

YVETTE BREBNOR,

Appellant

v.

BALTIMORE CITY
BOARD OF SCHOOL
COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-38

OPINION

INTRODUCTION

Yvette Brebnor (Appellant) appeals the decision of the Baltimore City Board of School Commissioners (local board) terminating her as a teacher for incompetence, insubordination, misconduct, and willful neglect of duty. We referred the matter to the Office of Administrative Hearings (OAH) where an Administrative Law Judge (ALJ) issued a Proposed Decision recommending that the State Board uphold the termination. Appellant filed Exceptions to the ALJ's Proposed Decision and the local board responded.

Oral argument was heard on October 22, 2019.

FACTUAL BACKGROUND

The full factual background is set forth in the ALJ's Proposed Decision at pp. 5 – 12. We summarize some of the essential facts below.

Appellant began working for Baltimore City Public Schools (BCPS) in 2002. During the 2015-16 and 2016-17 school years, she taught fourth grade at Harford Heights Elementary School (Harford Heights). Although Appellant received satisfactory or proficient evaluations prior to the 2015-16 school year, she was placed on a Performance Improvement Plan in November 2014 to address concerns in the area of planning and teaching.

This case focuses, in part, on Appellant's teacher evaluations. BCPS divides its annual teacher evaluation into two parts: 50% is based on student growth and 50% is based on professional practice. In the professional practice category, 35% of a teacher's score consists of formal observations. BCPS announces its formal observations in advance, and the teacher and observer meet both before and after the observation.

During the 2015-16 school year, school officials observed Appellant twice. Principal Tetra Jackson observed Appellant first and gave her a rating of 2.1 out of 4 possible points. Assistant Principal Cynthia Brown conducted the second observation (of a math lesson) and gave her 1.67 out of 4 points. Ms. Brown found that Appellant did not properly introduce the day's lesson to her students; had not posted or referred to any objectives of the lesson; presented the

lesson quickly without ensuring her students were following along; failed to hold the attention of her students; left her students confused about what they should be doing; and failed to redirect students who were fighting with pencils.

Principal Jackson and Ms. Brown placed Appellant on a Performance Improvement Plan in the areas of planning and preparation. The plan called for weekly feedback from administrators, informal observations, and support from reading and math coaches. Principal Jackson required Appellant to send her daily lesson plans, a requirement that Appellant failed to complete. Coaches who worked with Appellant found that she did not respond positively to feedback and failed to implement strategies presented to her.

Appellant's final evaluation for the 2015-16 school year faulted her for unprofessional communications with colleagues, administrators, and students. She also failed to complete tasks on time and had attendance issues. In addition, Appellant received an unsatisfactory score for her student learning objectives. Overall, Appellant earned an "ineffective" rating for the 2015-16 school year.

Appellant received two formal observations during the 2016-17 school year. Assistant Principal Brown gave the Appellant a score of 1.11 out of 4 points on the first observation. During that observation, she found that Appellant presented the content in only one way and did not work with students on how to engage with the lesson's text; failed to address student misbehavior; did not ask clarifying questions or provide wait time for students to ask questions; failed to engage her students in discussions or set up peer collaboration or interaction; and that students were unclear about the class objective and had little interaction with Appellant.

Principal Jackson gave the Appellant a score of 1.44 out of 4 points on the second observation. She found Appellant did not clearly explain the lesson to students; failed to engage her students with the topic or model learning strategies; and permitted students to talk through her instruction. School officials revived the PIP from the previous school year, focusing on highly effective instruction and the learning environment.

During the 2016-17 school year, school administrators faulted Appellant for not using positive behavioral intervention and supports, specifically through an electronic application called Class Dojo; failing to follow the correct protocol for referring students to the Alternative Learning Center (ALC); not using the school system's instructional framework for planning her instruction; failing to consistently and timely submit lesson plans to the principal; and keeping her classroom disorganized and loud during transitions.

In an effort to improve Appellant's instruction, the school's math coach held bi-weekly, 90 minute planning meetings with Appellant. She found that Appellant failed to consistently implement the strategies and suggestions given to her and did not see improvement in Appellant's teaching during the year. Another staff member conducted a demonstration lesson for Appellant in order to assist her. Despite these efforts, school officials found that students in Appellant's class performed worse on math assessments than students in other classes, even though the composition of Appellant's class was not different from other classes.

Administrators frequently criticized Appellant for not turning in materials on time. Appellant failed to timely submit progress reports, report cards, student learning objectives, substitute plans, and documentation necessary for retaining students. Another frequent criticism involved Appellant's professional demeanor. She arrived late for a meeting with her assistant

principal, yelled at students, and addressed students, a parent, and her superiors in a negative manner. Appellant failed to follow school protocols by not informing a guidance counselor after a student made a suicide threat; failed to follow the process for referring students to the alternative learning center; and failed to follow procedures when a student used a cell phone in class.

These behaviors led to multiple written and oral reprimands from her superiors. On April 3, 2017, she received written reprimands from Principal Jackson and Ms. Brown for failing to submit professional expectations to her principal on time. On April 27, 2017, Appellant received a written reprimand after closing a door in a parent's face and telling the parent, "This is my time now," when the parent came to pick a student up from detention and attempted to talk with Appellant. On May 10, 2017, Appellant received a written reprimand for insubordination for failing to meet numerous deadlines set by her supervisors.

Appellant's final evaluation for the 2016-17 school year continued to find fault with her communications with students and parents and criticized her for missing deadlines and failing to complete tasks. She received an unsatisfactory score for her student learning objectives and received an ineffective rating for the 2016-17 school year. As a result of all of these issues, the CEO recommended Appellant for termination.

Appellant challenged the recommendation and the local board referred the matter to a hearing examiner. The hearing examiner conducted a hearing over three days, taking dozens of documents into evidence and hearing testimony from numerous witnesses, including Appellant. The hearing examiner concluded Appellant should be terminated for incompetence, insubordination, misconduct, and willful neglect of duty. On December 11, 2018, the local board adopted the hearing examiner's decision and terminated Appellant.

On January 9, 2019, Appellant appealed the local board's decision to the State Board of Education. We transferred the matter to the Office of Administrative Hearings for findings of fact, conclusions of law, and a recommended decision. On April 25, 2019, Administrative Law Judge Brian Patrick Weeks conducted a hearing, during which the local board relied on its exhibits and witnesses in the prior hearing. Appellant introduced some additional exhibits and presented testimony from three witnesses, in addition to herself.

On July 8, 2019, the ALJ issued his proposed decision recommending that the State Board uphold Appellant's termination. Appellant filed exceptions to the decision and the local board responded to those exceptions.

Oral argument on the exceptions is scheduled for October 22, 2019.

STANDARD OF REVIEW

Because this appeal involves the termination of a certificated employee pursuant to §6-202 of the Education Article, the State Board exercises its independent judgment on the record before it in determining whether to sustain the termination. COMAR 13A.01.05.05F(2). In addition, the State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.05E.

The State Board transferred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify or remand the ALJ's proposed decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications or amendments to the proposed decision. *See* Md. Code Ann., State Gov't §10-216. In reviewing the ALJ's proposed decision, the State Board must give deference to the ALJ's demeanor based credibility findings unless there are strong reasons present that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

LEGAL ANALYSIS

Appellant identifies more than a dozen exceptions to the ALJ's findings of fact and conclusions of law. For convenience sake, we shall group some of the exceptions together.

