

A [REDACTED] S [REDACTED]

Appellant,

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-12

OPINION

INTRODUCTION

The Appellant appeals the decision of the Prince George's County Board of Education ("local board") terminating him from his position with Prince George's County Public Schools ("PGCPS") as a barbering instructor for misconduct in office based on his inappropriate communications with a high school student who attended a private school.

We transferred the case pursuant to COMAR 13A.01.05.07(A)(1)(b) to the Office of Administrative Hearings ("OAH") for review by an Administrative Law Judge ("ALJ"). On October 28, 2019, the ALJ issued a Proposed Decision recommending that the State Board uphold the local board's decision terminating the Appellant from employment.

The Appellant did not file any exceptions to the ALJ's Proposed Decision.

FACTUAL BACKGROUND

The factual background in this case is set forth in the ALJ's proposed decision, Stipulated Finding of Fact, pp.3-7 and Findings of Fact, p.7.

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.01.05.06F.

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).

ANALYSIS

Based on a preponderance of the evidence, the ALJ determined that the Appellant committed misconduct in office based on his inappropriate communications with a high school student who attended a private school. Specifically, the ALJ found that the Appellant's various communications with the student on social media and texts, which led to an intimate relationship between the two, violated several provisions of PGCPS Administrative Procedure 4128 – *Dating and Inappropriate relationships Among Students and Employees, Independent Contractors, and Volunteers*. We have reviewed the record and concur with the conclusions of the ALJ.

CONCLUSION

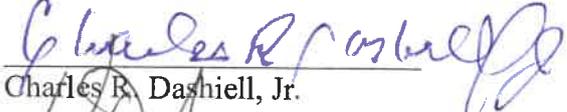
We agree with the ALJ's assessment that the record in this case supports the local board's termination of the Appellant from his teaching position on the grounds of misconduct in office. We, therefore, adopt the ALJ's Proposed Decision affirming the local board.


Warner I. Sumpter
President

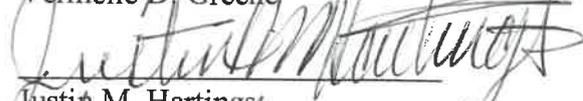

Jean C. Halle
Vice-President

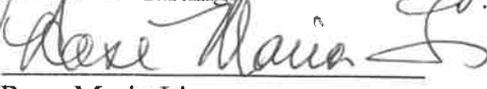

Gail H. Bates

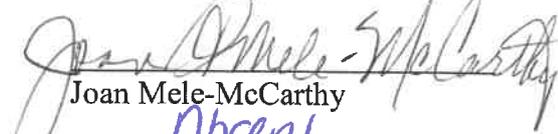

Clarence C. Crawford

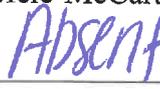

Charles R. Dashiell, Jr.


Vermelle D. Greene


Justin M. Hartings


Rose Maria Li


Joan Mele-McCarthy


Absent
Michael Phillips



David Steiner

February 25, 2020

A [REDACTED] S [REDACTED]

APPELLANT

v.

PRINCE GEORGE'S COUNTY

BOARD OF EDUCATION

* BEFORE BRIAN ZLOTNICK,
* AN ADMINISTRATIVE LAW JUDGE
* OF MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: MSDE-BE-01-19-13623

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

A [REDACTED] S [REDACTED] (Appellant) challenges the Prince George's County Public School's (PGCPS') termination of his employment at [REDACTED] High School ([REDACTED]) due to inappropriate communications with a high school student who attended a private school ([REDACTED]).¹ On April 9, 2018, Dr. Kevin M. Maxwell, PGCPS Chief Executive Officer, notified the Appellant of a recommendation that he be terminated from his teaching position at [REDACTED]. The Appellant appealed his termination on April 18, 2018. On April 20, 2018, the Prince George's County Board of Education (Local Board)² referred his appeal to Hearing Examiner Kia Chandler, Esquire, for an evidentiary hearing which was held on July 17, 2018. On October 26, 2018, Hearing Examiner Chandler issued her decision reversing Dr. Maxwell's recommended termination of the Appellant. The Local Board heard oral argument on this matter on February 28, 2019 and, on March 28, 2019,

¹ The student's name is not revealed to protect her identity.

² Code of Maryland Regulations (COMAR) 13A.01.05.01B(6) defines "local board" as the board of education for a county including the Baltimore City Board of School Commissioners.

issued a decision reversing Hearing Examiner Chandler's decision and instead deciding to terminate the Appellant from his employment with [REDACTED].

