

JENNIFER HOOVER

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-03

OPINION

INTRODUCTION

Jennifer Hoover (Appellant) appeals the decision of the Montgomery County Board of Education (local board) dismissing her claims of workplace bullying and harassment. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

Appellant has worked for Montgomery County Public Schools (MCPS) for more than 20 years. At the time of the events that led to this appeal, Appellant served as the magnet coordinator and the International Baccalaureate (IB) coordinator at Richard Montgomery High School. (Richard Montgomery HS). The magnet coordinator position is an administrative one, classified as an assistant principal position. As a result, the Appellant was part of the Montgomery County Association of Administrators and Principals (MCAAP) bargaining unit. In her most recent evaluation, during the 2013-14 school year, she met all standards. (Motion, Ex. II, #3 Kopp Decision; #2 Kress Decision).

Damon Monteleone became principal of Richard Montgomery HS at the start of the 2014-15 school year. The professional relationship between Appellant and Principal Monteleone deteriorated quickly. An incident occurred in October 2014 when Principal Monteleone learned that Appellant missed a professional development day, not because she had a previously scheduled meeting out of the building as she claimed, but because she was on a cruise with family. Principal Monteleone described lacking trust in Appellant after that point. (Motion, Ex. II, #2 Kress Decision; #3a Monteleone Statement).

Appellant and Principal Monteleone met in February 2015 to discuss the future of the magnet coordinator position, Appellant's use of leave, administrator responsibilities, and other issues. Documentation of the meeting indicated that Appellant had expressed interest in working at a different school during the next school year. The following month, however, when Principal Monteleone sent Appellant information about an upcoming job fair, she believed he had misinterpreted their prior conversation and took the email to mean he wanted to push her into leaving her job. (Motion, Ex. II, #2 Kress Decision).

By May 2015, Appellant accused Principal Monteleone of creating a hostile work environment by telling her he did not trust her and by mistreating her, including by denying a request for professional leave despite prior approval. According to Principal Monteleone, they discussed her concerns during regular meetings and he attempted to see her point of view, though he ultimately concluded they had a “fundamental difference of philosophy” regarding her role and responsibilities. Although Principal Monteleone found that Appellant worked well as the school’s magnet and IB coordinators and had good relationships with students and parents, he wanted Appellant to assist more with general administrator tasks. For her part, Appellant believed Principal Monteleone did not fully understand the programs she managed and the challenges Appellant faced in her multiple roles. She also felt that he never fully acknowledged or addressed her concerns. (Motion, Ex. II, #2 Kress Decision; #3a Monteleone Statement).

In the summer of 2015, Principal Monteleone asked Appellant to submit a monthly workflow chart. He ultimately concluded that she had been serving in four roles (AP testing coordinator, magnet program administrator, IB diploma program coordinator, and assistant principal). He first moved AP testing coordinating duties to a teacher. He later met with Appellant to discuss creating a separate magnet coordinator position. According to Appellant, he discussed altering her position as magnet coordinator with other administrators and Appellant’s union without informing her first. (Motion, Ex. II, #3a Monteleone Statement; #2 Kress Decision; #5M 2016-17 School Year Summary).

Tensions continued to mount between the two. In February 2016, Appellant received a “letter of concern,” which outlined issues with the timeliness of Appellant’s work and her ability to meet requests, deadlines, and expectations. The letter described a few instances when Principal Monteleone felt that Appellant had failed to communicate about her schedule. Principal Monteleone believed that Appellant prioritized her magnet program duties over other administrative tasks and had trouble arriving to work on time. Appellant felt, however, that Principal Monteleone singled her out and she objected to his cataloging her use of leave. In December 2016, Principal Monteleone denied Appellant leave to attend a professional development trip, stating that she had been out of the building too much already and that he had not been consulted prior to her applying to attend the trip. Appellant maintained that she had sought and previously obtained Prince Monteleone’s approval for the trip. (Motion, Ex. II, #3a Monteleone Statement; #5M 2016-17 School Year Summary).