The basis given for many of these exceptions is that the ALJ should have cited and relied upon additional testimony and documentary evidence that was part of the record. This is essentially an argument that the ALJ should have given weight to certain evidence. "Hearing officers are not required to give equal weight to all of the evidence." *Hoover v. Montgomery County Bd. of Educ.*, MSBE Op. No. 19-03 (*citing Karp v. Baltimore City Bd of Sch. Comm'rs*, MSBE Op. No. 15-39 (2015)). As the fact finder, it is the ALJ's job to sort through the evidence and reach factual conclusions based on the weight the ALJ assigns to that evidence. It is also not necessary for an ALJ to cite to every piece of evidence or testimony given in a case. *Id.* We keep this standard in mind as we review Appellant's exceptions.

Exception 1 – Informal observation

Appellant argues that the ALJ should have found that an informal observation sheet from May 27, 2016 deliberately had the top cut off so the date would not be visible. She maintains that Principal Jackson did this in order to hide the fact that she conducted an informal observation on "fun day," a day in which Appellant claims the school provided activities and games for students and she did not have any teaching responsibilities.

Appellant provides nothing to support her claim that Principal Jackson deliberately photocopied an informal evaluation report in order to disguise when it occurred. Even so, the ALJ discounted this argument because he found that the informal observations did not weigh into the local board's termination decision. Appellant does not explain why the ALJ should have spent time considering an informal observation form that did not factor into her termination.

Exceptions 2 and 3 – Pre-observation reports

Appellant argues that it was improper for Principal Jackson to meet with her for a pre-observation conference on the same day as an observation. The record indicates that, at least on one occasion, Principal Jackson held pre-observation conferences with Appellant on the same day as the formal observation because Appellant failed to submit necessary information in advance, such as her lesson plan. (Local Board Hearing. T. 34-40). Even if this were somehow improper, the ALJ found that Appellant had not articulated any prejudice she might have faced from having the pre-observation conference on the same day as the formal observation. She offers none here and we agree with the ALJ's conclusion that there was no evidence that her formal observations were unfair or impartial.

Relatedly, Appellant argues that the ALJ mischaracterized or misunderstood her arguments regarding the pre-observation process that took place before her formal observations. Appellant acknowledges that it was her responsibility, not Principal Jackson's, to submit information to her principal in advance of the formal observations. This distinction does not appear in any way to undermine the ALJ's conclusions.

Exceptions 4 and 5– Math notebooks and math assessments

Appellant argues that the ALJ “explained away” lies from the math coach about math notebooks used by Appellant's students. Appellant maintains that the math coach lied when she testified that Appellant's students were not using math notebooks in the manner the coach suggested because the coach's informal observation notes recorded that students were writing notes in the notebooks. As the ALJ observed, these two statements do not prove that the math coach lied. The students could be writing notes in their math notebooks, but still not using the notebooks for the purpose that the coach suggested to Appellant.

In addition, Appellant argues that the ALJ ignored evidence that Appellant had properly submitted math scores for her students when the math coach testified that she had not. The ALJ had the ability to weigh the evidence and reach conclusions about that evidence. The record indicates that the math coach pulled some of Appellant's students into her office and tested them in order to make sure the school had appropriate math data for all students. (Local Board Hearing, T. 181-82). We find no error in the ALJ crediting that testimony.

Exception 6 – Student learning objectives

Appellant argues that she submitted her student learning objectives on time, but that school officials returned them to her for corrections that she believes were unnecessary. The record shows that the student learning objectives were among multiple documents the Appellant submitted late to school officials. Whether those documents were late because they were turned in late, or considered late because they were submitted on time but were incomplete, does not appear to be a significant distinction given the multiple examples cited by school officials.

Exception 7 – Reliability of Infinite Campus documents

Appellant challenges a statement made by the ALJ that printouts from Infinite Campus, the electronic system used by BCPS to record grades, were not “sufficiently reliable.” School officials accused Appellant of submitting her grades late, a charge that Appellant attempted to dispute by using the printouts of her students' grades. The ALJ found that the printouts were not sufficiently reliable for him to draw conclusions about *when* Appellant submitted her grades. The record indicates that the electronic system could not pinpoint exactly when particular grades were submitted. (Local Board Hearing, T. 158). We find no error in the ALJ's conclusion.

Exception 8 – Late progress reports and report cards

Appellant argues that the local board did not adequately prove through documentation that she failed to submit progress reports and report cards on time. Contrary to Appellant's assertions, the record contains a wealth of supporting information that Appellant failed to submit multiple documents in a timely fashion, including through the testimony of school officials. The ALJ did not err by crediting that testimony.

Exception 9 – Weight afforded to Appellant’s witnesses

Appellant argues that the ALJ erred by giving little weight to three of her witnesses and instead placing weight on the testimony of two school system witnesses. The ALJ stated that he gave little weight to the testimony of Appellant’s witnesses because they were not “qualified observers” trained to conduct formal observations and they did not formally or informally observe the Appellant in her classroom. By contrast, the two school system witnesses, although not apparently trained as formal observers, conducted informal classroom observations of Appellant. We see no error in the ALJ placing greater weight on the testimony of witnesses who viewed Appellant in the classroom over those who did not. In addition, the ALJ did not err by giving little weight to the testimony of witnesses concerning formal observations when those witnesses were not trained as formal observers.

Exception 10 – Photos of classroom

Appellant argues that the ALJ ignored photographs of her classroom that showed she had an area set aside for posting the day’s learning objectives for students. During formal observations, the principal and assistant principal found that Appellant had not posted her daily objectives for students in her classroom. A photograph showing those objectives posted on particular days does not mean that Appellant had objectives posted on other days, particularly days in which the principal and assistant principal conducted their formal observations. We find no error in the weight that the ALJ gave to the photographs.

Exception 11 – Demonstration of lesson

Appellant clarifies that a coach demonstrated a small group lesson for her and not a math or English Language Arts lesson, as Appellant requested. There is conflicting evidence in the record about what types of lessons Appellant had demonstrated for her, and whether she requested others. The ALJ had the ability to sift through this potentially conflicting evidence and reach factual conclusions. We find support for those conclusions in the record. Even if the ALJ adopted Appellant’s version of events, however, it does not materially affect the end result, which was that the school system provided Appellant with support to help her improve.

Exception 12 – Lesson plan

Appellant argues that she submitted evidence of a lesson plan she used and that the ALJ did not place enough weight on it. She does not elaborate on this argument. As with the photographs, the fact that Appellant may have had a lesson plan on a particular day does not mean that she had lesson plans available on the day that the principal and assistant principal observed her. Indeed, Appellant indicated that at times she may have stored lesson plans on her computer and not had them readily available for an observer to see. (Local Board Hearing, T. 611-12).

Exception 13 – Bias of the hearing examiner

Appellant implies that the ALJ’s decision was biased because it “must” favor the employer in order to deter other employees from filing appeals. Appellant offers no support for this argument. We discern nothing in the ALJ’s decision to indicate he felt bound to find in favor of the employer. Likewise, our standard of review does not require us to give deference to any decision made by the local board and we are free to use our independent judgment on the

record before us in reaching a decision. We apply that standard here and find the record amply supports the local board's decision.

