WILLIAM KELLY FORD,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
PRINCE GEORGE'S COUNTY BOARD OF EDUCATION,	OF EDUCATION
	Opinion No. 19-19
Appellee.	

OPINION

INTRODUCTION

Appellant challenges the decision of the Prince George's County Board of Education ("local board") upholding the CEO's affirmation of the EEO Advisor's finding that the Appellant harassed a co-worker, resulting in Appellant's transfer to another school. The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. The Appellant responded to the Motion and the local board replied to the response.

FACTUAL BACKGROUND

During the 2016-2017 school year, the Appellant taught the 6th grade at Ridgecrest Elementary School ("Ridgecrest"), co-teaching with Ms. W. As co-teachers, Appellant and Ms. W. rotated instruction of the 6th grade class, with Ms. W. teaching reading and social studies and Appellant teaching math and science. The two teachers taught their classes out of temporary trailers adjacent to one another located outside of the school building. As co-teachers, the Appellant and Ms. W. achieved successful results with their students.

In addition to their professional relationship as co-teachers, the Appellant and Ms. W. had a personal relationship. Ms. W. often confided in the Appellant regarding personal matters, such as finances, home renovations, issues concerning her dog and other matters. Initially, Ms. W. appreciated the Appellant's advice and counsel on the various matters they discussed, but things changed. (R.138)

Around November 2016, Ms. W. became uncomfortable with the relationship based on what she perceived as increased interest in her personal life and constant analysis of her behavior by the Appellant. She tried using social cues and avoidance to deal with the situation, but was unsuccessful. On or about December 15, 2016, in both verbal conversations and text messages, Ms. W. requested that the Appellant refrain from inquiring about her personal life and asked that their communications be exclusively professional. The Appellant, however, continued to try to speak privately with Ms. W. about personal issues, and invaded her personal and professional space at work. (R.125, R.138).

On or about January 4, 2017, Ms. W. told the principal of Ridgecrest, Ms. Dunn, of her concerns. Principal Dunn advised the Appellant that Ms. W. did not want a personal relationship with him and that he was only to have professional interactions with her. Principal Dunn met with the Appellant and Ms. W. weekly in order to monitor the situation. For a brief period of time, they managed to interact on a professional level.

The Appellant, however, sought out an explanation regarding the change to their relationship. On or about March 16, 2017, the Appellant requested that Principal Dunn convene a meeting with him and Ms. W. so that he could get "answers that he deserved." On March 17, the parties met and Ms. W. shared her reasons for feeling uncomfortable and terminating their personal relationship. The Appellant was not satisfied with the explanation and believed that Ms. W.'s allegations were disingenuous. (R.125-126).

Thereafter, on May 1, 2017, prior to the start of the instructional day, the Appellant used his key to gain entry to Ms. W.'s classroom. Appellant asked Ms. W. to discuss the May 2, 2017 email he sent her, which stated, "Hi, I think most of that was directed at me today. I would love to share my thoughts with you when you are ready. I think you are doing a great job. You have my 100% support. Always have. Always will." Ms. W. was uncomfortable and asked the Appellant not to use his key to enter her classroom. Principal Dunn spoke to the Appellant and also directed him not to use his key to enter Ms. W.'s locked classroom.

Ms. W. continued to feel uncomfortable. She claimed that Appellant was focused on her and would follow her around the school. (R. 134). On or about May 2, 2017, the Appellant directly contacted the PGCPS Director of Food Services when he thought that Ms. W. violated food safety and handling protocols rather than following school procedures and first contacting Principal Dunn or the School Cafeteria Manager. When he eventually spoke to Principal Dunn, the Appellant inquired whether Ms. W. would "get in trouble." (R.122).

The Appellant also spoke to others who were not involved in the situation about Ms. W. On or about May 7, 2017, the Appellant texted a former colleague requesting to speak to her about a matter involving him, Principal Dunn, and by inference, Ms. W. Around this time, the Appellant was also engaging school staff to enlist their help to convince Ms. W. to speak with him. (R.130-133, 139).

On May 8, 2017, the Appellant again used his key to enter Ms. W.'s locked classroom and asked to speak to her about "a situation." Ms. W. refused and told him to email it to her. She later received an email from Appellant stating that it would be in her "best interest" to hear him out, that it concerned "a very serious matter" and that he had "knowledge of things [Ms. W.] may not be aware of." (R.134). Ms. W. did not respond. Appellant later approached her in the cafeteria and tried to speak to her, and again later that day. *Id*. Ms. W. felt fearful of the Appellant when she left work. *Id*.

On May 9, 2017, the Appellant again used his key in an attempt to enter Ms. W.'s locked classroom, however, Ms. W. grabbed the door handle prior to the Appellant opening the door completely. She told him not to let himself into the room again and shut the door. She then received multiple emails from the Appellant during the school day about matters that required no discussion. Ms. W. reported the incident to Principal Dunn and stated that she intended to take a leave of absence because of the stress caused by the Appellant's behavior and the "hostile

environment." She was fearful of the Appellant and felt that his "obsession was not going away," but rather "it was escalating." *Id*.