On April 22, 2019, the Appellant appealed the Local Board's decision to the Maryland State Department of Education (MSDE) which, on May 2, 2019, transmitted the case to the Office of Administrative Hearings (OAH) for a *de novo* hearing pursuant to Code of Maryland Regulations (COMAR) 13A.01.05.06F, 13A.01.05.07A(1)(b).

On June 13, 2019, I conducted a telephone pre-hearing conference during which the respective parties identified the legal issue to be litigated as well as relevant exhibits and witnesses to be presented during the contested case hearing.

On August 5, 2019, I conducted a contested case hearing at the Sasscer Administrative Building in Upper Marlboro, Maryland.³ The Appellant was present and was represented by Nicholas W. Woodfield, Esquire. Roger C. Thomas, Esquire, represented the Local Board.

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 OAH.⁴

ISSUES

Did the Appellant commit misconduct in office by engaging in inappropriate conduct with [REDACTED] in violation of PGCPS Administrative Procedure #4218 and, if so, should the Appellant's termination be affirmed?

³ COMAR 13A.01.05.07.

⁴ Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019); COMAR 13A.01.05; and COMAR 28.02.01.

SUMMARY OF THE EVIDENCE

Exhibits

During the June 13, 2019 pre-hearing conference the Local Board and the Appellant stipulated to the admissibility of the record generated below, including the following exhibits:

- BOE Ex. 1 - Local Board Final Decision, March 28, 2019
- BOE Ex. 2 - Hearing Examiner Chandler's Decision, October 26, 2018
- BOE Ex. 3 - PGCPS Administrative Procedure #4218
- BOE Ex. 4 - July 17, 2018 hearing transcript
- BOE Ex. 5 - Request for Special Investigation, July 19, 2017
- BOE Ex. 6 - Child Abuse and Neglect Reporting Form, July 19, 2017
- BOE Ex. 7 - ██████'s witness statement, September 18, 2017
- BOE Ex. 8 - Appellant's witness statement, September 19, 2017
- BOE Ex. 9 - Texts between the Appellant and ██████, dated January 28, 2017 and February 3, 2017
- BOE Ex. 10 - Notice of Termination, April 9, 2018
- BOE Ex. 11 - Appellant's Hearing Request, April 18, 2018

Neither the Appellant nor the Local Board submitted any supplemental exhibits during the August 5, 2019 contested case hearing.

Testimony

The Local Board did not present any witnesses. The Appellant testified and did not present any additional witnesses.

STIPULATED FINDING OF FACT⁵

The parties stipulated to the following:

1. The Appellant was a Barbering Instructor at ██████, located in Prince George's County, Maryland. The Appellant has been a certified employee and classroom teacher of PGCPS since August 2015.
2. The Appellant was not subject to any disciplinary action or accused of improper conduct while working for PGCPS until July 2017.

⁵ With the exception of confidentiality issues, I replicated the stipulated findings as provided.

3. On January 28, 2017, the Appellant became acquainted with [REDACTED] through the social media website Tinder. [REDACTED], who was eighteen years old at the time, was a senior at [REDACTED] High School, a private school located in Washington, D.C.

4. The Appellant was not aware that [REDACTED] was a student during their initial communications. [REDACTED] had previously attended [REDACTED], but she did not know the Appellant or attend any classes in which he was an instructor. At no point during this period did he meet [REDACTED] or interact with her in a social capacity when she was a student at [REDACTED].

5. The Appellant was an instructor of one of [REDACTED]'s older sisters from 2014-2015, and he also went on one or two dates with another of [REDACTED]'s older sisters, who never attended [REDACTED] and he briefly met [REDACTED]'s mother at that time but otherwise had limited contact with the family.

6. After meeting on Tinder in January of 2017, the Appellant and [REDACTED] continued communicating via cell phone texts beginning in February of 2017 and continuing through May of 2017, when [REDACTED] graduated.

7. From January 28, 2017, until [REDACTED]'s graduation from high school in May 2017, the Appellant and [REDACTED] had one physical meeting, in which they briefly spoke after encountering one another at National Harbor in Oxon Hill, Maryland.

8. In May 2017, [REDACTED] graduated from high school and was no longer a high school student in the District of Columbia, Maryland, or any of the school systems of the surrounding area.