During the 2016-17 school year, Appellant became upset after Principal Monteleone discussed changing the IB testing program without Appellant’s knowledge, made decisions about the magnet program without including her (including hiring a chemistry teacher for the program without her input), and made a recruitment video for the IB program without her knowledge. Principal Monteleone sent Appellant an email in which he emphasized that as principal he had the authority to make decisions and did not require her input to proceed. He did, however, reach out to Appellant asking for suggestions on how to better balance her workload. Appellant offered several ideas, but Principal Monteleone did not adopt any of her suggestions. He believed Appellant continued to resist any changes to her responsibilities at the school. (Motion, Ex. II, #2 Kress Decision; #5M 2016-17 School Year Summary).

On March 20, 2017, the two met to discuss creating a separate IB coordinator position. Principal Monteleone believed Appellant supported the change, while Appellant maintained that

she expressed concerns about losing her role with the IB program. Soon after their meeting, Principal Monteleone announced the new IB coordinator position. Although he allowed Appellant to participate in the hiring process, Appellant maintained that Principal Monteleone had already decided on his preferred candidate and did not consider her input. Appellant stated that after the new position had been announced, other school system employees approached her asking if she had been demoted. The loss of her IB coordinator position caused her embarrassment and humiliation. (Motion, Ex. II, #3a Monteleone Statement; #2 Kress Decision; #5M 2016-17 School Year Summary).

In April 2017, Principal Monteleone accused Appellant of not completing work related to the AP program prior to spring break. He required her to meet with him on April 19, 2017, but Appellant objected, explaining that she already had another meeting with teachers scheduled. In a hallway at the school, Principal Monteleone told her she had to meet with him immediately; she objected to having to “follow you like a child in trouble.” During their meeting, Principal Monteleone accused Appellant of not supporting the AP program coordinator. Appellant maintained that she was not responsible and that a miscommunication occurred among other staff members. According to Appellant, Principal Monteleone acknowledged he should have let her explain her side of things first. He later admitted to being angry at the time and said he apologized to Appellant about his behavior. Both Appellant and Principal Monteleone conceded they raised their voices and were argumentative with one another. (Motion, Ex. II, #2 Kress Decision; #5M 2016-17 School Year Summary).

On May 15, 2017, Appellant dropped off a letter in Principal Monteleone’s office, which happened to be open because a cleaning crew was cleaning the office. Apparently unaware of that fact, Principal Monteleone accused Appellant of inappropriately entering his locked office. In the letter she delivered, Appellant accused Principal Monteleone of refusing to meet with her to discuss her concerns about creating a separate IB coordinator position. She felt Principal Monteleone had berated her for raising her views and she suggested that the change to her work responsibilities was “disciplinary.” She further wrote, “At this point however, if there is to be no forum with you to have such a conversation please clarify with whom I should speak, to avoid any further accusations of insubordination.” In Appellant’s view, this statement meant that she intended to raise concerns about Principal Monteleone with others outside of the building. (Motion, Ex. II, #2 Kress Decision; #5I Hoover Letter; Appeal and Response to Motion).

That same week, a teacher informed Principal Monteleone about possible IB and AP testing violations by Appellant. Principal Monteleone notified the MCPS Office of Human Resources and Development. The office’s director, Rob Grundy, instructed Principal Monteleone to issue a one-day administrative leave letter to Appellant. He also instructed Principal Monteleone not to discuss the allegations with Appellant. Besides answering questions from an MCPS investigator, Principal Monteleone had no further role in the disciplinary investigation. (Motion, Ex. II, #3a Monteleone Statement; #2 Kress Decision).

On May 17, 2017, Principal Monteleone issued the one-day leave letter as instructed and placed Appellant on administrative leave with pay for one day based on allegations of testing violations, insubordination, and falsification or misrepresentation of documents. The allegations spanned several months, beginning on February 20, 2017 and ending on May 12, 2017. The letter barred Appellant from being on the grounds of any MCPS property during her leave and directed her not to contact any staff, students, or parents. Within minutes of receiving the letter,

Appellant confronted the teacher who made allegations against her and asked whether she knew that Appellant had been placed on leave. (Motion, May 17, 2017 Monteleone letter; Ex. II, #6 Confino Decision). The next day, MCPS extended Appellant's paid administrative leave pending the result of the investigation. During the next three weeks, Appellant continued to make contact with staff, parents, and students, but claimed she did so because her judgment was clouded based on emotional distress and because she was concerned about students being negatively impacted by her absence. (Motion, Ex. II, #6 Confino Decision).

