

JEROME A. NICHOLAS, III

Appellant

v.

BALTIMORE CITY BOARD  
OF SCHOOL  
COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-05

## OPINION

### INTRODUCTION

Jerome Nicholas, III (“Appellant”) appeals the decision of the Baltimore City Board of School Commissioners (“local board”) terminating him from his position as a School Bus Aide. The local board filed a Memorandum in Response to Appeal. The Appellant responded to the Memorandum, and the local board filed a reply.

### FACTUAL BACKGROUND

The Appellant began his employment with Baltimore City Public Schools (“BCPS”) on January 14, 2002. At the time of the Appellant’s termination, he held the position of School Bus Aide. (Motion, Ex. 3 – Grant-Skinner Letter). Between September 2016 and May 2019, while in this position, the Appellant received multiple reprimands and disciplinary actions for failing to comply with the rules and responsibilities of his job.

On September 22, 2016, Operations Supervisor Camille Williams issued a written reprimand to the Appellant for failing to report to his assigned shift and for failing to communicate his absence. (Motion, Ex. 3 – Williams 2016 Letter).

During a November 7, 2017 observation, La Rae Taylor, Safety Trainer for BCPS, noted that the Appellant failed to conduct safety checks on the students, did not assist students entering the bus, did not respond to a parent’s concerns, failed to follow safety protocols when placing a child in a car seat, used his cell phone, and appeared to fall asleep during the ride.<sup>1</sup> (Motion, Ex. 3 – Grant 2018 Email).

At the beginning of the 2018-2019 school year, Pupil Transportation issued to the Appellant five sets of uniforms. The Appellant had also received a September 8, 2018 memo which stated in part that “Bus staff is to be dressed in proper uniform daily,” and “Any deviation

---

<sup>1</sup> The record is unclear as to how this incident was resolved. BCPS provided an email outlining the concerns raised by the safety observation and referencing a termination letter. However, no additional evidence, including the referenced termination letter, was submitted to indicate how the matter was handled after the Appellant was apparently removed from his assigned bus in 2017.

of this directive will constitute insubordination and will result in disciplinary action.” (Motion, Ex. 3 – Grant-Skinner 2019 Letter).

On September 21, 2018, BCPS received a complaint that the Appellant had failed to properly secure a student in their seat with a harness as a required by their Individualized Education Program (IEP). (Motion, Ex. 3 – Jones 2018 Letter).

On November 7, 2018, a substitute bus aide who was filling in for the Appellant was unable to complete the student attendance sheet because the Appellant had not kept accurate and updated attendance sheets as required by his job responsibilities. On November 26, 2018, it was also reported that the Appellant was watching movies on his cell phone during his bus route instead of monitoring the students as required by his job. The students were able to hear the movies which contained foul language. Operations Supervisor Gloria Holt issued a memo to the Appellant highlighting the two incidents and stating, “Please be aware that any further neglect of duty will result in disciplinary actions.” (Motion, Ex. 3 – Holt 2018 Memo).

On December 12, 2018, the Appellant attended a *Loudermill* hearing<sup>2</sup> at which the September 21, November 7, and November 26 incidents were discussed. The Appellant at the hearing denied these allegations. BCPS found the Appellant’s response unacceptable and determined his behavior constituted “serious misconduct.” The Appellant was issued a ten-day suspension. The suspension was served December 18, 2018 through December 31, 2018. (Motion, Ex. 3 – Jones 2018 Letter).

On January 7, 2019, Acting Bus Supervisor, Patricia McCall, conducted a formal observation of the Appellant. On that day, the Appellant arrived almost an hour late to work, causing his bus to be delayed. The Appellant also ate his lunch onboard, which was prohibited due to student allergy concerns. In addition, the Appellant directed the new bus driver to drop students off at unauthorized places, failed to follow all attendance protocols, used his cell phone 90% of the time, and did not setup tie down straps for a student in a wheelchair, among other concerns. The observation report included nine areas for improvement, including monitoring students and wearing the uniform daily. (Motion, Ex. 3 – McCall 2019 Report).

In response to this observation, a second *Loudermill* hearing was held on January 11, 2019. As a result of that hearing, the Director of the Office of Pupil Transportation, Jacinta Hughes, issued a Written Warning to the Appellant. The Warning found the Appellant’s response to the concerns (denial and/or deflection) to be unacceptable. The Appellant was warned “...that further occurrences of this nature will result in additional disciplinary actions up to and including a recommendation seeking your dismissal from [BCPS] for willful neglect of duty.” (Motion, Ex. 3 – Hughes 2019 Letter).

In April 2019, an issue arose regarding the Appellant’s failure to wear his work uniform. On April 3, 2019, BCPS posted a memo from the Transportation Director stating “Effective Tuesday, April 23, 2019 all staff is [*sic*] expected to be in uniform daily.” On April 5, 2019, Operations Manager Gloria Holt sent an email, including the memo, to all employees. The email stated in part, “Please be mindful that the attached memo is a directive from Director Jacinta Hughes and failure to comply with this memorandum will constitute insubordination.” (Motion,

---

<sup>2</sup> A *Loudermill* hearing, also known as a pre-termination hearing, is a conference where employees are given notice of the charges against them and provided with an opportunity to respond. The conference is named for the Supreme Court’s decision in *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).

Ex. 1). The Appellant reported to work April 23-25 out of uniform, prompting his third *Loudermill* hearing of the 2018-2019 school year. (Motion, Ex. 4).

