

STEPHEN PRICE,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 22-12

OPINION

INTRODUCTION

Appellant, Stephen Price, filed exceptions to the Administrative Law Judge's ("ALJ") Proposed Decision ("Proposed Decision") recommending that the State Board uphold the Howard County Board of Education's ("local board") decision to terminate Appellant from his teaching position for insubordination, misconduct, willful neglect of duty and incompetence. The local board filed a response to the exceptions. This Board heard oral argument on the exceptions on May 24, 2022.

FACTUAL BACKGROUND

Appellant was a tenured teacher employed by Howard County Public School System ("HCPSS") as a social studies instructor at ██████████ High School ("██████HS"). Appellant has a history of disciplinary issues.

As a result of the disciplinary issues, on January 15, 2021, Anissa Dennis, Chief School Management and Instructional Leadership Officer, as the Superintendent's Designee, held a virtual pre-disciplinary meeting on the recommendation of Appellant's termination. At that meeting, Appellant was represented by counsel. Ms. Dennis informed Appellant of the charges against him and the HCPSS policies he had violated, and provided Appellant an opportunity to respond to the charges against him. During this meeting, Appellant claimed that he was being discriminated against because he is an African American and the administration at ████████HS had no authority to discipline him or place him on a non-disciplinary action plan. Appellant also contended that as an African American man he is better equipped to teach controversial issues regarding African American culture and he should not be expected to follow HCPSS policies. (Local Bd. Resp., Ex. 12, 2/10/21 Letter to Appellant).

On February 10, 2021, the Superintendent sent Appellant a letter advising that he was recommending Appellant's termination and placing Appellant on suspension without pay pending the local board's action on the recommendation. Specifically, the letter informed Appellant of the basis for his termination including:

- On November 13, 2013, Appellant intimidated a student by engaging in unnecessary physical contact with the student and received a letter of concern;
- On June 18, 2016, Appellant left his classroom and followed a student and slammed a book on the floor and received a letter of warning;
- On November 13, 2018, Appellant made false, hateful, disparaging comments about homosexuality and gay/lesbian individuals and received a letter of reprimand;
- On January 17, 2019, Appellant showed two violent videos on the topic of police brutality in violation of HCPSS Policy 8050 – Teaching of Controversial Issues and received a letter of reprimand;
- On December 4, 2019, Appellant failed to attend a meeting as directed by the assistant principal to review Appellant’s SLO/Goals for the 2019-20 school year and received a letter of reprimand;
- In February 2020, Appellant failed to comply with his action plan and received a letter of reprimand;
- On December 14, 2020, Appellant was sent a reminder email that Appellant had not submitted paperwork or confirmed his scheduled observation and Appellant failed to attend the scheduled pre-observation conference; and
- Appellant failed to attend four staff training meetings, other staff meetings, student sessions and continued to be out of compliance with his action plan.

The letter also informed the Appellant that the Superintendent did not find any evidence to support Appellant’s claim of racial discrimination. Appellant was further advised that his actions violated the following HCPSS Policies:

- Board Policy 7030 IV.A – Employee Conduct and Discipline;
- Board Policy 7030 IV.E.2 – Misconduct in Office;
- Board Policy 1000 A – Civility;
- Board Policy 1000 IV.A;
- Board Policy 1010 – Anti-discrimination;
- Board Policy 1010 IV.D;
- Board Policy 1040 – Safe and Supportive Schools;
- Board Policy 1040 V.E;
- Board Policy 8050 – Teaching of Controversial Issues;
- Board Policy 8050 IV.A, C, and E;
- Board Policy 8000 – Curriculum;
- Board Policy 8000 IV.A;
- Board Policy 8040 – Selection of Instructional Materials; and
- Board Policy 8040 IV.C.2

Id.

The notice of termination letter also informed Appellant of his right to request a hearing stating:

Pursuant to §6-202 of the Education Article of the Annotated Code of Maryland, you may request a hearing before the Board of Education or an arbitrator regarding my recommendation. If you wish to request a hearing, you must send a written request to Ms. Kathleen Hanks...Your request for a hearing must be received within ten (10) calendar days of the date of this letter.

Id.