Summary

Appellant maintains that it defies common sense that she would have done the things she was accused of doing, such as ignoring directions from superiors, failing to follow school protocols, or being unprepared for meetings. The record, however, provides ample evidence to support the ALJ's conclusions. The two years of ineffective evaluations demonstrated her incompetence, the pattern of refusing to comply with her superior's directives showed insubordination, the pattern of rude interactions with students, parents, and administrators constituted misconduct, and her failure to submit numerous documents and materials on time demonstrated willful neglect of duty. The ALJ correctly applied the appropriate legal definitions to the evidence before him to conclude that Appellant committed incompetency, insubordination, misconduct, and willful neglect of duty. We find no merit to Appellant's exceptions and adopt the ALJ's decision in full.

CONCLUSION

We adopt the proposed decision of the ALJ, as supplemented by this decision, and uphold Appellant's termination for incompetency, insubordination, misconduct, and willful neglect of duty.

Signatures on File:

Warner I. Sumpter
President

Jean C. Halle
Vice-President

Gail H. Bates

Clarence C. Crawford

Charles R. Dashiell, Jr.

Vermelle D. Greene

Justin M. Hartings

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

October 22, 2019

ALJ's Proposed Decision

YVETTE A. BREBNOR

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS

* BEFORE BRIAN PATRICK WEEKS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No: MSDE-BE-01-19-02096

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSION OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

Yvette A. Brebnor (Appellant) was employed with Baltimore City Public Schools (City Schools) as a certificated teacher. She taught fourth grade at Harford Heights Elementary School (Harford) during the 2015-2016 and 2016-2017 academic years. On October 30, 2017, the Chief Executive Officer (CEO) of City Schools, Sonja B. Santelises, recommended the Appellant's dismissal on the grounds of incompetence, insubordination, misconduct, and willful neglect of duty. Md. Code Ann., Educ. § 6-202(a) (Supp. 2018).

The Appellant subsequently filed an appeal of that determination to the Baltimore City Board of School Commissioners (Local Board). Thereafter, the Local Board appointed Andrew W. Nussbaum, Hearing Examiner, to conduct a due process hearing and to provide it with a recommendation whether to terminate the Appellant. Md. Code Ann., Educ. § 6-203 (2018). Mr. Nussbaum conducted a three-day hearing commencing August 1, 2018 (Local Board Hearing). On October 24, 2018, he submitted a report to the Local Board, wherein he concluded

that the Appellant had committed acts of insubordination, misconduct, and willful neglect of duty, and recommended that the Appellant be terminated from employment as a teacher with City Schools.

On December 11, 2018, the Local Board issued its Decision and Order in which it adopted the recommendation of the hearing examiner and affirmed the hearing examiner's recommendation that the CEO terminate the Appellant from employment as a teacher with City Schools. The Appellant's employment was officially terminated as of December 11, 2018.

On or about January 9, 2019, the Appellant appealed the Local Board's decision to the State Department of Education (State Board) and, on January 17, 2019, the State Board transmitted the case to the OAH for a *de novo* hearing pursuant to Code of Maryland Regulations (COMAR) 13A.01.05.06F, 13A.01.05.07A(1)(b).

I conducted a hearing on April 25, 2019 at the OAH in Hunt Valley, Maryland. The Appellant represented herself. Lori Branch-Cooper, Esquire, represented City Schools.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board of Education, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 13A.01.05; COMAR 28.02.01.

ISSUE

Was the Appellant's termination proper?

SUMMARY OF THE EVIDENCE

Exhibits

Prior to the hearing, the parties stipulated to the admissibility of the record generated below, collectively called CEO Exhibit 1, including the following:

- Statement of Charges, October 30, 2017

- Hearing Examiner's Findings of Fact, Conclusions of Law and Recommendation, Case No. 17-08d, October 24, 2018
- Local Board's Order, December 11, 2018
- Record of the Local Board
- Transcript, Case No. 17-08d, August 1, 8 and 15, 2018
- Appellant's Exhibits from Case No. 17-08d
- City Schools' Exhibits from Case No. 17-08d

At the hearing, I admitted the following exhibits on behalf of the Appellant:

- App. Ex. 1 - Request for Leave, August 28, 2015
- App. Ex. 2 - Request for Leave for May 5, 2016, May 3, 2016
- App. Ex. 3 - Request for Leave for May 6, 2016, May 3, 2016
- App. Ex. 4 - Emails regarding leave requests, May 5, 2016
- App. Ex. 5 - Request for Leave for May 5, 2016, May 5, 2016
- App. Ex. 6 - Request for Leave for May 6, 2016, May 5, 2016
- App. Ex. 7 - Howard University graduation details, May 6, 2016
- App. Ex. 8 - Request for Leave for April 19, 2016, April 14, 2016
- App. Ex. 9 - Request for Leave for April 19, 2016, April 14, 2016
- App. Ex. 10 - Emails, various dates
- App. Ex. 11 - Referral to Alternative Learning Center (ALC), October 21, 2015
- App. Ex. 12 - Referrals to ALC, November 30, 2016, December 16, 2016, and February 24, 2017
- App. Ex. 13 - Feedback Planning Tool, undated
Photograph, undated
Harford May calendar
- App. Ex. 14 - Emails between Cynthia Brown and the Appellant, January 11 and 12, 2017
- App. Ex. 15 - Email from Appellant with attached chat logs, October 9, 2016

App. Ex. 16 - Emails, various dates

App. Ex. 17 - Schedule, February 24, 2017

App. Ex. 18 - Schedule, November 1, 2016

App. Ex. 19 - Formal observation, undated

App. Ex. 20 - *Not Admitted*¹

App. Ex. 20b - Evaluation standards, undated

App. Ex. 21a-c - *Not Admitted*

App. Ex. 22 - Chat logs, November 30, 2016

App. Ex. 23 - *Not Admitted*

App. Ex. 24 - Letter from Baltimore Teachers Union to Appellant, August 18, 2017

App. Ex. 25 - Email from Cynthia Brown to Appellant, November 13, 2015

App. Ex. 26a-c - Sections Summary Reports for Mathematics, Social Studies, Language Arts, date stamped May 1, 2017

App. Ex. 27a-d - Emails from Cynthia Brown, various dates

App. Ex. 28 - *Not Admitted*

App. Ex. 29 - Hand-written letter from Lindsay Vollentine to Appellant, undated; Emails between Lindsay Vollentine and Appellant, May 10-11, 2017

App. Ex. 30 - Emails between Appellant and Cynthia Brown, March 6 and 8, 2017

App. Ex. 31 - Professional Responsibilities Appraisal, sent March 22, 2016

App. Ex. 32a-b - Chat logs, various dates

App. Ex. 33a - The Learning Environment, September 9, 2016

App. Ex. 33b - *Not Admitted*

App. Ex. 34 - Data Link information, various dates

App. Ex. 35a - *Not Admitted*

¹ All documents marked as not admitted were offered but objected to and I sustained the objection but retained the exhibit to preserve the record.

App. Ex. 35b-d - Student Learning Objective (SLO), academic year 2016-2017; Teacher SLO Approval Rubric; Rubric Detail

App. Ex. 36 - Instructional Support/Feedback Tool, March 31, 2017

App. Ex. 37 - Photos, various dates

App. Ex. 38 - *First two pages Not Admitted*; Performance Improvement Plan, April 12, 2016

App. Ex. 39 - *Not Admitted*

City Schools did not submit any exhibits.