By letter dated May 6, 2019, BCPS Chief Human Capital Officer Jeremy Grant-Skinner informed the Appellant that his employment was being terminated effective May 7, 2019. The letter stated the Appellant's conduct constituted "insubordination, willful neglect of duty, and misconduct[.]" Mr. Grant-Skinner cited the uniform violations, the behavior warranting the ten-day suspension in December 2018, and the behavior resulting in the January 15, 2019 Written Warning as actions supporting the Appellant's termination. (Motion, Ex. 1).

On May 13, 2019, the Appellant appealed his termination to the local board. (Motion, Ex. 2). On July 6, 2019, after reviewing evidence submitted by the parties, a hearing examiner issued a recommendation that the local board deny the Appellant's appeal because the Appellant had committed several incidents of misconduct. (Motion, Ex. 4). On August 27, 2019, the local board voted and accepted the hearing examiner's recommendations. (Motion, Ex. 7).

This appeal followed.

## STANDARD OF REVIEW

A non-certificated employee is entitled to administrative review of a termination pursuant to § 4-205(c) of the Education Article. See *Homesley v. Prince George's County Bd. of Educ.*, MSBE Op. No. 14-56 (2014). The decision of the local board is presumed to be prima facie correct and the State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06(A). In order for a decision to be considered arbitrary or unreasonable, it must either be "contrary to sound educational policy[.]" or such that a "reasoning mind could not have reasonably reached the conclusion of the local board[.]" COMAR 13A.01.05.06(B). A decision may be illegal if it is "an abuse of discretionary powers[.]" COMAR 13A.01.05.06(C).

## LEGAL ANALYSIS

The Appellant files this appeal on the basis that the local board's decision to terminate him was "arbitrary, unreasonable and a total abuse of discretion." (Appeal). To support this position, the Appellant contends the local board inappropriately used old or resolved complaints to build a case, and unfairly disciplined him for the uniform incident. The Appellant failed to provide any evidence to support these claims. We address these arguments in turn.

### *Reliance on Prior Disciplinary Incidents*

The Appellant argues that the termination letter did not include the September 22, 2016 and November 7, 2017 incidents as reasons for his termination, thus the hearing examiner for the local board should not have included them as a basis for termination. This Board need not address this issue given the abundance of facts in evidence from the 2018-2019 school year to support the local board's decision, as discussed below.

The Appellant also argues that the September and November 2018 incidents, and the resulting ten-day suspension, should not be included as a basis for the Appellant's termination. The Appellant maintains that since he served the ten-day suspension in December, these matters are resolved and should not be a part of the current appeal. The Appellant has not cited any legal

authority to support this position. Certainly, an employer may consider the full discipline history of an employee when determining consequences for continuing employer misconduct. The BCPS Employee Handbook even states, “Corrective action at [BCPS] is progressive. That is, action taken in response to a rule infraction or violation of standards typically increases in seriousness until the infraction or violation is corrected or such action requires more significant disciplinary action.” (Motion, Ex. 3 – Employee Handbook, p. 34). This approach gives the employee the opportunity to correct their conduct (when warranted), but also ensures that employees are not allowed to continue committing infractions, however minor, indefinitely. Thus, the local board did not err in considering past disciplinary incidents when deciding the Appellant’s appeal of termination.

### *Uniform Infraction*

The Appellant argues that the real basis of his termination is the complaint about uniforms, and he disputes that he violated the uniform policy. The Appellant maintains that the uniform policy changed in April 2019, that he was not properly informed of this change, and that he complied with the uniform policy within a couple of days of learning of it. The Appellant has not produced any evidence to support his position.

The record evidence supports the position of the local board. First, BCPS supplied the Appellant with uniforms at the start of the school year. (Motion, Ex. 3 – Grant-Skinner 2019 Letter). Second, BCPS sent out a memo on September 8, 2018 reminding employees to be in proper uniform. (Motion, Ex. 3 – Grant-Skinner 2019 Letter). Third, the January 2, 2019 observation noted that the Appellant needed to wear his uniform daily. (Motion, Ex. 3 – McCall 2019 Report). Finally, BCPS sent out a memo specifically on the uniform policy, which was posted and emailed to employees. (Motion, Ex. 1). The Appellant does not dispute any of these facts.

Rather, the Appellant argues that the posted memo was hard to see amidst all the other papers on the bulletin board. However, the memo was also emailed to him. The Appellant argues that as a School Bus Aide he had no reason to check his employee email account. The BCPS Employee Handbook clearly states, “Every employee should monitor his or her email account regularly... Employees will be held accountable for knowing and acting upon information sent via email.” (Motion, Ex. 3 – Employee Handbook, p. 30). The Board does not give weight to the Appellant’s excuses. Even seen in the best light, that the policy truly did change in early April, the Appellant was not in uniform from the date of the email until April 25, 2019 – a couple days following a verbal warning. Although the Appellant maintains he was in uniform the two weeks prior to his termination, it does not change the fact that he was out of uniform through April 25<sup>th</sup>.

### *Arbitrary, Unreasonable, or Illegal Decision*

As stated above, the State Board can only overturn a local board decision if it is arbitrary, unreasonable, or illegal. The Appellant failed to satisfy this burden. The record shows the Appellant had a history of not complying with the rules and responsibilities of his position. During the 2018-2019 school year, he was involved in five documented infractions. Even after serving a ten-day suspension in December 2018 and receiving a subsequent Written Warning in January 2019, the Appellant still failed to follow the rules of his job. While the Appellant may feel that his termination is unnecessarily harsh or unfair, the decision of the local board is certainly well within reason and its discretion.

CONCLUSION

For all of the foregoing reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

Signatures on File:

\_\_\_\_\_  
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

Absent:  
Warner I. Sumpter  
President

January 28, 2020