By letter dated February 17, 2021, Appellant notified Ms. Hanks that he was requesting a hearing before the local board in accordance with §6-202 of the Education Article. (Local Bd. Resp., Ex. 13). The local board appointed a hearing examiner on February 25, 2021 and a hearing was set for April 27 and 28, 2021. (Local Bd. Resp., Ex. 10, Local Bd. Decision). Appellant's counsel requested a continuance and new dates were tentatively set for May 21 and 24, 2021. Appellant's attorney terminated her representation on or about May 5, 2021. After numerous communications with Appellant by the hearing examiner regarding the status of the hearing dates, on June 1, 2021, Appellant requested that the hearing be heard by an arbitrator rather than the hearing examiner claiming that the hearing examiner would be biased against him due to Appellant's race. *Id.*

By letter dated June 7, 2021, the local board, through counsel, denied Appellant's request to be heard by an arbitrator as the request was untimely. (Local Bd. Resp., Ex. 14). The letter further stated:

Please advise [Board office], in writing, by Monday, June 14, 2021, whether you still wish to be heard by the Board and if you are still represented by counsel. If you still wish to have this matter heard by the Board, the hearing officer will contact you, and your counsel, if you are represented by counsel, to reschedule the hearing as promptly as possible. If [Board office] has not received written correspondence from you indicating your desire to be heard by the close of business at 4:30 p.m. on Monday, June 14, it will be deemed that you have waived your right to a hearing and the Board will consider and take action on the Superintendent's recommendation for dismissal based solely on the documentation as it currently exists.

Id.

Appellant failed to contact the local board office and the local board did not schedule a hearing. (ALJ Rulings on Motions, p. 7). On July 8, 2021, the local board reviewed the matter of Appellant's termination based on the Superintendent's recommendation without holding a hearing. On August 3, 2021, the local board issued a written decision upholding the

superintendent's recommendation and terminating Appellant's employment. On August 9, 2021, Appellant appealed to the State Board. The State Board referred this matter to the Office of Administrative Hearings ("OAH") for further proceedings pursuant to COMAR 13A.01.05.07(A)(1)(b).

On September 11, 2021, Appellant filed a Motion to Disqualify the presiding ALJ, Richard O'Connor, as Appellant claimed that the ALJ was discriminating against him because he mistakenly called the Appellant by a different name. (ALJ Rulings on Motions, p. 1). On October 4, 2021, the ALJ denied Appellant's Motion to Disqualify. On October 14, 2021, the local board filed a Motion in Limine to Preclude the Admission of Additional Evidence by the Appellant. On October 22, 2021, the Appellant filed a Response to the Motion in Limine. On October 22, 2021, the Appellant filed a Motion for Summary Decision. On October 31, 2021, the local board filed a response to the Motion for Summary Decision. On November 8, 2021, the ALJ held a hearing on the pending motions.

The Appellant did not participate in the motions hearing and the ALJ denied his request for a postponement and proceeded in his absence. The ALJ denied Appellant's motion for reconsideration on the Motion to Disqualify and Appellant's Motion for Summary Decision. The ALJ also granted the local board's Motion in Limine precluding the Appellant from presenting additional testimony and documentary evidence at the hearing before the OAH. (Proposed Decision, pp. 1-2).

The ALJ determined that Appellant had been given an opportunity to be heard before the local board and chose not to exercise that opportunity. The ALJ held that under COMAR 13A.01.05.04C and 13A.01.05.07C, the Appellant did not establish good reason for his failure to present evidence to the local board and was not permitted to offer the evidence at the OAH hearing. *Id.* at p. 2.

On December 17, 2021, Appellant filed a request for subpoenas, which he subsequently amended. On December 23, 2021, the local board filed an objection to Appellant's request for subpoenas. A hearing was held at OAH on January 6 and 10, 2022. Appellant attended the OAH hearing but could not present evidence based on the ALJ's ruling on the Motion in Limine. At the hearing, the ALJ sustained the local board's objections to the subpoenas. On February 8, 2022, the ALJ issued a Proposed Decision upholding the termination of the Appellant due to Appellant's insubordination, misconduct in office, willful neglect of duty, and incompetence.

On February 23, 2022, the Appellant filed one general and 27 specific exceptions to the Proposed Decision. The local board filed a response to Appellant's exceptions. Oral argument was held on May 24, 2022.