Testimony

The Appellant testified and presented the following witnesses:

- Shellae Blackwell;
- Cynthia Harris; and
- Larry Lancaster.

City Schools did not present any witnesses.

STIPULATED FINDINGS OF FACT²

1. The Appellant began her employment with City Schools in 2002.
2. The Appellant taught fourth grade at Harford in academic years 2015-2016 and 2016-2017.
3. Tetra Jackson was the Principal of Harford during academic years 2015-2016 and 2016-2017.
4. Cynthia Brown was the Assistant Principal of Harford during academic years 2015-2016 and 2016-2017.
5. Principal Jackson and Assistant Principal Brown each conducted formal observations of the Appellant during academic year 2015-2016. The Appellant received a score

² These facts were agreed to by the parties at the second telephone prehearing conference on April 3, 2019.

of 2.11 out of a possible 4.0 on the first formal observation by Principal Jackson, and a score of 1.67 out of a possible 4.0 on her second formal observation by Assistant Principal Brown.

6. The Appellant received a score of 27 out of a possible 64 on the Professional Expectations component of the evaluation system for academic year 2015-2016. The evaluation noted deficiencies in the Appellant's communication with colleagues and administrators and deficiencies with the Appellant communicating respectfully and professionally with students. The evaluation noted the Appellant's lack of professionalism in completing tasks on time and attendance problems. The evaluation noted that the Appellant was not conscientious, accurate or reliable in completing tasks, did not adapt to changing priorities and strategies, and did not learn and apply new skills to work more effectively. The evaluation noted that the Appellant did not accurately complete reports or meet deadlines for submitting progress reports and grades.

7. The Appellant received a score of unsatisfactory on the Student Learning Objective (SLO) component of the evaluation for academic year 2015-2016.

8. The Appellant was placed on a Performance Improvement Plan (PIP) in academic year 2015-2016, targeting the area of planning and preparation.

9. The Appellant was rated ineffective for academic year 2015-2016.

10. The Appellant was formally observed twice during academic year 2016-2017. The first formal observation was conducted by Assistant Principal Brown. The Appellant received a score of 1.11 out of a possible 4.0 on the observation. The second formal observation was conducted by Principal Jackson. The Appellant received a score of 1.44 out of a possible 4.0.

11. The Appellant received a score of 27 out of a possible 64 on the Professional Expectations component of the evaluation system for academic year 2016-2017. The evaluation noted deficiencies in the Appellant's communication with colleagues and administrators and

deficiencies with the Appellant communicating respectfully and professionally with students and parents. The evaluation noted the Appellant's lack of professionalism in completing tasks on time and not maintaining a neat and professional appearance. The evaluation noted that the Appellant was not conscientious, accurate or reliable in completing tasks; did not adapt to changing priorities and strategies, did not learn and apply new skills to work more effectively, and did not take responsibility for her role in the work or accept feedback. The evaluation noted that the Appellant did not accurately complete reports or meet deadlines for submitting progress reports and grades or follow school district policies and procedures.

12. The Appellant received a score of unsatisfactory on the SLO component of the evaluation for academic year 2016-2017.

13. The Appellant was placed on a PIP in academic year 2016-2017, targeting the area of highly effective instruction and learning environment.

14. The Appellant was rated ineffective for academic year 2016-2017.

15. The Appellant was issued memoranda of concern and written reprimands in academic year 2016-2017.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. Professional expectations are a set of indicators that measure a teacher's effectiveness with communication, professionalism, professional practice, and district expectations.

2. Formal observations are conducted solely by qualified observers, are announced in advance and include a pre-observation conference between the observer and teacher. Prior to the pre-observation conference, teachers are required to fill out a form to help facilitate discussion at the conference. City Schools Exhibit 7 from Local Board Hearing.

3. Modeling a skill or concept requires a teacher to work through the skill or concept themselves so the student can observe how the teacher approaches the skill or concept, and then gradually moving towards independent practice of the skill or concept by the students.

4. SLO are goals that a teacher sets for her class to improve instruction.

5. The City Schools' annual evaluation for teachers is broken into two parts: 50% is based on student growth and 50% is based on professional practice. 40% of the student growth evaluation is based on the SLO. 35% of the professional practice evaluation is based on formal evaluations. City Schools Exhibit 1 from Local Board Hearing.

6. The Appellant received satisfactory or proficient evaluations prior to the 2015-2016 academic year.

7. On November 14, 2014, the Appellant was placed on a PIP to address concerns in the areas of planning and teaching.

8. At the second formal observation for the 2015-2016 academic year, the observer, Assistant Principal Brown, found the following:

- There was no introduction to the math lesson and no objective was posted or referred to;
- The Appellant did not have the attention of the students, presented the lesson very quickly, and did not ensure that students understood or were following along;
- The students were confused and did not understand what they should be doing in their groups; and
- The Appellant did not redirect certain students that were fighting with pencils.

9. The 2015-2016 PIP called for weekly feedback from administrators after informal observations and weekly feedback from reading and math staff developers. The PIP required the Appellant to submit daily lesson plans to Principal Jackson and to post instructional objectives in the classroom each day. After implementation of the PIP in April 2016, the Appellant failed to timely send Principal Jackson all of her lesson plans and made only minimal progress toward improving her instruction.

10. During the 2015-2016 academic year, Principal Jackson sent memoranda of concern to the Appellant. Teachers are required to return a signed copy of a memorandum of concern to Principal Jackson and are informed of this requirement. During the 2015-2016 and 2016-2017 academic years, the Appellant failed to return a signed copy of the memoranda of concern to Principal Jackson.

11. During the 2015-2016 and 2016-2017 academic years, the Appellant received teaching support, including verbal and written feedback, from the reading coach, math coach, climate and culture coach, as well as Principal Jackson and Assistant Principal Brown. She also received informal observations. The Appellant did not respond to support, feedback and recommendations from the above individuals.

12. During the Appellant's first formal observation for the 2016-2017 academic year, the observer, Assistant Principal Brown, observed the following:

- Students were not clear about the objective, which was read aloud;
- The Appellant did not model academic vocabulary or how to engage with the text;
- The Appellant presented content in only one way;
- The Appellant demonstrated few behavioral expectations for her students and failed to adequately address student misbehavior;

- The Appellant did not ask clarifying questions or provide wait time for students;
- Students were not engaged in discussions with peers and the Appellant did not set up structures for peer collaboration; and
- The classroom was not a safe community for most students and there was little to no interaction between the Appellant and students.

13. During the Appellant's second formal observation for the 2016-2017 academic year, the observer, Principal Jackson, observed the following:

- The Appellant did not model any of the strategies she explained to the class;
- Students were unclear on the strategy used to engage them and did not understand the concept being taught; and
- Students were talking and not engaged during the Appellant's instruction.

14. The purpose of the PIP during the 2016-2017 academic year was to improve the Appellant's instruction and classroom management. After the PIP went into effect, Harford staff conducted reviews of the Appellant that indicated the following:

- The Appellant was not using positive behavioral intervention and supports (PBIS) such as Class Dojo;³
- The Appellant continued to not follow the referral protocol for the Alternative Learning Center (ALC);
- The Appellant did not use the instructional framework for planning instruction and did not consistently and timely submit lesson plans; and
- The Appellant's classroom was unorganized and loud during transitions.

³ Class Dojo is an application used to share reports between parents and teachers, including reports regarding student behavior.