On May 15, 2017, Ms. W. filed a discrimination/harassment report alleging that the Appellant was engaging in harassing behavior by continuing to attempt to interact with her on a personal level despite her and Ms. Dunn's requests that he stop. She claimed that the Appellant continued to attempt to engage in personal conversations, followed her around the school, and used his key to let himself into her classroom. The Appellant maintained that she no longer felt safe in the workplace with the Appellant present. (R.61-R.67). The school system offered the parties mediation pursuant to PGCPS Administrative Procedure, but Ms. W. indicated that she did not want to engage in mediation with the Appellant. (R.109).

Also on May 15, 2017, Principal Dunn placed the Appellant on administrative leave based upon his repeated failure to adhere to Principal Dunn's directives, his increasing attempts to engage with Ms. W. personally, and his conduct creating an otherwise unsafe work environment.[1] The Appellant maintained that he did not harass Ms. W. He claimed that Ms. W.'s rendition of the facts was inaccurate, and that his actions "were supportive and were intended to provide a positive working relationship and improve the quality of life throughout the school community." (R.28).

The school system conducted an investigation into Ms. W.'s claims. On August 7, 2017 the Office of Security Services issued a Special Investigation Report concluding that the Appellant's conduct had the purpose or effect of unreasonably interfering with Ms. W.'s work, and also created an intimidating, hostile, or offensive educational environment because his judgment concerning Ms. W was highly questionable. (R.126).

On August 31, 2017, Ms. Amanda Simmons, EEO Advisor, issued a Letter of Determination in which she found that, after Ms. W. advised the Appellant on December 15, 2016 that she no longer wished to maintain a personal relationship with him, the Appellant's conduct "was continuously intrusive and harassing in violation of AP4170." She further stated as follows:

> Pursuant to AP4170, harassment includes conduct that has the purpose or effect of unreasonably interfering with an employee's work performance, or creates an intimidating, hostile or offensive working environment. While there is no overt evidence to suggest that Respondent sought sexual attention from Charging Party, it is clear that Respondent (Male) engaged in a continuing and pervasive pattern of unwanted behavior toward Charging Party (Female), and such behavior interfered with Charging Party performing her job functions. The undersigned recommends that Mr. Ford's removal from Ridgecrest Elementary School be permanent and that the parties no longer be assigned to teach at the same school.

(R.4).

[1] The CEO ultimately suspended the Appellant for 10 days without pay for misconduct based on his conduct regarding Ms. W. The Appellant did not appeal the misconduct charge and it is not the subject of this appeal. (Appeal, 11/10/17 Letter of Suspension).

The Appellant appealed the decision to the Chief Executive Officer ("CEO") who referred the matter to a hearing examiner for investigation and review. The hearing examiner's proposed decision incorporated the factual findings from the August 31, 2017 Letter of Determination and recommended that the CEO affirm the finding of harassment. (R.113-R.118). On December 5, 2017, the CEO adopted the hearing examiner's recommendation and affirmed the decision. (R.119).

Appellant appealed to the local board. Oral argument took place on October 22, 2018. On November 13, 2018, the local board unanimously affirmed the decision of the CEO stating that "the overwhelming evidence in this matter demonstrates that the Appellant engaged in a significant pattern of conduct that was harassing in nature and that significantly interfered with [Ms. W's] ability to perform her duties." (R.229).

This appeal followed.

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 unless the decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

The Appellant maintains that the local board's decision was arbitrary, unreasonable or illegal because the school system committed various procedural errors in the case, and because he did not harass Ms. W. in violation of PGCPS Administrative Procedure ("AP") 4170 – Discrimination and Harassment.

Alleged Procedural Violations

As a preliminary matter, we address the Appellant's argument that the school system failed to follow various procedures with regard to the resolution of the EEO Complaint, as set forth in AP 4170. Specifically he maintains that (1) "he was unable to respond to false claims and misinterpretations made by others about key elements of the case" because he was not asked to complete the "Employee Respondent Form;" (2) he was not offered mediation; and (3) the EEO investigation took more than 45 days. (*See* AP 4170.VI.B).

Although the school system did not ask the Appellant to complete an "Employee Respondent Form," it is our view that the Appellant had the opportunity to respond to the harassment allegations against him when he spoke with Ms. Simmons during her investigation of the case. The Appellant had the opportunity to submit a statement that was reviewed by Ms. Simmons as well. (*See* R.201, R.229). The record also contains documentation that Appellant submitted a response to Ms. W.'s complaint during the initial investigation by the Department of Security Services. At that time, the investigator provided Appellant the opportunity to add any information he desired to the investigation by way of submitting a statement. (R.147-154).

As for the mediation, the parties were offered mediation but Ms. W. declined. Once that happened, there was no reason for the school system to seek further response on the issue from the Appellant. With regard to the length of the EEO investigation, the Appellant has not shown that he was prejudiced in any way. The school year had already ended and he was assigned to a new school for the 2017-2018 school year.