STANDARD OF REVIEW

Because this appeal involves the suspension 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 an evidentiary hearing and the ALJ

issued proposed findings of fact and conclusions of law. 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(b).

LEGAL ANALYSIS

Appellant identifies one general exception and 27 specific exceptions to the Proposed Decision. Appellant generally excepts to the Proposed Decision because he argues he was not afforded his statutory due process right to a hearing before the local board as required by § 6-202 of the Education Article. We agree with the Appellant.

Section 6-202(a)(2) and (3) of the Education Article governs teacher termination cases and provides, in relevant part, as follows:

(2) (i) Before removing an individual, the county board shall send the individual a copy of the charges against the individual and give the individual an opportunity within 10 days to request:

1. A hearing before the county board; or
2. A hearing before an arbitrator in accordance with paragraph (5) of this subsection.

(ii) If an individual's request does not specify that the hearing be before an arbitrator, the request shall be considered a request for a hearing before the county board.

(3) If the individual requests a hearing before the county board within the 10-day period:

(i) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; and

(ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing.

(4) The individual may appeal from the decision of the county board to the State Board.

(5) (i) If the individual or the individual's representative requests a hearing before an arbitrator within the 10-day period, the hearing shall be conducted in accordance with this paragraph.

Paragraph 57 of the findings of facts in the Proposed Decision states that the local board terminated the Appellant's employment without holding a hearing before the local board and the circumstances surrounding the local board's failure to hold a hearing are explained in the ALJ's

Rulings on the Motions. The ALJ states in the Rulings on the Motions that the Appellant requested a hearing before the local board and the Appellant argued he could not present any evidence before the local board because there was no hearing held. The ALJ then states:

On this point the Appellant is correct. The County Board's letter of June 7, 2021 required the Appellant, in effect, to reaffirm his request for a hearing before the County Board. No statute or regulation requires this of an appellant. The County Board should have set a hearing date, sent notice of the hearing to the Appellant, and held the hearing with or without the Appellant present. Nevertheless, the County Board's failure to hold a hearing is not, in the circumstances of this case, a fatal flaw.

Id. The ALJ then explains the Appellant's reasons for not replying to the local board's June 7th letter:

The reasons given for my request to have an Arbitrator hear my case stem from the due process meeting [with Ms. Dennis] not being fair on January 15, 2021, lack of fair representation as prescribed by law and subsequent non advisement as to my options, and the biasness of the hearing examiner chosen by the board of education (Greg Szoka- recommending termination of African-Americans dating back a decade).

....

In my case, I found evidence (public transcript of an African-American teacher dismissal) of bias with the hearing examiner being used by the system but was not offered any alternative (Arbitration). As mentioned previously, he would not have conducted a fair hearing as I was left to represent myself after the union allowed the school system to illegally suspend me without pay without conducting an investigation.

Id. at 12. The ALJ then concludes that Appellant chose not to participate in a hearing before the local board. The local board acknowledges that the Appellant timely requested a hearing, "but then refused to participate when given the opportunity to do so, thus waiving his right to a Hearing." Motion in Limine at p. 6.

We agree with the ALJ that no statute or regulation requires the Appellant to reaffirm his request for a hearing before the County Board. We also agree with the ALJ that the County Board should have set a hearing date, sent notice of the hearing to the Appellant, and held the hearing with or without the Appellant present. However, we disagree with the ALJ's conclusion that the Appellant waived his right to a hearing before the county board. The Appellant's continued request to change the proceeding from the local board to an arbitrator does not equate to a waiver of his State statutory right to be heard before the local board. We agree that the Appellant's request for an arbitrator to hear his case was untimely and the local board was correct to deny the request. But, instead of putting the responsibility of scheduling the hearing

upon Appellant, the local board's obligation pursuant to §6-202(a)(3)(i) & (ii) was to schedule and promptly hold a hearing where he "shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing."