15. On March 28, 2017, Tiffany Lombardi, Educational Associate, conducted a demonstration lesson for the Appellant.

16. During the 2016-2017 academic year, Shannon Lee, Math Coach, held bi-weekly, ninety minute collaborative planning meetings that the Appellant attended. Ms. Lee observed the Appellant was not consistently implementing the strategies and suggestions given to her and saw no improvement during the academic year.

17. During the 2016-2017 academic year, the Appellant failed to submit timely progress reports, report cards, SLO, and documentation necessary for retaining students.

18. During the 2016-2017 academic year, the students in the Appellant's class performed considerably lower on mathematics assessments than did students in other classes. The composition of students in the Appellant's class was not different from the composition of students in other classes.

19. During the 2016-2017 academic year, the Appellant:

- Failed to submit completed substitute plans;
- Failed to appear for a scheduled meeting on time;
- Failed to meet with administrators when directed;
- Addressed a student in a very negative way;
- Failed to follow proper protocol after hearing of a threat of suicide by a student;
- Failed to follow proper protocol regarding a student with a cell phone;
- Failed to pick students up from class on time;
- Exhibited unprofessional behavior in addressing a student and in sending students to the ALC; and
- Failed to return email read receipts.

20. On April 3, 2017, the Appellant received a written reprimand for insubordination for failure to timely submit her professional expectations to Principal Jackson.

21. On or about April 27, 2017, the Appellant received a written reprimand for unprofessional and insubordinate behavior displayed that same day while speaking to a parent and Assistant Principal Brown. The Appellant held a student in detention and the Student's mother arrived to pick her up and began to converse with the Appellant. The Appellant then stated, "this is my time now" and closed the door in the parent's face.

22. On May 10, 2017, the Appellant received a written reprimand for insubordination for failing to meet a number of deadlines established by her supervisors.

DISCUSSION

General Legal Framework

Section 6-201 of the Education Article of the Maryland Annotated Code provides that the county superintendent⁴ "shall . . . [s]uspend [teachers] for cause and recommend them for dismissal in accordance with § 6-202 of this subtitle." Md. Code Ann., Educ. § 6-201(b)(2)(iv) (2018). Section 6-202 of the Education Article provides that "[o]n the recommendation of the county superintendent, a county board may suspend or dismiss a teacher . . . for . . . misconduct in office . . . insubordination . . . incompetency . . . or . . . willful neglect of duty." Md. Code Ann., Educ. § 6-202(a)(1) (Supp. 2018).

Section 602(a)(2)-(4) sets forth the procedure for such removal, including notice, opportunity for a hearing before the county board, in person or by counsel, to bring witnesses to the hearing, and the right to appeal the decision of the county board to the State Board. *Id.*

⁴ In Baltimore City, the Chief Executive Officer of the Baltimore City Board of School Commissioners is the executive officer, secretary, and treasurer of the Board of School Commissioners. Md. Code Ann., Educ. § 4-102 (2018). In all other jurisdictions in Maryland, the county superintendent is the executive officer, secretary, and treasurer of the county board. *Id.*

§ 6-202(a)(2)-(4). The county board may have the proceedings heard first by a hearing examiner. *Id.* § 6-203(a), (b) (2018). Pursuant to COMAR 13A.01.05.03D(1), (2), when a decision is appealed to the State Board, the local board shall transmit the record of the local proceedings with its response to an appeal, including a transcript of the proceedings.

COMAR 13A.01.05.06F sets forth the standard of review in an appeal to the State Board:

F. Certificated Employee Suspension or Dismissal pursuant to Education Article, §6-202, Annotated Code of Maryland.

(1) The standard of review for certificated employee suspension and dismissal actions shall be *de novo* as defined in §F(2) of this regulation.

(2) The State Board shall exercise its independent judgment on the record before it in determining whether to sustain the suspension or dismissal of a certificated employee.

(3) The local board has the burden of proof by a preponderance of the evidence.

(4) The State Board, in its discretion, may modify a penalty.

Accordingly, on behalf of the State Board and on the record before me, I am exercising my independent judgment and discretion to determine whether the Local Board established by a preponderance of the evidence that the Appellant engaged in incompetency, insubordination, misconduct in office and willful neglect of duty.

Incompetency

The statute governing teacher discipline does not define the term incompetency. Black's Law Dictionary defines "incompetence" as the "quality, state, or condition of being unable or unqualified to do something." *Black's Law Dictionary* (11th ed. 2019). Merriam-Webster defines "incompetent" as "not legally qualified," "inadequate to or unsuitable for a particular purpose," "lacking the qualities needed for effective action" and "unable to function properly." <https://www.merriam-webster.com/dictionary/incompetent> (last visited June 28, 2019).

The State Board makes the final decision in all appeals.⁵ COMAR 13A.01.05.09. The State Board has decided in prior written opinions that a local board must establish the following criteria to dismiss a teacher on the ground of incompetency: (1) the evaluation process was fair and impartial; (2) the teacher had serious teaching deficiencies; and (3) the teacher was provided adequate assistance to remedy those deficiencies. *Sammarco v. Bd. of Educ. of Prince George's County*, MSBE Op. No. 04-13 (2004) (citations omitted). As the agency tasked with final decision making authority in matters involving teacher discipline, the State Board's interpretation of the requirements of the statute are to be given weight. *See, e.g., Maryland Ins. Com'r v. Central Acceptance Corp.*, 424 Md. 1, 16 (2011). Therefore, I analyze the evidence to see if it is consistent with the standard announced by the State Board in its prior cases. Based on that analysis, I conclude that the Appellant's actions constituted incompetency.

(1) Fair and Impartial Evaluation Process

City Schools conducts a yearly teacher effectiveness evaluation pursuant to written criteria established by City Schools. City Schools Exhibit 1 from Local Board Hearing. Generally, City Schools rates each teacher for effectiveness based on an evaluation that takes into account professional practice ratings (50%) and student growth ratings (50%). The professional practice rating consists of classroom observations (40%) and professional expectations measures (10%).⁶

The State Board has by regulation established minimum requirements for the evaluation of professionally certificated personnel, which provide:

A. General Standards.

(1) An evaluation shall be based on written criteria established by the local board of education, including but not limited to scholarship, instructional

⁵ Opinions of the Maryland State Board of Education are available at <http://archives.marylandpublicschools.org/MSDE/stateboard/legalopinions/index.html>.

⁶ The teacher effectiveness evaluation appears to have remained the same for the 2015-2016 and 2016-2017 academic years.

effectiveness, management skills, professional ethics, and interpersonal relationships.

(2) An evaluation shall provide, at a minimum, for an overall rating.

(3) An overall rating that is not satisfactory or better is considered unsatisfactory.

(4) An evaluation shall be based on at least two observations during the school year.

(5) An unsatisfactory evaluation shall include at least one observation by an individual other than the immediate supervisor.

(6) The written evaluation report shall be shared with the certificated individual who is the subject of the evaluation.

(7) The certificated individual shall receive a copy of and sign the evaluation report.

(8) The signature of the certificated individual does not necessarily indicate agreement with the evaluation report.

(9) An evaluation shall provide for written comments and reactions by the individual being evaluated, which shall be attached to the evaluation report.

COMAR 13A.07.04.02A.

With respect to the City Schools evaluation process, qualified observers conduct the classroom observations, which occur two times per school year. City Schools rates teachers on a scale of one to four for each of nine components. Each formal observation results in a score which is the average of the score received for the nine components. The nine components are written and distributed or made available to all teachers.