9. In June 2017, the Appellant and [REDACTED] began to spend time together and eventually initiated a physically intimate relationship. This occurred only after [REDACTED] graduated from high school and was no longer a high school student in the District of Columbia, Maryland, or any of the school systems of the surrounding area.

10. In July 2017, ██████'s parents became aware of the relationship. ██████'s mother contacted ██████, Assistant Principal of ██████. Ms. ██████ also spoke with ██████'s father.

11. On July 19, 2017, a Child Abuse and Neglect Form was submitted to the PGCPS Department of Security Services and to Child Protective Services.⁶

12. ██████ and the Appellant submitted uncontradicted, sworn statements during the Security Services' investigation evidencing that their physically intimate relationship did not begin until June 2017, after ██████ graduated from high school.

13. After the conclusion of their investigation, the Prince George's County Department of Social Services found no finding of abuse or neglect.

14. PGCPS initiated a *Loudermill* meeting for the Appellant, which took place on October 17, 2017. The Appellant was present, as was his union representative, Cheryl A. McLeod. ██████ was represented by Acting Principal ██████ and Cynthia Perry, a PGCPS Employee and Labor Relations Advisor. The Appellant and Ms. McLeod were provided with a copy of the security report and discussed the allegations with Principal ██████ and Ms. Perry.

15. On April 9, 2018, Dr. Kevin Maxwell, the then-CEO of Schools for PGCPS, notified the Appellant that he was being recommended for dismissal from his position at ██████ pursuant to Maryland Code Annotated, *Education Article* section 6-202(a), based on the grounds of purported Misconduct in Office. The Appellant appealed the CEO's recommendation for termination and requested a formal hearing to discuss the matter.

16. The appeal was assigned to a Hearing Examiner and a hearing was conducted on July 17, 2018. On October 26, 2018, the Hearing Examiner provided her findings of fact, conclusions of law and recommendation to the PGCPS Board. The Hearing Examiner reviewed

⁶ I removed the reporter's name from this stipulation.

whether the Appellant's actions violated PGCPs Administrative Procedure 4218, Dating and Inappropriate Relationships Among Students and Employees, Independent Contractors, and Volunteers (Administrative Procedure 4218).

17. The Hearing Examiner found that the CEO did not offer any evidence or testimony to show that the Appellant and █████ had an intimate relationship while she was a student. While the Hearing Examiner found that the Appellant's communications with █████ between January 2017 and May 2017, in which he provided █████ with his cell phone number, were in violation of Administrative Procedure 4218, she determined that "disciplinary action in the form of termination is contrary to the plain language of the [the procedure]." The Hearing Examiner found that Administrative Procedure 4218 was intended to provide an opportunity for employees to correct problematic behavior, and that the Appellant had not been given this opportunity. The Hearing Examiner found that the Appellant's behavior warranted disciplinary action, but "per the language of the procedure there should first be an opportunity to correct such behavior and this cannot be done when the disciplinary action is termination." The Hearing Examiner recommended that the CEO's recommendation to terminate the Appellant from PGCPs be reversed.

18. The PGCPs Board of Education heard oral arguments on February 28, 2019, and on March 28, 2019, the PGCPs Board of Education issued its Final Written Decision and Order.

19. The PGCPs Board of Education found that the CEO met the burden of demonstrating by a preponderance of the evidence that the Appellant engaged in conduct in violation of Administrative Procedure 4218. The PGCPs Board of Education disagreed with the Hearing Examiner's finding that disciplinary action in the form of termination is contrary to the plain meaning of Administrative Procedure 4218. It also found that the Appellant's communications with █████ while she was enrolled as a high school student were used as a means of "grooming" █████ "with the goal of having sexual contact with her at some point in the future."

20. The PGCPs Board of Education denied the Appellant's appeal and accepted the CEO's recommendation that he be terminated as a PGCPs classroom teacher.

21. On April 22, 2019, the Appellant filed an appeal to the MSDE.

FINDINGS OF FACT

After considering the entire administrative record as well as all evidence presented during the contested hearing, I find the following facts by a preponderance of the evidence:

1. During the week preceding the start of each school year teachers at ██████████ are required to participate in various sit-in training sessions where information about different administrative procedures are discussed. Teachers are also provided information regarding accessing those administrative procedures. Administrative Procedure 4218 was covered during staff training prior to the start of the school year. (Testimony of ██████████ – Tr. at 35.)