We disagree with the ALJ's Rulings on the Motion in Limine that the Appellant's pre-disciplinary meeting held with Ms. Dennis on January 15, 2021 satisfied the Appellant's substantive due process rights granted to the appellant under §6-202. The meeting may have met the pre-termination notice and opportunity to be heard in the *Loudermill* hearing, named for the Supreme Court case *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), but, the January 15th pre-disciplinary meeting fails to satisfy the due process owed to the Appellant under §6-202. The purpose of the hearing before the county board is to address the validity of the discipline. See *William Morrison v. Baltimore City Bd. of School Comm'rs*, MSBE Op. No. 15-19 (2015)(following the pre-termination *Loudermill* hearing the local board conducted a hearing to address the validity of the termination).

On January 15th, Ms. Dennis, the Superintendent's designee, held a virtual pre-disciplinary meeting with Appellant and his counsel. Ms. Dennis informed Appellant of the charges against him and the HCPSS policies he had violated. Appellant had an opportunity to respond to the charges against him. Appellant could not bring witnesses to the meeting and the appeal of Ms. Dennis's decision was to the local board. (Local Bd. Resp., Ex. 12, 2/10/21 Letter to Appellant). On February 10, 2021, the Superintendent sent Appellant a letter advising that he was recommending Appellant's termination and placing Appellant on suspension without pay pending the local board's action on the recommendation. This meeting did not meet the more exacting due process to verify the result of the disciplinary decision required by §6-202.

In our prior decisions where the local board failed to hold a §6-202 hearing, we have protected the statutory due process rights of an appellant to have a hearing before the local board and remanded the case back to the local board to conduct a full evidentiary hearing.¹ See *Johnston v. New Baltimore City Bd. of School Comm'rs*, MSBE Op. No. 01-19 (2001)(remanding back to local board for scheduling of hearing before the local board even though the State Board found the appellant failed to exercise due diligence in the case); See also *York v. Price George's County Bd. of Educ.*, MSBE Op. No. 15-12 (2015)(State Board remanded case back for a hearing on the merits because the "Appellant was not given notice of the hearing date, she was given no meaningful opportunity to be heard regarding her termination" resulting in a denial of due process.").

The record shows that the Appellant was denied his right to a hearing before the local board under §6-202 of the Education Article. Because the local board failed to hold a hearing before the board, we are remanding this case back to the local board to schedule and hold a hearing in accordance with §6-202 and the local board's governing policies and procedures. If the Appellant chooses not to participate in the hearing before the local board by either failing to

¹ Even when the appellant was incarcerated, and repeated attempts by the local board's hearing officer and staff to arrange for the Appellant's participation in the hearing by telephone were unsuccessful, the hearing officer allowed Appellant to file an affidavit in lieu of testimony that was considered by the hearing officer in rendering the decision. The State Board agreed with the ALJ's analysis and conclusion that the local board provided the appellant with the "fairest procedure possible under the unique circumstances." *Beard v. Baltimore County Bd. of Educ.*, MSBE Op. No. 11-44 at p. 7 (2011).

appear or affirmatively waiving his right to a hearing in writing, we urge the local board to move to dismiss this case in accordance with our prior decisions. *See York v. Prince George's County Bd. of Educ.*, MSBE Op. No. 19-07 at p. 3 (2019)("Appellant's failure to appear for the February 28 hearing and the October 9 oral argument acted as a waiver of her right to challenge the Superintendent's termination decision."); *See also Tague v. Charles County Bd. of Educ.*, MSBE Op. No. 12-32 (2012)("Failure to appear is a reasonable and legally appropriate basis on which to dismiss the appeal.").

CONCLUSION

For all of these reasons, we do not adopt the ALJ's Proposed Decision. Because we find that the Appellant was denied due process, we remand the case to the local board for a full evidentiary hearing before a local hearing examiner on Appellant's termination. Given the remand, there is no need for this Board to consider the Appellant's other exceptions that deal with the merits of the termination decision.