The professional expectations measure is intended to measure non-instructional professional responsibilities and includes sixteen indicators that are grouped into the following four competencies: communication, professionalism, professional practice, and district expectations. Each indicator is rated on a scale of one to four. The sixteen indicators are written and distributed or made available to all teachers.

In short, the City Schools' professional practice evaluation process is consistent with the regulatory requirements governing the evaluation of professionally certificated personnel such as the Appellant. COMAR 13A.07.04.02A. For both classroom observations and professional expectations, City Schools conducted two evaluations of the Appellant each year. City Schools based the evaluations on written components, and the evaluations provided an overall rating for the Appellant. Assistant Principal Brown, who is not the Appellant's immediate supervisor, conducted one of the observations during both academic years.

At the hearing, the Appellant took issue with one informal observation that took place on May 27, 2016 with Principal Jackson observing. She testified that the day in question was "fun day," a day in which the children play games outside and teachers are not expected to have instruction. I give the Appellant's testimony regarding this informal observation little weight. I note that the informal evaluation was not part of City Schools' case before the hearing examiner. The evaluation sheet made part of the record by the Appellant has the top cut off, so the date is not visible. Even accepting her testimony that the evaluation took place on "fun day," there is nothing on the document itself to show that she was unfairly penalized in the evaluation because the evaluation took place on "fun day." In fact, there is no feedback from Principal Jackson evident in the document the Appellant submitted into the record.

The Appellant also argued that Principal Jackson failed to complete a pre-observation sheet for the formal observation conducted on February 24, 2017. The Appellant's testimony is inconsistent with Principal Jackson's testimony at the Local Board Hearing. There, Principal Jackson testified on cross examination that she typically prepares the pre-observation form in advance but did not do so in advance of this particular observation. She could not recall why. However, on direct examination, she had testified that the Appellant had not provided her with the requisite documents so that she could complete the pre-observation form. In any event, the

completed pre-observation sheet was made part of the record from the Local Board Hearing, so I do not credit the Appellant's testimony that Principal Jackson failed to complete it. Even if she failed to complete the pre-observation sheet until the day of the observation, the Appellant did not explain why this fact made that particular observation unfair or impartial.

With respect to the professional expectations component of the annual review, the Appellant took issue with one of her ratings for professionalism.⁷ For the 2015-2016 academic year, Principal Jackson rated the Appellant a two in the area of "maintains a neat and appropriate appearance" and commented that the Appellant occasionally "acts and/or dresses in an inappropriate manner and violates boundaries." The Appellant's witnesses all testified to her appearance in school, and that they did not see her dress in an inappropriate manner. Even accepting their testimony that none of them witnessed the Appellant dressed inappropriately, the Appellant has not demonstrated, on the basis of their testimony alone, that Principal Jackson evaluated the Appellant in an unfair way. None of the Appellant's witnesses are qualified observers and therefore are not able to render an opinion as to whether the evaluation was conducted properly. Further, their testimony does not establish that the Appellant never acted or dressed in an inappropriate manner or violated boundaries. For these reasons, I give their testimony little weight.

The Appellant also submitted into evidence an instructional support/feedback tool that Ms. Lee drafted after an informal observation on March 31, 2017. The Appellant pointed to the inconsistency between this document and Ms. Lee's testimony from the Local Board Hearing, specifically that Ms. Lee's testimony was that for this informal observation she had not observed any evidence of math notebooks being utilized as she had requested, whereas the document notes under the "Strengths" column that "Students are in the habit of writing review notes in their math

⁷ As noted above, each of the four professional expectations competencies is further broken down into four indicators, for a total of sixteen indicators that make up a teacher's rating on this part of the evaluation.

journal.” Ms. Lee’s testimony from below was that she had requested that the Appellant require her students to use a math notebook for reference so they can copy questions and keep a running log of their notes to help facilitate their explanation of how they arrived at their answer. Although the document submitted into evidence does state that students are writing notes in their math journal, it does not specify what they are writing. In other words, it does not prove that Ms. Lee’s testimony at the Local Board Hearing was false. It is entirely possible that the Appellant’s students were writing review notes in their journal but were not doing so in the manner that Ms. Lee had suggested. With respect to the substance of the informal evaluation itself, the Appellant did not argue that it was unfair.

In summary, the documents submitted by the Appellant at the hearing and her testimony are not sufficient enough to demonstrate that the observation process, or the evaluation process generally, was unfair.

(2) Serious Teaching Deficiencies

The evaluations, both formal and informal, illustrate the Appellant had serious teaching deficiencies during the 2015-2016 and 2016-2017 academic years.

During the 2015-2016 academic year, the Appellant received a score of 2.11 out of a possible 4.0 on the first formal observation by Principal Jackson, and a score of 1.67 out of a possible 4.0 on her second formal observation by Assistant Principal Brown. During the 2016-2017 academic year, the Appellant received a score of 1.11 out of a possible 4.0 on the first formal observation by Assistant Principal Brown, and a score of 1.44 out of a possible 4.0 on the second formal observation by Principal Jackson. In part on the basis of these evaluations, City Schools rated the Appellant as ineffective for both the 2015-2016 and 2016-2017 academic years.

At the second formal observation for the 2015-2016 academic year, the observer, Assistant Principal Brown, found the following: there was no introduction to the math lesson and no

objective was posted or referred to; the Appellant did not have the attention of the students, presented the lesson very quickly and did not ensure that students understood or were following along; the students were confused and did not understand what they should be doing in their groups; and the Appellant did not redirect certain students that were fighting with pencils.

City Schools placed the Appellant on a PIP in academic year 2015-2016 targeting the areas of planning and preparation. During the next formal observation, the first during the 2016-2017 academic year, the observer, Assistant Principal Brown, observed the following: students were not clear about the objective, which was read aloud; the Appellant did not model academic vocabulary or how to engage with the text; the Appellant presented content in only one way; the Appellant demonstrated few behavioral expectations for her students and failed to adequately address student misbehavior; the Appellant did not ask clarifying questions or provide wait time for students; students were not engaged in discussions with peers and the Appellant did not set up structures for peer collaboration; and the classroom was not a safe community for most students and there was little to no interaction between the Appellant and students.

During the Appellant's second formal observation for the 2016-2017 academic year, the observer, Principal Jackson, observed the following: the Appellant did not model any of the strategies she explained to the class; students were unclear on the strategy used to engage them and did not understand the concept being taught; and students were talking and not engaged during the Appellant's instruction.

After the second formal evaluation for the 2016-2017 academic year, City Schools placed the Appellant back on a PIP in March 2017 targeting the areas of instruction and classroom management. Subsequently, City Schools conducted informal reviews that indicated the following: the Appellant was not using PBIS such as Class Dojo; the Appellant continued to not follow the referral protocol for the ALC; the Appellant did not use the instructional framework

for planning instruction and did not consistently and timely submit lesson plans; and the Appellant's classroom was unorganized and loud during transitions.