2. Administrative Procedure 4218 was discussed during a May 17, 2017 staff meeting and was also accessible to teachers and staff through the PGCPs system's website. This procedure was an agenda item for that meeting and was shared with teachers at least a day before the staff meeting. (Testimony of ██████████ – Tr. at 45 & 46.)

3. The Appellant had no knowledge of Administrative Procedure 4218 while employed at ██████████ (Cross of Appellant – Tr. at 160.)

4. The Appellant continued to communicate with ██████████ after he learned in February 2017 that she was still a high school student. Between February 2017 and June 2017, he continued to communicate with ██████████ through text messaging and was interested in having an intimate relationship with ██████████ (Testimony of Appellant – August 5, 2019 hearing.)

DISCUSSION

The Local Board dismissed or terminated the Appellant for misconduct under Education Article section 6-202 because he communicated with ■■■■ by text and through the Tinder social media site while she was enrolled as a student at a private high school in Washington, D.C. with the intention of grooming her for a sexual relationship. The Appellant contests his termination from employment as a teacher by alleging that he is a good teacher and that although he did violate Administrative Procedure 4218, those violations did not rise to the level of disciplinary termination. The Appellant maintains that there were options short of termination which could have been imposed against him.

The Applicable Law

Section 6-202 of the Education Article provides the framework under which a teacher may be suspended or dismissed; it states, in pertinent part:

- (1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:
 - (i) Immorality;
 - (ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of § 5-704 of the Family Law Article;
 - (iii) Insubordination;
 - (iv) Incompetency; or
 - (v) Willful neglect of duty.

Md. Code Ann., Educ. § 6-202(a)(1) (Supp. 2019).

In an appeal of a suspension or dismissal of a certificated employee pursuant to Section 6-202 of the Education Article and COMAR 13A.01.05.06F provide the following:

- (1) The standard of review for certificated employee suspension or 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;
and
- (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 has established by a preponderance of the evidence that the Appellant committed misconduct in office and whether termination of his employment is an appropriate sanction. I find that the Local Board met its burden to establish the Appellant's misconduct in office.

Analysis

In this case, a primary legal issue is how Education Article Section 6-202 defines "misconduct." In *Resetar v. State Board of Education*, 284 Md. 537 (1979), the Maryland Court of Appeals for the first time addressed this legal issue. Before defining "misconduct" as contemplated by Section 6-202 of the Education Article, the *Resetar* Court engaged in a comprehensive review of how "misconduct" has been defined or applied from a broad variety of sources, including cases from other jurisdictions, *Black's Law Dictionary*, and a Maryland case defining the term in the context of the unemployment insurance statute.

The type of conduct reviewed in *Resetar* covered several broad areas including but not limited to sexual misconduct, insubordination, unauthorized absences, incompetency, unprofessional conduct, intemperance, gambling, and use of profane language. *Resetar*, 284 Md. at 556-561. After its review of the law and the broad range of conduct which may be considered "misconduct," the Court in *Resetar* never clearly defined which type of "misconduct" is contemplated by Section 6-202 of the Education Article, but found relevant that whatever the transgression by a teacher, the conduct must bear upon a teacher's fitness to teach. *Id.* at 561.

The Appellant was discharged from employment on the grounds of misconduct. "Misconduct" is defined in *Black's Law Dictionary*, (Rev. 4th Ed., 1968) 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....” *Black’s Law Dictionary* also defines “misconduct in office” as “any unlawful behavior by a public officer in relation to the duties of his office, willful in character.” In *Rogers v. Radio Shack*, 271 Md. 126, 132 (1974), the Maryland Court of Appeals noted that misconduct is “a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, or a course of wrongful conduct committed by an employee, within the scope of his employment relationship....”

The conduct at issue here occurred during the months of February 2017 through May 2017, when the Appellant, while employed as a teacher at ██████████, engaged in numerous text communications with ██████ after providing ██████ his cell phone number. There is no dispute that the Appellant became acquainted with ██████ while on the online dating social media site, Tinder. And the Appellant admitted that he continued his communications with ██████ after he became aware in February 2017 that she was a high school student in Washington, D.C. The Appellant also testified that between February 2017 and June 2017 he was interested in having an intimate relationship with ██████. After ██████ graduated in May 2017, the Appellant had intimate sexual contact with her in June 2017.