Harassment Charges – Administrative Procedure 4170

The Appellant argues that the local board improperly found him in violation of Administrative Procedure 4170 ("AP 4170") because a finding of harassment under AP 4170 requires that the harassment be based on a protected class listed therein (race, color, sex, age, national origin, religion, marital status, sexual orientation, or disability) and the local board specifically stated in its decision that the harassment was not based on gender or protected class. The local board maintains that AP 4170 applies to all forms of harassment.

AP 4170 states as follows under the Discrimination and Harassment Guideline for Employees:

> 1. It is the policy of the Board of Education of Prince George's County that all employees should be able to enjoy a work environment free from all forms of discrimination and harassment based on race, color, sex, age, national origin, religion, marital status, sexual orientation, or disability. Conduct constitutes prohibited harassment when:
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> * * *
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> c. Such conduct has the purpose or effect of interfering with an employee's work performance, or creates an intimidating, hostile, or offensive working environment.

AP 4170 defines harassment as follows:

> A. Harassment - The harassment of an individual on the basis of his or her race, color, sex, age, national origin, religion, marital status, sexual orientation, or disability, is just as demeaning and disrespectful as discriminating against such an individual on those basis. Harassment takes many forms, including, but not limited to the following:
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> 1. Conduct that has the purpose or effect of unreasonably interfering with an employee's work, or a student's education or extra-curricular performance, based on the employee's/student's race, color, sex, age, national origin, religion, marital status, sexual orientation, or disability.
>
> 2. Conduct that has the purpose or effect of creating an intimidating, hostile, or offensive working or educational

> environment, based on race, color, sex, age, national origin, religion, marital status, sexual orientation, or disability.
>
> * * *

(AP 4170.III.A).

In our view, the record evidence supports the conclusion that the Appellant harassed Ms. W. in violation of AP 4170. Ms. Simmons, the EEO Advisor, reviewed all of the evidence submitted in the case and spoke to the parties involved. Based on her investigation, Ms. Simmons stated that "[w]hile there is no overt evidence to suggest that Respondent sought sexual attention from Charging Party, it is clear that Respondent (Male) engaged in a continuing and pervasive pattern of unwanted behavior toward Charging Party (Female), and such behavior interfered with Charging Party performing her job functions." We interpret this to mean that, although she found no evidence of sexual harassment, which can include threats and demands for sexual favors, she found that the Appellant engaged in harassment based on Ms. W. being a female. Whether or not the Appellant sought sexual attention from Ms. W., he engaged in behavior directed toward a female co-worker seeking attention from her that went beyond a professional co-worker relationship. He did so even after being asked to stop on multiple occasions by Ms. W. and his supervisor Principal Dunn. The result was that his actions unreasonably interfered with Ms. W.'s work and had the effect of creating an intimidating, hostile, or offensive working environment. Thus, we find that the record supports the local board's decision to affirm the finding that the Appellant engaged in harassment against Ms. W. in violation of AP 4170.

In addition, the resulting transfer of the Appellant to another school was a reasonable response. This Board has long recognized that a local superintendent has broad statutory authority to reassign teachers as the needs of the school require. *See* Md. Code Ann., §Educ. 6-201. *See also Somers v. Prince George's County Bd. of Educ*., MSBE Op. No. 10-13 (2010) and cases cited therein. Teachers have no entitlement to any particular position within the school system, and their transfer to another position is solely within the discretion of the superintendent. *Coleman v. Howard County Bd. of Educ*., MSBE Op. No. 01-40 (2001).

Disagreement with Factual Findings

The Appellant disagrees with the factual determinations made by Ms. Simmons, the EEO Advisor. His appeal contains his own rendition of facts to try to explain his conduct as it relates to Ms. W. He maintains that all of his actions and communications were professional in nature and were misconstrued.

In a case such as this, initial fact-finders, like the EEO Advisor, must make credibility determinations about conflicting evidence in order to reach a decision on the merits. We defer to the fact-finder's demeanor-based credibility findings unless there are strong reasons presented that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Shrieves*, 100 Md. App. 283, 302-303 (1994). When evaluating facts, fact-finders 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).

We find no reason to reject Ms. Simmons' factual findings. Ms. Simmons gathered data that is included in the case record and discussed the matter with the Appellant, Ms. W., Principal Dunn, and other relevant witnesses before making a determination on the totality of the information before her. To the extent that the Appellant's version of the events differed from that of Ms. W., Ms. Simmons determined which version she found to be most credible and issued her decision that included her factual findings. On appeal, the CEO and the local board affirmed the determination. We find that the record evidence supports Ms. Simmons' findings and the decision of the local board.

CONCLUSION

For the reasons stated above, we do not find the decision of the local board to be arbitrary, unreasonable or illegal. We affirm the local board's determination that the Appellant violated AP 4170 by engaging in harassment of his co-worker, Ms. W., and we affirm the decision to transfer him to another school.

Signatures on File:

_____
Stephanie R. Iszard
Vice-President

_____
Gail H. Bates

_____
Clarence C. Crawford

_____
Vermelle D. Greene

_____
Jean C. Halle

_____
Joan Mele-McCarthy

_____
Michael Phillips

_____
David Steiner

_____
Warner I. Sumpter

Absent:
Justin M. Hartings
President

Rose Maria Li

April 23, 2019