The Appellant contested City Schools' assertion that she failed to follow the referral protocol for the ALC, failed to properly use Class Dojo, and failed to timely submit grades. The Appellant submitted what she said were completed referral forms for the ALC from the 2016-2017 academic year. However, there is no indication on the documents that the ALC ever received the forms. Thus, I give these documents no weight. With respect to Class Dojo, she submitted screenshots of the messenger component of Class Dojo. She argued that the screenshots demonstrate her use of Class Dojo. However, these documents are not sufficient for me to conclude that she was using Class Dojo for PBIS as required by City Schools. With respect to the submission of grades, the Appellant submitted printouts from Infinite Campus, the electronic system used by teachers to input grades. She asserted that certain students were transfer students, which is why there are no grades showing during certain quarters. I do not find the documents to be sufficiently reliable to conclude that the Appellant submitted her grades in a timely manner.

In addition to the formal and informal evaluations that demonstrate the Appellant's serious teaching deficiencies in the areas of instruction and classroom management, the Appellant engaged in other behavior during the 2016-2017 academic year that is indicative of serious teaching deficiencies: addressed a student in a very negative way; failed to follow proper protocol after hearing of a threat of suicide by a student; failed to follow proper protocol regarding a student with a cell phone; failed to pick students up from class on time; and exhibited unprofessional behavior in addressing a student and in sending students to the ALC. Finally, the Appellant failed to meet a number of deadlines during the 2016-2017 academic year, including deadlines to submit progress reports, report cards, SLO and documentation necessary for retaining students.

Although geared more towards out-of-classroom indicators, the professional expectations evaluations also demonstrate that the Appellant had serious teaching deficiencies. The Appellant received a score of 27 out of a possible 64 on the Professional Expectations component of the evaluation system for academic year 2015-2016. The evaluation noted deficiencies in the Appellant's communication with colleagues and administrators and deficiencies with the Appellant communicating respectfully and professionally with students. The evaluation noted the Appellant's lack of professionalism in completing tasks on time and attendance problems. The evaluation noted that the Appellant was not conscientious, accurate or reliable in completing tasks, did not adapt to changing priorities and strategies, and did not learn and apply new skills to work more effectively. The evaluation noted that the Appellant did not accurately complete reports or meet deadlines for submitting progress reports and grades.

The Appellant received a score of 27 out of a possible 64 on the Professional Expectations component of the evaluation system for academic year 2016-2017. The evaluation noted deficiencies in the Appellant's communication with colleagues and administrators and deficiencies with the Appellant communicating respectfully and professionally with students and parents. The evaluation noted the Appellant's lack of professionalism in completing tasks on time and not maintaining a neat and professional appearance. The evaluation noted that the Appellant was not conscientious, accurate or reliable in completing tasks, did not adapt to changing priorities and strategies, did not learn and apply new skills to work more effectively, and did not take responsibility for her role in the work or accept feedback. The evaluation noted that the Appellant did not accurately complete reports or meet deadlines for submitting progress reports and grades or follow school district policies and procedures.

Despite all of the above, the Appellant argued that the results from the i-Ready tests demonstrate that she was competent. However, Principal Jackson testified at the hearing below

that the i-Ready assessment is not reflective of a specific teacher's competence; rather, the i-Ready tests progress over a longer time period and a student's scores may reflect skills learned in other grades and with the assistance of other teachers. Principal Jackson contrasted the i-Ready results with the results from unit assessments, which are given to students after the conclusion of unit instruction. She indicated that unit assessment results are a much better indicator of a teacher's competence. The Appellant did not explain why she felt that i-Ready results are a better indicator than unit assessment results, and for that reason I credit Principal Jackson's testimony from the Local Board Hearing.

All of the above behaviors demonstrate that the Appellant exhibited serious deficiencies in classroom management that can be traced to her failure to adequately plan and implement lesson plans. The record also amply demonstrates that the Appellant had serious deficiencies related to classroom instruction that were compounded by the serious deficiencies in classroom management. Finally, the Appellant's failure to meet deadlines is indicative of serious teaching deficiencies in the areas of planning and preparation.

(3) *Adequate Assistance to Remedy Deficiencies*

The record demonstrates that City Schools provided adequate assistance to the Appellant to help remedy the serious teaching deficiencies identified above. The 2015-2016 PIP called for weekly feedback from administrators after informal observations and weekly feedback from reading and math staff developers. The PIP required the Appellant to submit daily lesson plans to Principal Jackson and to post instructional objectives in the classroom each day. After implementation of the PIP in April 2016, the Appellant failed to timely send Principal Jackson all of her lesson plans and made only minimal progress toward improving her instruction.

The Appellant also received teaching support, including verbal and written feedback, from the reading coach, math coach, climate and culture coach, as well as Principal Jackson and

Assistant Principal Brown. She also received informal observations. The Appellant did not respond to support, feedback and recommendations from the above individuals.

During the 2016-2017 academic year, Tiffany Lombardi, Educational Associate, conducted a demonstration lesson for the Appellant on March 28, 2017. Ms. Lee also held bi-weekly, ninety minute collaborative planning meetings that the Appellant attended. Ms. Lee observed that the Appellant was not consistently implementing the strategies and suggestions given to her and saw no improvement during the academic year.

On the basis of the above evidence, I conclude that City Schools provided adequate assistance to the Appellant to remedy the serious teaching deficiencies it first identified during the 2015-2016 academic year. The record shows that the Appellant did not respond to feedback received during the 2015-2016 and 2016-2017 academic years. In fact, her scores on the 2016-2017 formal observations were both lower than the lowest score from the 2015-2016 formal observations. Additionally, her Professional Expectations score remained the same in 2016-2017 as it was in 2015-2016.

Insubordination

The statute governing teacher terminations does not define the term insubordination. Black's Law Dictionary defines the term as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." *Black's Law Dictionary* (11th ed. 2019). Merriam-Webster defines insubordinate as "disobedient to authority." The State Board has defined insubordination as the failure to follow direct instructions from a supervisory employee. *Gordon v. Prince George's County Bd. of Educ.*, MSBE Op. No. 06-12 (2006).

Based on my review of the record, I conclude that the Appellant engaged in insubordinate behavior on multiple occasions during the 2015-2016 and 2016-2017 academic years.

The record reflects the Appellant engaged in multiple instances of disobedience to her supervisors such as Principal Jackson and Assistant Principal Brown. On November 22, 2016, Assistant Principal Brown sent the Appellant a memo regarding an interaction that occurred between them that day. City Schools Exhibit 28 from Local Board Hearing. The Appellant had students in lunch detention when Assistant Principal Brown inquired as to how much longer the Appellant would keep the children in detention. The memo states the Appellant responded inappropriately by escalating her voice and informing Assistant Principal Brown that “it is my lunch.” After Assistant Principal Brown asked the students to leave the classroom so she could talk to the Appellant, the Appellant walked away from her and left the classroom, indicating “I don’t have time for this.” The Appellant similarly walked away from Assistant Principal Brown on February 23, 2017, when she attempted to instruct the Appellant that she needed to follow the ALC referral requirements, and also shut the door in Assistant Principal Brown’s face on that occasion. After Assistant Principal Brown brought the students back to the Appellant’s classroom so she could properly refer them to the ALC, the Appellant sent the students out of the classroom for a second time without following the referral protocol as instructed. On April 27, 2017, the Appellant received a written reprimand for unprofessional and insubordinate behavior displayed that same day while speaking to a parent. When Assistant Principal Brown attempted to speak with the Appellant about her behavior on that occasion, the Appellant did not respond to her request to come to the door of her classroom and open it so that Assistant Principal Brown could speak with her regarding the incident.