Signatures on File:

Clarence C. Crawford
President

Charles R. Dashiell, Jr.
Vice-President

Gail H. Bates

Chuen-Chin Bianca Chang

Susan J. Getty

Jean C. Halle

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Absent:
Shawn D. Bartley
Vermelle D. Greene
Joan Mele-McCarthy

May 24, 2022

STEPHEN PRICE,
APPELLANT
v.
BOARD OF EDUCATION
OF HOWARD COUNTY

*** BEFORE RICHARD O’CONNOR,**
*** ADMINISTRATIVE LAW JUDGE,**
*** THE MARYLAND OFFICE OF**
*** ADMINISTRATIVE HEARINGS**
*** OAH No.: MSDE-BE-01-21-18518**

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDATION
NOTICE OF RIGHT TO FILE EXCEPTIONS

STATEMENT OF THE CASE

On February 10, 2021, the Superintendent of the Howard County Public School System (HCPSS) notified the Appellant, a teacher at [REDACTED] High School, that he was recommending the Appellant’s termination for insubordination, misconduct in office, willful neglect of duty, and incompetence. Md. Code Ann., Educ. § 6-202(a)(1) (2018). The Appellant requested a hearing before the Board of Education of Howard County (County Board), and on August 3, 2021, the County Board terminated the Appellant.

The Appellant appealed to the Maryland State Board of Education (State Board) on August 9, 2021. Md. Code Ann., Educ. § 6-202(a)(4) (2018). The State Board referred the matter to the Office of Administrative Hearings (OAH) for further proceedings.

On September 11, 2021, the Appellant filed a Motion to Disqualify the presiding administrative law judge (ALJ). On October 4, 2021, I denied the Motion to Disqualify.

On October 14, 2021, the County Board filed a Motion in Limine. The Appellant filed a Response to Nussbaum Board of Education of Howard County Motion in Limine to Preclude the Admission of Additional Evidence (Response) on October 22, 2021.

On October 18, 2021, the Appellant filed a Response to Ruling on Motion requesting reconsideration of my order denying the Motion to Disqualify. The County Board filed a response on the same date.

On October 22, 2021, the Appellant filed a Motion for Summary Decision.¹ The County Board filed a response on October 31, 2021.

I held a hearing on the pending motions on November 8, 2021² and issued Rulings on Motions on December 8, 2021. Upon reconsideration, I denied the Appellant's Motion to Disqualify the presiding ALJ, as well as his Motion for Summary Decision. Additionally, I granted the County Board's Motion in Limine precluding the Appellant from presenting additional testamentary and documentary evidence at the hearing before the OAH.³

I held a hearing on the merits of the appeal at the OAH in Hunt Valley, Maryland, on January 6 and 10, 2022. The Appellant participated without representation. Andrew W. Nussbaum, Esquire, Nussbaum Law LLC, represented the County Board. Prior to the hearing, on December 17, 2021, the Appellant had filed a request for subpoenas, which he subsequently amended. The County Board filed an objection to the request for subpoenas on December 23, 2021. When the hearing

¹ The Motion for Summary Decision was part of the same pleading that contained the Appellant's Response to the County Board's Motion in Limine.

² The Appellant did not participate in the motions hearing. I denied his request for postponement and proceeded in his absence. The reasons for denying the request for postponement are articulated in the Rulings on Motions issued in this case on December 8, 2021.

³ The rationale for this decision is laid out at some length in the Rulings on Motions. Essentially, I determined that the Appellant had been given an opportunity to be heard before the County Board and chose not to exercise that option. Under Code of Maryland Regulations (COMAR) 13A.01.05.04C and 13A.01.05.07C, the Appellant did not establish a good reason for his failure to present evidence to the County Board and, pursuant to the State Board's policy, was not permitted to offer the evidence at the OAH hearing.

began, I sustained the County Board's objection to the request for subpoenas for the reasons stated in the Rulings on Motions.

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, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 13A.01.05; COMAR 28.02.01.

ISSUE

The issue is whether the County Board properly terminated the Appellant's employment as a teacher.

SUMMARY OF THE EVIDENCE

Exhibits

The County Board offered the following exhibits,⁴ which I admitted into evidence except as noted:

1. Letter of Reprimand, January 10, 2019.
2. Student's⁵ written statement, November 8, 2018.
3. Student's written statement, November 16, 2018.
4. Student's written statement, November 13, 2018.
5. Student's written statement, November 14, 2018.
6. Recommendation for Suspension Without Pay, March 12, 2019.
7. Student's written statement, January 18, 2019.
8. Student's written statement, undated.
9. Student's written statement, undated.
10. Email from J [REDACTED] W [REDACTED] to the Appellant, March 1, 2019.