In reviewing the extensive record in this case, I conclude that the Appellant, though competent and with no prior disciplinary history, did violate Administrative Procedure 4218 through his communications with ██████. Administrative Procedure 4218 became effective August 17, 2016 and its purpose is to clearly prohibit dating and other inappropriate relationships and interactions between employees and students with an eye toward preventing “grooming” students for sexual interactions.⁷ An inappropriate relationship includes using personal, non-PGCPS accounts or

⁷ BOE Ex. 3.

devices – such as cell phones – to text communications with students without a supervisor or manager’s approval.⁸ Again, the Appellant admitted to engaging in cell phone text communications with ■■■ and there was no evidence that these communications were approved by his supervisors. The Appellant also violated this procedure when he provided ■■■ with his cell phone number for purposes of non-school related conversations.⁹ In addition, allowing ■■■ to interact with him on Tinder was another violation.¹⁰ This procedure prohibits teachers from have inappropriate relationships with any student regardless of whether the student is enrolled in PGCPs or another school system and states that the age of the student is immaterial.¹¹ So the stipulated facts have established that the Appellant was engaged in an inappropriate relationship with ■■■ even though she was 18 years-old and attended a high school in Washington, D.C.

The Appellant also argued that his communications with ■■■ were not evidence of grooming her for a future intimate relationship. I disagree. The Appellant began his interactions with ■■■ on Tinder, which is a social networking site designed to encourage intimate relationships. Most telling was the Appellant’s statement that during his contact with ■■■ between February and June 2017 he was interested in having an intimate relationship with her. Clearly, these text messages were used to further their relationship to a point where it would become physically intimate. The Appellant’s patience in waiting until ■■■ graduated from high school before becoming physically intimate with her does not deflect his grooming actions while she was still a student.

The Appellant argued that Administrative Procedure 4128 requires progressive discipline and that since this was his first violation, dismissal is unwarranted. I disagree. A violation of Administrative Procedure 4128 results in disciplinary action which includes a written reprimand,

⁸ Administration Procedure 4218 Section III (C)(iv) – BOE Ex. 3.

⁹ Administrative Procedure 4218 Section III (C)(x) – BOE Ex. 3.

¹⁰ Administrative Procedure 4218 Section III (C)(xii) – BOE Ex. 3.

¹¹ Administrative Procedure 4218 Section IV (A). – BOE Ex. 3.

suspension, or dismissal.¹² Dismissal is an option in this matter and there is no indication in this procedure that a reprimand or suspension must be issued prior to dismissal.

Lastly, the Appellant argued that he was not aware of Administrative Procedure 4128 and had he known of this procedure he would have never jeopardized his teaching position by violating that procedure. Yet Ms. ████████ testified during the July 2018 evidentiary hearing about the extensive training provided to teachers regarding Administrative Procedures and how those procedures are always available on the PGCPS website. Most damaging to the Appellant was his failure to inquire with any of his supervisors whether his conduct with ██████ was appropriate. His lack of insight into the implications of a teacher communicating with a student on Tinder and then continuing those communications with his private cell phone number for purely personal reasons warrants dismissal from PGCPS. I recommend that termination be upheld.

Having concluded that the Appellant engaged in misconduct by violating several provisions of Administrative Procedure 4128 the remaining issue is whether termination of his employment is an appropriate sanction. Again, as found by the *Resetar* Court, the salient point is whether the misconduct in this case bears upon the Appellant's fitness to teach.

As discussed above, the Appellant engaged in communications with a student while she was enrolled in high school for the purposes of developing an intimate relationship with her. This is precisely the type of behavior that Administrative Procedure 4128 was enacted to prevent. This type of behavior negatively impacts the trust between the PGCPS and the community it serves. I find that such actions by the Appellant make him unfit to teach and that termination of his employment is appropriate.

¹² Administrative Procedure 4218 Section IV(C) – BOE Ex. 3.

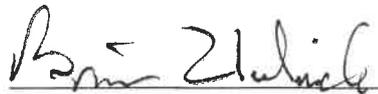
CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Local Board has established by a preponderance of the evidence that the Appellant committed misconduct in office and termination of his employment with PGCPs is appropriate. Md. Code Ann., Educ. § 6-202(a)(1) (Supp. 2019); *Resetar v. State Board of Education*, 284 Md. 537 (1979) and COMAR 13A.01.05.06F.

PROPOSED ORDER

It is proposed that the decision of the Prince George's County Board of Education to terminate the Appellant's employment for misconduct in office under Education Article Section 6-202 be **UPHELD**.

October 28, 2019
Date Decision Mailed

Brian Zlotnick
Administrative Law Judge

#182781
BMZ/emh

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.