On July 14, 2017, Andrew Zuckerman, the MCPS Chief Operating Officer, informed Appellant of the allegations and provided her an opportunity to give additional information. Appellant met with MCPS officials on July 28, 2017. (Ex. II, #6 Confino Decision).

On August 21, 2017, Dr. Zuckerman issued a reprimand against Appellant. The letter explained that an investigation did not substantiate claims that she falsified documents or that she committed violations of Advanced Placement testing procedures. The letter further stated that Appellant did not commit insubordination related to International Baccalaureate testing procedures, but that Appellant "failed to support other staff" at her school "in implementing directives from the principal." Finally, the letter stated that Appellant had previously been instructed not to have contact with students, staff, or parents during the investigation; Dr. Zuckerman found that Appellant acted in an insubordinate manner by not following that directive. (Motion, Ex. II, #5C Zuckerman Letter).

On August 25, 2017, Appellant filed an administrative complaint (the "bullying" complaint) against Principal Monteleone accusing him of violating MCPS's workplace bullying policies. Specifically, the complaint alleged the following:

The principal of Richard Montgomery High School continued a persistent pattern of intimidation and bullying, thereby creating a hostile environment over a course of 3 years, made unsubstantiated allegations of inappropriate conduct causing me to lose my position and maligned my reputation resulting in significant emotional distress. Reports to MCPS were not resolved.

(Appeal, Ex. A1-A2). As a remedy, Appellant requested that all documents related to any investigation and disciplinary action against her be expunged and that MCPS agree to restore her reputation, place her in a mutually agreed job placement, and take "significant consequences" against the principal for his actions. (Appeal, Ex. A-2).

On September 28, 2017, Appellant filed a second administrative complaint challenging her reprimand (the "reprimand" complaint) and accusing Principal Monteleone of violating the MCPS culture of respect compact, the employee code of conduct and Article 24 of the Montgomery County Association of Administrators and Principals (MCAAP) contract.¹ In her complaint, she alleged that she had been falsely accused by Principal Monteleone based on "ill will" and his "lengthy period of intimidation and bullying." She stated she had been on administrative leave for an unconscionable period (about four months) and that the issue of insubordination would not have occurred had MCPS not investigated her in the first place.

¹ The superintendent's designee concluded that the alleged contractual violations were not a proper subject of an administrative complaint and dismissed them. Appellant does not challenge that decision. (Appeal, Ex. D1).

(Motion, Ex. II, #6, Attachment A). The two administrative complaints proceeded on parallel tracks, with the reprimand complaint resolved before the bullying complaint.

The reprimand complaint

A hearing officer met with Appellant on October 26, 2017, regarding the reprimand complaint. On December 14, 2017, Hearing Officer Robin Confino issued her decision. She found that Appellant assigned a retired teacher to AP testing duties and work hours beyond those agreed to by Principal Monteleone. Hearing Officer Confino determined that, based on their acrimonious relationship, Appellant did not communicate issues with scheduling AP exams with Principal Monteleone. Furthermore, Appellant failed to seek testing waivers and approvals for testing students off schedule and for students with accommodations; she seated students too close together for some testing; and she placed a proctor outside a testing room rather than inside. Hearing Officer Confino concluded these were testing irregularities rather than violations, none of which negatively affected students, and Appellant acknowledged the mistakes. As for a claim of falsification of documents, Hearing Officer Confino found there was a miscommunication among staff: Appellant drafted a letter to go out underneath another staff member's signature, but the staff member apparently did not realize it. Finally, Hearing Officer Confino concluded that Appellant contacted MCPS staff despite a directive not to do so, but credited Appellant's explanation that she did so based on emotion and concern for students. Hearing Officer Confino recommended that a letter of concern replace the reprimand letter and that MCPS assign Appellant to an appropriate administrative position. (Motion, Ex. II, #6 Confino Decision).