⁴ The County Board pre-marked its exhibits as listed here.

⁵ The names of all students and parents are redacted from the exhibits.

11. Letter of Reprimand, June 5, 2019.
12. Plan of Action, December 3, 2019.
13. Email from a parent to Mr. W■■■■■■■■■■, November 14, 2019; Mr. W■■■■■■■■■■'s email response, November 15, 2019.
14. Student's written statement, November 15, 2019.
15. Student's written statement, November 21, 2019.
16. Email from a student, November 21, 2019.
17. Email from a parent to A■■■■■■■■■■ Y■■■■■■■■■■, November 25, 2019.
18. Email from C■■■■■■■■■■ G■■■■■■■■■■ to Mr. W■■■■■■■■■■, November 15, 2019; email from Mr. W■■■■■■■■■■ to P■■■■■■■■■■ M■■■■■■■■■■, November 15, 2019.
19. Not admitted.
20. Letter of Reprimand, January 10, 2020.
21. Email from R■■■■■■■■■■ S■■■■■■■■■■ to the Appellant, November 22, 2019.
22. Email from Mr. S■■■■■■■■■■ to the Appellant, December 5, 2019.
23. Letter of Reprimand, February 21, 2020.
24. Email from Mr. S■■■■■■■■■■ to the Appellant, April 20, 2020.
25. Email from Mr. S■■■■■■■■■■ to the Appellant, June 26, 2020.
26. Email from the Appellant to Mr. S■■■■■■■■■■, September 3, 2020; email from Mr. S■■■■■■■■■■ to the Appellant, September 3, 2020.
27. Plan of Action, revised September 11, 2020.
28. Email from the Appellant to Mr. S■■■■■■■■■■, September 30, 2020.
29. Withdrawn.
30. Email from Christina R. Bos to the Appellant, January 6, 2021.
31. Email from Mr. S■■■■■■■■■■ to ■■■■HS⁶ Social Studies, January 7, 2021; email from J■■■■■■■■■■ M■■■■■■■■■■ to Mr. S■■■■■■■■■■ and ■■■■HS Social Studies, January 7, 2021.

⁶ ■■■■ High School.

32. Email from Mr. S█████ to the Appellant, January 7, 2021.
33. Letter from Mr. W█████i to the Appellant, January 12, 2021.
34. Notes from due process meeting, January 15, 2021.
35. Notice of Charges and Recommended Termination, February 10, 2021.
36. Letter from D█████ B█████ to the Appellant, November 15, 2013.
37. Letter of Concern, January 30, 2014.
38. Letter of Warning, June 14, 2016.
39. Emails between Mr. S█████ and a parent, March 20 to April 8, 2019.
40. Email from Mr. S█████ to the Appellant, January 29, 2020.
41. Teacher Mid-Year Review, January 31, 2020.
42. Emails from Mr. S█████ to the Appellant, September 4 and 7, 2020.
43. Emails from Mr. S█████ to the Appellant, September 9 and 11, 2020.
44. Email from Mr. S█████ to the Appellant, September 23, 2020.
45. Email from Mr. S█████ to the Appellant, September 25, 2020.
46. Email from Mr. S█████ to the Appellant, October 26, 2020.
47. Emails from Ms. Bos to the Appellant, October 28, 2020.
48. Email from Mr. S█████ to the Appellant, November 2, 2020; email from the Appellant to Mr. S█████, November 3, 2020.
49. Teacher Announced Observation report, March 4, 2020.
50. Email from C█████ S█████ to the Appellant, December 14, 2020.
51. Teacher Unannounced Observation report, January 13, 2021.
52. Letter from Judith S. Bresler, Attorney, to the Appellant, June 7, 2021.
53. Letter from Kathleen Hanks to the Appellant and Mr. Nussbaum, June 30, 2021.
54. Letter from Kathleen Hanks to the Appellant, August 3, 2021.
55. Decision of the County Board, August 3, 2021.