The record also reflects the Appellant willfully disregarded instructions regarding her obligation to timely submit documents and meet other obligations imposed by her supervisors. On September 21, 2016, Assistant Principal Brown sent a third notice of incomplete substitute plans to the Appellant. On March 8, 2017, Assistant Principal Brown notified the Appellant that

she had failed to comply with her directive to meet regarding the Appellant's PIP, and that she had also failed to meet with a representative from Class Dojo to assist her with implementation of that application. On April 3, 2017, Assistant Principal Brown sent a written reprimand memo to the Appellant because she failed to meet the deadline for submitting her professional expectations. On May 10, 2017, the Appellant received a written reprimand for insubordination for failing to meet the deadline for submission of a grade tracker as well as retention forms and personal learning plans for students at risk of failing. On May 12, 2017, Assistant Principal Brown sent the Appellant an email informing her that she had failed to meet the deadline for submission of student progress reports.

In her defense, the Appellant stated that Assistant Principal Brown interpreted every interaction with her as insubordination. However, she did not refute any of the above interactions, all of which fit the definition of insubordination. Therefore, I conclude City Schools has demonstrated that the Appellant engaged in insubordinate behavior on multiple occasions during the 2015-2016 and 2016-2017 academic years.

Misconduct

The statute governing teacher discipline does not define the term "misconduct in office." In *Resetar v. State Bd. of Educ.*, 284 Md. 537, *cert. denied*, 444 U.S. 838 (1979), the Court of Appeals was presented with the question of whether the State Board properly terminated a teacher for misconduct in office based on his use of a racially derogatory term. In resolving that question in favor of the State Board, the Court looked to the Black's Law Dictionary of "misconduct," which at that time defined the term as a "transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness." The

Court also looked to how Black's Law Dictionary defined "misconduct in office," which at that time was "any unlawful behavior by a public figure in relation to the duties of his office, willful in character." *Id.* at 561. The Black's Law Dictionary definition of misconduct in the current eleventh edition, published in 2019, is largely similar to the definition the Court cited favorably in *Resetar*. The current definition of "misconduct in office" cross-references to the definition for "official misconduct": "A public officer's corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance." Black's Law Dictionary (11th ed. 2019).

The record is replete with conduct that fits the definitions of misconduct from above. For example, many of the same instances of malfeasance or misfeasance supporting the conclusion that the Appellant was insubordinate also support the conclusion that the Appellant committed misconduct in office. Both the February 22 and 23, 2017 incidents involved situations where the Appellant yelled at her students in front of other classmates. On April 27, 2017, the Appellant spoke disrespectfully to a parent and closed her classroom door in the parent's face while the parent was attempting to have a conversation with her. Similarly, many of the same instances of nonfeasance supporting the conclusion that the Appellant was insubordinate also support the conclusion that the Appellant committed misconduct in office. For example, during the 2016-2017 academic year, the Appellant failed to submit timely progress reports, report cards, SLO and documentation necessary for retaining students.

On the basis of the above conduct, none of which was refuted by the Appellant, I conclude that City Schools has proved that the Appellant engaged in misconduct in office.

Willful Neglect of Duty

The statute governing teacher discipline does not define the term "willful neglect of duty." Black's Law Dictionary defines "willful neglect" as "intentional or reckless failure to carry out a legal duty." Black's Law Dictionary (11th ed. 2019). The State Board has interpreted

“willful neglect of duty” as occurring “when the employee has willfully failed to discharge duties which are regarded as general teaching responsibilities.” *Baylor v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 13-11 (2013).

The most obvious example of willful neglect of duty that is evident from the record is the Appellant’s failure to timely meet deadlines for submission of academic records such as progress reports, reports cards, SLO and retention documentation. For example, the Professional Expectations component of the Appellant’s 2015-2016 and 2016-2017 evaluations noted that the Appellant did not accurately complete reports or meet deadlines for submitting progress reports and grades. Additionally, after being placed on a PIP in March 2017, the Appellant failed to perform general teaching responsibilities by not using PBIS such as Class Dojo, not following the referral protocol for the ALC, and not using the instructional framework for planning instruction. On April 3, 2017, the Appellant received a written reprimand for insubordination for failure to timely submit her professional expectations to Principal Jackson. During the Appellant’s testimony at the Local Board Hearing, she admitted to submitting her SLO, lesson plans and grades late. She also admitted to not reporting a suicide threat from a student appropriately.

There is no doubt based on my consideration of the above facts that the Appellant willfully failed to discharge her duties on multiple occasions during the 2015-2016 and 2016-2017 academic years. There is also no doubt that the above responsibilities are general teaching responsibilities that every teacher is expected to comply with.

The Appellant’s Contentions

The Appellant argued the hearing examiner erred in finding that City Schools’ witnesses testified credibly. However, she did not identify any specific testimony that she sought to rebut with the exception of the testimony discussed above. She also did not explain in any detail or

provide evidence of why she believed that City Schools had pre-determined that she should be terminated. Without additional testimony or evidence on this issue, I see no reason to disturb the credibility determinations made by the hearing examiner based on his evaluation of the witnesses at the Local Board Hearing.

Many of the documents the Appellant submitted into evidence at the hearing pertained to her requests for leave, which she argued she submitted in accordance with City Schools' policy. However, the Appellant's use of leave was not a major issue in the Local Board Hearing, and City Schools did not argue that the Appellant's improper use of leave is part of the basis for its recommendation that the Appellant be dismissed for incompetence, insubordination, misconduct, and willful neglect of duty.

The Appellant also presented the testimony of three witnesses: Shellae Blackwell, Cynthia Harris, and Larry Lancaster. Ms. Blackwell and Ms. Harris taught at Harford with the Appellant. Both testified to their interactions with and observations of the Appellant at Harford. However, neither are qualified observers and they did not formally or informally observe the Appellant. For that reason, I give their testimony little weight. Mr. Lancaster was a behavioral specialist at Harford and his duties included keeping the hallways clear and redirecting students who were asked to leave the classroom. He was only at Harford for the 2015-2016 academic year and was not able to testify with certainty regarding the Appellant's compliance with the ALC referral protocol. Like Ms. Blackwell and Ms. Harris, he is not a qualified observer and did not observe the Appellant. For these reasons, I give his testimony regarding the Appellant's classroom management little weight.

In short, the additional evidence and testimony presented by the Appellant is not sufficient to tip the scales in her favor.

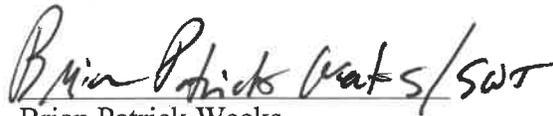
CONCLUSION OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that City Schools properly terminated the Appellant's employment for incompetence, insubordination, misconduct, and willful neglect of duty. Md. Code Ann., Educ. § 6-202(a) (Supp. 2018).

PROPOSED ORDER

I **PROPOSE** that the State Board of Education uphold the decision of the Baltimore City Board of School Commissioners to terminate the Appellant's employment as a certificated teacher for incompetence, insubordination, misconduct, and willful neglect of duty.

July 8, 2019
Date Decision Issued


Brian Patrick Weeks
Administrative Law Judge

BPW/dlm
#179743

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this Proposed Decision has the right to file written exceptions within 15 days of receipt of the decision; parties may file written responses to the exceptions within 15 days of receipt of the exceptions. Both the exceptions and the responses shall be filed with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

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