MCPS adopted the recommendations made by the hearing officer and converted the reprimand into a letter of concern. MCPS and Appellant's union representative agreed that she would accept temporary placement as a teacher, that letters related to the reprimand and her administrative leave would be removed from her personnel file, and that she would have priority placement for an administrator position in the 2018-19 school year. According to the MCPS staff directory, Appellant currently serves as an assistant principal at an MCPS middle school. In addition, Appellant agreed that she would not appeal the reprimand complaint to the local board. (Motion, Ex. II, #5L; #6)

The bullying complaint

Because the bullying complaint involved a principal, MCPS skipped the first level of the administrative complaint process, which requires review by an employee's principal. Instead, the complaint moved directly to the second level of review. Hearing officer Donald Kopp conducted a hearing with Appellant and her union representative on October 11, 2017. (Motion, Ex. II, #3 Kopp Decision; Motion, Ex. II, #2 Kress Decision).

Appellant raised five general complaints about Principal Monteleone: (1) he improperly denied leave and objected to her attending meetings outside of the building; (2) he attempted to "push her" to move to another position at another school; (3) he made changes to the IB program without consulting her; (4) he falsely accused her of failing to complete assigned responsibilities, committing testing violations, falsifying a document, and committing insubordination, and (5) he did not properly respect Appellant in violation of the MCPS Culture of Respect policy. (Motion, Ex. II, #3, Kopp Decision).

In response, Principal Monteleone explained that he tried to limit Appellant's meetings outside of the school after finding that some of them were unnecessary; he tried to help her move to another position only after learning she was interested in a move and denied trying to sabotage her efforts; he denied making changes to the IB program without her input, although he acknowledged trying to simplify her work by removing the IB coordinator responsibilities from her job description; he believed Appellant committed insubordination by continuing to pay a retired teacher for AP testing and giving her too much responsibility after being directed not to do so; and he followed directions from the MCPS central office after receiving a complaint about Appellant committing potential test security violations. Finally, Principal Monteleone maintained that there were fundamental differences in philosophy about Appellant's role and responsibilities that led to conflict. (Motion, Ex. II, #3 Kopp Decision).

On January 25, 2018, Hearing Officer Kopp denied the bullying complaint. He found that Principal Monteleone raised legitimate concerns about Appellant's lateness and attendance which did not constitute bullying or harassment. The hearing officer credited Principal Monteleone's explanation that he wanted to assist Appellant in finding another position because she expressed her desire to leave. He also found that Appellant and Principal Monteleone, while not agreeing on the direction of the IB program and not showing much respect for one another, did discuss changes. The hearing officer determined that both Appellant and Principal Monteleone at times failed to use appropriate or positive language. Separately, the hearing officer declined to consider issues regarding the reprimand complaint because it was part of a separate complaint and the "validity of those claims has been or will be addressed through the other complaint and will therefore not be considered as part of this complaint." (Motion, Ex. II, #3 Kopp Decision).

Appellant appealed to the next level and a different hearing officer, Donald Kress, met with Appellant and her union representative on April 12, 2018. On May 17, 2018, he denied the bullying complaint. In addition to reviewing much of the same information provided to the first hearing officer, Mr. Kress interviewed Dr. Deborah Munk, director of school support and improvement for MCPS. She described Appellant and Principal Monteleone as "oil and water," and said she had met with Appellant to hear her concerns and suggest ways of working with Principal Monteleone. Dr. Munk did not, however, recall Appellant raising complaints about bullying. (Motion, Ex. II, #2 Kress Decision).

Hearing Officer Kress found that there was "certainly tension in the working relationship" that "led to declining respect for and animosity between one another." Hearing Officer Kress found that two emails sent by Principal Monteleone were disrespectful, but that there was no evidence of humiliation or workplace bullying. Hearing Officer Kress also found that Principal Monteleone did not attempt to force Appellant out of the school or negatively affect her opportunities for advancement. Hearing Officer Kress found that there were "steps taken by Mr. Monteleone that altered [Appellant's] work responsibilities within her job description with which she didn't agree; but, those changes were not intended to alter the conditions of [Appellant's] working environment." (Motion, Ex. II, #3 Kress Decision).