- A. HCPSS Policy 7030: Employee Conduct and Discipline, effective September 6, 2018.
- B. HCPSS Policy 7030-IP: Implementation Procedures, Employee Conduct and Discipline, effective April 11, 2019.
- C. HCPSS Policy 8000: Curriculum, effective July 1, 2014.
- D. HCPSS Policy 8000-IP: Implementation Procedures, Curriculum, effective July 1, 2014.
- E. HCPSS Policy 8040: Selection of Instructional Materials, effective July 1, 2018; HCPSS Policy 8040-IP: Implementation Procedures, Selection of Instructional Materials, effective July 1, 2018.
- F. HCPSS Policy 8050: Teaching of Controversial Issues, effective July 1, 2005.
- G. HCPSS Policy 8050-IP: Implementation Procedures, Teaching of Controversial Issues, effective July 1, 2005.
- H. HCPSS Policy 8050: Teaching of Controversial Issues, effective July 1, 2020.
- I. HCPSS Policy 8050-IP: Implementation Procedures, Teaching of Controversial Issues, effective August 18, 2020
- J. HCPSS Policy 1000: Civility, effective July 1, 2018.
- K. HCPSS Policy 1000-IP: Implementation Procedures, Civility, effective July 1, 2018.
- L. HCPSS Policy 1010: Anti-Discrimination, effective July 1, 2018; HCPSS Policy 1010-IP: Implementation Procedures, Anti-Discrimination, effective July 1, 2018.
- M. HCPSS Policy 1040: Safe and Supportive Schools, effective October 17, 2019.
- N. HCPSS Policy 1040-IP: Implementation Procedures, Safe and Supportive Schools, effective October 17, 2019.

Because I granted the County Board's Motion in Limine, the Appellant was not permitted to introduce documentary evidence, and he did not offer any non-documentary exhibits.⁷

⁷ The Appellant submitted voluminous documents with his appeal to the State Board. These documents are not in evidence, but they remain in the file as part of the administrative record.

Testimony

The following witnesses testified for the County Board:

1. J██████. W██████, Principal of ████████ High School.
2. Anissa Dennis, Chief School Management and Instructional Leadership Officer, HCPSS.
3. R██████ S██████, Assistant Principal of ████████ High School.
4. Christina Renée Bos, Coordinator of Secondary Social Studies, HCPSS.
5. Theo Cramer, former Community Superintendent, HCPSS.

Because I granted the County Board's Motion in Limine, the Appellant was not permitted to offer testamentary evidence.

FINDINGS OF FACT

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

1. Until his termination, the Appellant was a tenured teacher in the Social Studies department of ████████ High School (██████HS), a facility of HCPSS.
2. At all relevant times, Mr. W██████ was the principal of ████████HS.
3. At all relevant times, Mr. S██████ was an assistant principal at ████████HS whose duties included overseeing the Social Studies department.
4. On November 13, 2018, while teaching, the Appellant made comments to the students that suggested that homosexuality led to pedophilia and was akin to bestiality.
5. On the same date, the Appellant also made comments that were disparaging of female Asian drivers.
6. Some students were offended, and the school administration learned of the Appellant's comments.

7. On January 10, 2019, Mr. W██████ issued a Letter of Reprimand to the Appellant for violating HCPSS policies 1000 (Civility), 1010 (Anti-Discrimination), 1040 (Safe and Supportive Schools), and 8050 (Teaching of Controversial Issues).

8. Also on November 13, 2018, a cheerleader in one of the Appellant's classes was to be excused from class to perform at an assembly. The Appellant loudly berated and mocked the student for asking to leave the classroom. The student's parent complained to Mr. W██████ the next day.

9. At around the same time, the Appellant called another student a "burnt marshmallow" and told a Muslim student that he or she could probably fly home on a "magic carpet."

10. On January 19, 2019, the Appellant taught a lesson about police brutality and showed his class two videos: "Rob Hustle – Call the Cops" and "Police Officer Slams S.C. High School Student to the Ground." Both videos contained scenes of violence.

11. The videos were not part of the HCPSS curriculum, and the Appellant did not request or obtain approval from school administrators or the Social Studies department before playing the videos in class.

12. Some students were distressed after viewing the videos, and the school administration learned of the incident.

13. Throughout February 2019, Mr. W██████ tried to meet with the Appellant about the incident. The Appellant did not respond to Mr. W██████'s inquiry about possible meeting dates, then either cancelled or did not show up for at least three scheduled meetings.

