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. A local board decision may be arbitrary or unreasonable “if a reasoning mind could not have reasonably reached the conclusion the local board . . . reached” or if the decision “is contrary to sound

⁶ Appellant contends that immunization non-compliance had been an issue for “many years” prior to her arrival. (Wakhweya Declaration, p. 1).

educational policy.”⁷ COMAR 13A.01.05.05B. The Appellant bears the burden of proof. COMAR 13A.01.05.05D.

LEGAL ANALYSIS

Preliminary Issues

Record Provided by the Local Board

The Appellant claims that the local board failed to provide the entire record in this case and has included the “missing” documents in her appeal. COMAR 13A.01.05.03E(1) requires the local board to transmit a record of the local proceedings with the local board’s response to the appeal. The local board maintains that it provided the entire record. The local board, however, has not requested the exclusion of the documents submitted by the Appellant. Thus, we find that all of the documents submitted by the parties in this case to be part of the record.

In addition, the Appellant also claims that the local board was required to submit the transcript of oral argument. COMAR 13A.01.05.03E(2) requires only that the local board submit the transcript of an evidentiary hearing. There was no evidentiary hearing in this case. Therefore, there is no transcript to submit.

Conflict of Interest

The Appellant maintains that there is a conflict of interest because legal counsel for the local board, Ms. Judith Bresler, also represented the CEO in the proceedings before the local board. The Appellant has not substantiated this claim.

The Appellant also claims that Mr. Eddie Pounds, who served as legal counsel to the local board during the Appellant’s appeal before the local board, made statements during oral argument “advocating for the position taken by [the] CEO, rather than sitting as a Board neutral, evaluating the appeal.” We note that even if board counsel spoke favorably about a position taken by the CEO, doing so does not equate to personal bias or prejudice against the Appellant.

Lack of Evidentiary Hearing/Dispute of Material Fact

The Appellant argues that there were disputed issues of material fact that required the local board to send the case to a hearing examiner for evidentiary review. We agree with the local board that this is not a case in which there is a dispute of material fact. Rather, this is a case in which the Appellant disagrees with the weight and relevance given to the facts that were presented.

Appellant’s Termination

Despite Appellant’s many arguments and excuses, the merits of the termination here are overwhelming. The Appellant was tasked with the complex job of developing, implementing, and overseeing a plan for the immunization of students in PGCPs. Although the Appellant had

⁷ Appellant mistakenly cites to the wrong standard of review in her appeal. She cites to the “de novo” standard applicable in suspension and termination appeals involving “certificated employees” pursuant to §6-202 of the Education Article. This is not such a case. Appellant is a non-certificated employee whose termination is subject to administrative review pursuant to §4-205(c)(3) of the Education Article.

told the CEO in 2014 that she would be able to report the immunization compliance numbers for the 2015-2016 school year, the Appellant was unable to provide the numbers or accurately state⁸ the scope of the problem.

As supported by the record, the CEO set forth a variety of reasons substantiating the termination including Appellant's overall inability to bring PGCPS into compliance with the immunization requirements resulting in at least 7000 students being noncompliant at the start of the 2015-2016 school year. Although the Appellant engaged in various activities to try to achieve compliance, Appellant underestimated what steps were involved in reaching those goals and the amount of time and coordination involved. Appellant was unable to effectively communicate with executive level cabinet members and interagency officials, and she erred massively by directing school administrators to allow noncompliant students without evidence of an immunization appointment to attend school at the beginning of the 2015-2016 school year. All of this together contributed to Appellant's failure in her position. Thus, while Appellant made efforts to attain the goal of compliance, her efforts were ineffective and the scope of the problem was enormous by the start of the 2015-2016 school year.

There is no denying that immunization noncompliance is a complicated system-wide issue, but it was the Appellant's responsibility to navigate the issue, to coordinate efforts, and to implement a solid plan that could realistically achieve compliance. The local board found the CEO's decision to be reasonable and supported by the record. We find that there is sufficient evidence in the record to support the termination.

CONCLUSION

For all of the reasons stated above, we find that the decision of the local board affirming the Appellant's termination from her position was not arbitrary, unreasonable or illegal.

Signatures on File:

Justin M. Hartings
President

Gail H. Bates

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- On June 15, 2015, Appellant told the CEO that 1,000 student immunization records are still missing and 2,500 students were non-compliant with the immunization requirements;
- On June 22, 2015, Appellant reported to the Cabinet that 126,912 students record had been entered, and of those entered, 764 were missing immunization records and 2,297 were non-compliant;
- On July 29, 2015, Appellant told the County Health Department that there are 5000 non-compliant students;
- On or about September 2, 2015, Appellant reported that there were approximately 3000 noncompliant students . . .with a large number beneath them; and
- On September 2 or September 3 Appellant also reported that there were 7,339 non-compliant students and 7,151 missing immunizations.

Vermelle D. Greene

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

Absent:
Stephanie R. Iszard
Vice-President

March 26, 2019