

DONNELL HEARD,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 22-10

OPINION

INTRODUCTION

Donnell Heard (“Appellant”) filed an appeal of the decision of the Baltimore City Board of School Commissioners (“local board”) to uphold his termination as a Family and Community Engagement Specialist with Baltimore City Public Schools (“City Schools”). The local board filed a Memorandum in Response to the Appeal. Appellant responded, and the local board replied.

FACTUAL BACKGROUND

In 2011, City Schools hired Appellant, and Appellant assumed his current position as a Family and Community Engagement Specialist (“FCE Specialist”) in 2015. (Local Board, Ex. 1). An FCE Specialist is responsible for being knowledgeable about Title I funds under the Every Student Succeeds Act and State and federal policies regarding family and community engagement. The FCE Specialist is tasked with fielding questions, reviewing and making suggestions on Title I funding applications. The FCE Specialist must also provide support to assist schools in bridging the communication gap between schools and families. In this role, the FCE specialist must be able to think critically, implement strategic planning, and communicate effectively with school staff members. Appellant was liaison for 20 to 25 schools. (Local Board, Ex. 3).

In August 2019, Ms. Shana McIver assumed the role of Family Engagement Director and Appellant’s supervisor. Ms. McIver began to have concerns about Appellant’s ability to perform the basic functions of his job. She believed Appellant required more supervision and oversight than should have been required for someone with his number of years of experience, and she did not believe he could produce the work product expected of their office. As a result, Ms. McIver informed Appellant on January 6, 2020 that she would be placing him on a Performance Improvement Plan (“PIP”), and the two met on January 8, 2020 to discuss the PIP. (Local Board, Ex. 2-3).

Appellant was initially resistant to being placed on a PIP. Ms. McIver for the next month asked Appellant to provide his own input into the development of the PIP. She provided

multiple versions of the PIP, but Appellant did not sign any of them. On February 19, 2020, Ms. McIver sent Appellant an email indicating that the PIP was now in the implementation phase. (Local Board, Ex. 8). The PIP identified the following areas for targeted improvement:

- Support to school leaders and identified leads to develop, implement and sustain research-based family and community engagement strategies at the school level by providing technical assistance, training and monitoring.
- Assist schools with the development and sustainability of School Family Councils and organized parent groups to ensure that parent and community members have an active role in school-based decision-making processes.
- Identify resources and partnerships, training opportunities that support the specific engagement needs of diverse school communities.
- Prepares reports for Engagement Office leadership review.

The PIP also identified the following actions Appellant would take to correct the problems:

- Participate in weekly check in with Family Engagement Director to provide progress updates and request/receive coaching and any needed guidance.
- Implement use of project management tool/tracker (of choice).
- Identify and take advantage of coaching, professional development and scholarly articles that will build and strengthen capacity in the areas of: Family and Community Engagement, writing, strategic planning, decision-making/problem solving and facilitation.
- Enroll in Harvard Institute's FCE online certification course. (Local Board, Ex. 21).

Between February and May 2020, Appellant and Ms. McIver met most weeks to discuss Appellant's work and progress on the PIP actions. Ms. McIver continued to have concerns about Appellant's ability to perform the basic functions of his job. While Appellant completed many of the actions associated with his PIP, he still was not performing at the standards set by Ms. McIver. Examples of subpar performance included:

- Appellant's inability to independently lead the Choice Ambassador campaign, which focused on engaging underserved families;
- Appellant's ineffective handling of Virtual Family Listening Sessions, wherein Appellant failed to use the required agenda, PowerPoint, or talking points, and invited individuals who could not participate in the program; and
- Appellant's inability to fully and correctly complete Title I applications, requiring other staff members be pulled from their work to revise the applications despite repeated, detailed feedback to Appellant.

Ms. McIver also noted that Appellant continued to provide assistance to schools and programs outside of his portfolio, including non-Title I schools and the Alternative Options Program, despite her assigning these schools and programs to another Specialist. (Local Board, Exs. 4, 16).

Despite the efforts made by Appellant, Ms. McIver failed to see sufficient improvement in Appellant's performance. Ms. McIver continued to find that Appellant demonstrated inadequate decision-making, strategic planning, and communication skills. Furthermore, Appellant's work continued to require editing and oversight for corrections of errors that Appellant should not be making. (Local Board, Exs. 5, 6, 7, 16). On June 4, 2020, Ms. McIver made her final notes on Appellant's PIP, noting that she had concerns about his ability to support major collaborations and indicating that data demonstrated that school and district stakeholder engagement opportunities were negatively impacted by Appellant's inability to provide necessary support. (Local Board, Ex. 12). On June 30, 2020, Ms. McIver rated Appellant as "developing" – the lowest rating – on his annual evaluation, and she recommended him for termination. (Local Board, Exs. 13, 16). On July 8, 2020, the Baltimore Teachers' Union ("BTU") filed a grievance on behalf of Appellant.

On August 20, 2020, City Schools held a *Loudermill* hearing¹ to address Appellant's performance issues. At the hearing, Appellant was represented by the BTU representative. Ms. McIver attended and presented evidence. On August 28, 2020, City Schools' Chief Human Capital Officer and Chief Executive Officer's designee, Mr. Jeremy Grant-Skinner, sent a letter to Appellant finding that his conduct constituted insubordination, neglect of duty, incompetence, and misconduct. City Schools terminated Appellant. (Local Board, Ex. 1).