Appellant appealed to the local board. On September 11, 2018, the local board upheld the dismissal of Appellant's bullying complaint. Although the board found that Appellant filed the appeal late, the board reviewed the record and concluded that the evidence supported the

findings and recommendations of the two hearing officers. The board concluded that the appeal should be limited to Appellant's bullying complaint because the resolution of the reprimand complaint included an agreement that Appellant would not appeal the matter further to the local board. (Motion, Ex. II, Summary of Verbal Agreements). The board found there was no evidence that Principal Monteleone's actions were motivated by a desire to intimidate, bully, or harass Appellant; rather, the evidence showed that Appellant disagreed with decisions made by Principal Monteleone and perceived those disagreements as workplace bullying. (Exhibit VI, Local Board Decision).

This appeal followed.

STANDARD OF REVIEW

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.

LEGAL ANALYSIS

Although described in different ways, Appellant essentially raises two issues on appeal: (1) whether the hearing examiners (and subsequently the local board) improperly failed to consider evidence from her reprimand complaint as part of the appeal of her bullying complaint; and (2) whether the hearing officers and local board gave appropriate weight to her evidence.

The reprimand complaint

Appellant argues that Hearing Officers Kopp and Kress, and subsequently the local board, erred by failing to consider evidence raised in Appellant's reprimand complaint as part of her bullying appeal. The local board argues that Appellant agreed not to appeal the reprimand complaint and therefore waived the right to challenge the issues raised in it.

Maryland law is "well settled" that the "right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal." *Swift v. Montgomery County Bd. of Educ.*, MSBE Op. No. 02-09 (2002) (quoting *Williams v. Maryland Dep't of Human Resources*, 136 Md. App. 153 (2000)). In *Swift*, we determined that a teacher's decision not to challenge her termination before the local board precluded her from appealing that same termination to the State Board. *Id.*

Appellant's situation is analogous. She raised the issue of bullying in her reprimand complaint, alleging that she had been falsely accused based on Principal Monteleone's "ill will" and his "lengthy period of intimidation and bullying." She filed the reprimand complaint *after* her initial bullying complaint. MCPS ultimately withdrew the reprimand and agreed to issue a letter of concern. In turn, Appellant agreed not to challenge the matter further to the local board. "Generally speaking, a party will not be permitted to maintain inconsistent positions or to take a position in regard to a matter which is directly contrary to, or inconsistent with, one previously assumed by [the party]." *Id.* (quoting 28 AM.JUR.2D *Estoppel and Waiver* § 68 (1966)).

Having decided to forgo further appeal of the reprimand complaint (and by extension the litigation of the facts alleged within it), Appellant was barred from raising those same allegations with the local board.

Failure to give appropriate weight to evidence

Appellant argues that the hearing officers assigned to her case took the word of Principal Monteleone and other administrators over hers. Because the local board adopted the findings and recommendations of both hearing officers, she maintains that the local board therefore continued this error. Every hearing officer must sort through conflicting evidence and reach factual conclusions. Hearing officers are not required to give equal weight to all of the evidence and their failure to agree with an Appellant's view of the evidence does not mean their decisions are arbitrary, unreasonable, or illegal. *See Karp v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15-39 (2015). In our view, factual findings from the record supported the conclusions reached by the hearing officers, and the local board did not act in an illegal, unreasonable, or arbitrary manner by adopting those conclusions.

In addition, Appellant argues that the hearing officers were biased because they referenced their own experiences in their decisions and the local board should have rejected those findings. One such example cited by Appellant involved Principal Monteleone placing Appellant on administrative leave and instructing her not to talk with other staff members, students, or parents. Hearing Officer Kress found that Principal Monteleone's actions were consistent with his own knowledge of the MCPS employee discipline process. In our view, this does not demonstrate an improper bias on the part of a hearing officer. Referencing one's own knowledge of MCPS policies, or whether certain actions taken were reasonable, does not mean a hearing officer is inappropriately relying on his or her personal feelings in deciding a case. Therefore, the local board did not act in an illegal, unreasonable, or arbitrary manner by adopting the hearing officers' decisions.

CONCLUSION

We affirm the decision of the local board because it was not arbitrary, unreasonable, or illegal.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Absent
Chester E. Finn, Jr.

Vermelle D. Greene

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

January 22, 2019