On September 22, 2020, the BTU representative appealed the termination on behalf of Appellant. The appeal alleged that the *Loudermill* hearing was held prematurely, and Appellant's grievance should have been heard before the hearing. The appeal also argued that the evidence presented at the *Loudermill* hearing showed Appellant made improvements in accordance with the expectations outlined in the PIP. (Local Board, Ex. 15). The two bases for appeal were handled in two separate hearings.

On November 18, 2020, Ms. Mary Ellen Quinn Johnson, Senior Advisor in the Office of Employment & Labor Relations, held a grievance hearing on the allegation that the PIP process was incorrectly followed. After reviewing testimony and submitted evidence, Ms. Quinn Johnson issued a report on December 1, 2020 finding the grievance was without merit. Subsequently, the local board assigned a hearing examiner to the appeal of the grievance, and a hearing was held over the course of three days between April and May 2021. On May 31, 2021, the hearing examiner found that evidence showed Appellant was allowed the opportunity to participate in the planning of the PIP, but he refused. She further found that Appellant failed to demonstrate that he was not provided with support measures during the PIP period. (Local Board, Ex. 11).

¹ At a *Loudermill* conference, also known as a pre-termination hearing, 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).

The local board also assigned the same hearing officer to hear the appeal of Appellant's termination. Over the course of two days in June and October 2021, a termination hearing was held. The parties agreed to incorporate the testimony and evidence from the grievance matter into the termination appeal hearing. Appellant, represented by BTU, argued that his termination was unjust as he completed all the steps asked of him in the PIP. The CEO, through counsel, argued that Appellant's termination was just as Appellant failed to show improvement in his performance despite several assistive measures and supports put in place. On November 10, 2021, the hearing examiner issued her recommendation to the local board that Appellant's termination be upheld. The hearing examiner found that while Appellant's work performance did not rise to the level of insubordination or misconduct, evidence existed to support a finding of neglect of duties. The hearing examiner reasoned that after years of employment as an FCE Specialist, it was reasonable to expect Appellant to be able to complete all required tasks correctly with expertise. The hearing examiner was not persuaded by Appellant's argument that completion of the action steps in his PIP demonstrated his termination was unjust. The hearing examiner found that while Appellant appeared to be do well with establishing relationships with school representatives, he was still unfortunately unable to complete his assigned duties. (Local Board, Ex. 20).

On December 17, 2021, the local board issued a letter to Appellant informing him of its vote on December 14, 2021 to accept the hearing examiner's recommendation to deny the appeal. (Local Board, Ex. 17).

This appeal followed.

STANDARD OF REVIEW

A non-certificated employee is entitled to administrative review of a termination pursuant to §4-205(c)(3) of the Education Article. *See Goines v. Prince George's County Bd. of Educ.*, MSBE Op. No. 17-16 (2017). Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A.

LEGAL ANALYSIS

As an FCE Specialist in City Schools, Appellant's termination is subject to the provisions of the Baltimore Teachers Union Paraprofessional School Related Personnel Chapter Agreement ("Agreement") with City Schools. The agreement provides that City Schools has the burden of proof for demonstrating "just cause" in termination proceedings against an employee. (Local Board, Ex. 14). In the appeal before us, Appellant asks this Board to reconsider the local board's decision to uphold his termination as an FCE Specialist with City Schools. In support of his request, Appellant disputes the facts used to support the hearing examiner's finding of neglect of duty. Specifically, Appellant maintains that: (1) there is no evidence that he violated federal or State laws related to Title I funding; (2) he submitted approximately 28 applications for Title I

funding, which were approved; and (3) there is no evidence to support that his colleagues expended excessive amounts of time correcting his work.

At the grievance hearing (incorporated by parties' agreement) and the termination hearing, Ms. McIver, and Appellant's colleague, Ms. Lawrence, testified to the issues surrounding Appellant's review and submission of Title I applications. Ms. Lawrence testified that she had to correct all but approximately three of the 27 to 30 Title I applications submitted by Appellant. She also testified that these applications often required multiple revisions and feedback. Ms. McIver also testified that correction of Appellant's errors required a significant amount of time by others. The issue therefore is not that Appellant violated Title I; the issue is that Appellant was not able to complete his work in a satisfactory manner and at a level expected of someone in his position. This, along with the other examples of subpar work, such as the inability to lead projects and need for constant feedback and oversight are enough to satisfy City School's burden to demonstrate just cause for Appellant's termination. While it appears that Appellant is a dedicated employee who loved his job and established good relationships with school staff, the evidence suggests that he failed to competently carry out the core functions of his role. Appellant fails to prove that the local board acted arbitrarily, unreasonably, or illegally in adopting the hearing examiner's findings.

Additional Evidence

Appellant also attempts to introduce a February 4, 2020 discrimination complaint he filed with the Equal Employment Opportunity Commission and Maryland Commission on Civil Rights as evidence of unjust termination. Under COMAR 13A.01.05.04C, the State Board may receive additional evidence if "it is shown to the satisfaction of the State Board that the additional evidence is material and that there were good reasons for the failure to offer the evidence in the proceedings before the local board[.]" In the present case, Appellant did not raise the claim of discrimination in his case before the local hearing examiner, nor does he provide a reason for why he did not present the complaint at the hearing. Therefore, we decline to consider this evidence.

CONCLUSION

For the aforementioned reasons, we affirm the local board's decision as neither arbitrary, unreasonable, nor illegal.

Signatures on File:

Clarence C. Crawford
President

Charles R. Dashiell, Jr.
Vice-President

Shawn D. Bartley

Gail H. Bates

Chuen-Chin Bianca Chang

Susan J. Getty

Jean C. Halle

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Absent:
Vermelle D. Greene
Holly C. Wilcox

April 26, 2022