14. On March 12, 2019, Mr. W██████ recommended to the HCPSS superintendent that the Appellant be suspended without pay for one day for violating HCPSS policies 7030

(Employee Conduct and Discipline), 8050 (Teaching of Controversial Issues), 8040 (Selection of Instructional Procedures), and 1040 (Safe and Supportive Schools).

15. Instead of serving a one-day suspension, the Appellant received a Letter of Reprimand from Mr. W■■■■■ on June 5, 2019.

16. The Appellant was on medical leave at the beginning of the 2019-2020 school year. He returned to teaching on or about November 5, 2019.

17. On November 22, 2019, Mr. S■■■■■ informed the Appellant by email that the 2019-2020 school year would be a “full evaluation” year for the Appellant.

18. In a full evaluation year, teachers are required to submit student learning objectives (SLO) and teaching goals for the year.

19. Mr. S■■■■■’s email also told the Appellant that, because of concerns about the Teaching of Controversial Issues and Selection of Instructional Materials policies, the Appellant would be subject to a personal Plan of Action (referred to as an “action plan”) to train and support the Appellant in those areas during the school year.

20. Mr. S■■■■■ directed the Appellant to meet with him, Mr. W■■■■■, and Ms. Bos on December 4, 2019, at 12:40 p.m. to discuss the SLO/goals and the action plan.

21. The Appellant did not appear for the meeting on December 4, 2019, nor did he submit SLO/goals.

22. On December 5, 2019, Mr. S■■■■■ told the Appellant by email that the action plan would be implemented without the Appellant’s input and that Mr. S■■■■■ had chosen the Appellant’s teaching goals for the year.

23. On the same date, the Appellant emailed Mr. S■■■■■, stating that he questioned the validity of the action plan.

24. On January 21, 2020, Mr. W████████ and Dr. Cramer held a due process meeting⁸ with the Appellant and his attorney about missing the December 4 meeting.

25. The Appellant's action plan required him to receive controversial issues training, which he did with the Social Studies team on November 25, 2019.

26. The Appellant's action plan required him to submit procedures for implementing the plan to Mr. S██████ by December 20, 2019. The Appellant never met this requirement.

27. The Appellant's action plan required him to submit lesson plans for teaching controversial issues to Mr. S██████ or Ms. Bos at least five days before the lesson would be presented. The Appellant never submitted any lesson plans.

28. The Appellant's action plan required him to meet monthly with Social Studies staff or Ms. Bos to receive support with controversial issues implementation. The Appellant never attended any meetings.

29. The Appellant's action plan provided that Mr. S██████, Ms. Bos, or Instructional Facilitator Coffman would conduct at least one walk-through monthly of the Appellant's classes to monitor compliance with the Teaching Controversial Issues policy.

30. The curricula for the classes the Appellant taught included many controversial issues.

31. Mr. S██████ conducted a mid-year review, which is a performance evaluation, of the Appellant on January 31, 2020. The Appellant received a rating of unacceptable, primarily because he had not submitted any SLOs or goals for the school year and had not complied with the action plan.

32. On February 21, 2020, Mr. W████████ issued a Letter of Reprimand to the Appellant for violating HCPSS policy 7030 (Employee Conduct and Discipline) for not

⁸ Due process meetings are an opportunity for HCPSS employees to respond to allegations against them.

attending the December 4, 2019 meeting, not submitting SLO/goals, and ignoring the action plan.

33. On February 28, 2020, Ms. Bos conducted an announced observation of the Appellant's class.

34. The usual practice for an announced observation is for the teacher to meet with the observer before the observation to go over lesson plans and presentations scheduled for that day.

35. Despite several attempts by Ms. Bos, the Appellant did not meet with her before the date of the observation or submit any lesson plans.

36. On the day of the observation, the Appellant was giving his class an exam for the entire period, limiting the usefulness of the observation.

37. In March 2020, HCPSS instituted virtual learning for all students because of the COVID-19 pandemic.

38. On or about April 20, 2020, HCPSS changed the Appellant's action plan to indicate that, instead of walk-throughs of his classes, HCPSS would monitor the Appellant's content on Canvas (an HCPSS program by which teachers delivered lessons to students), Google Meet, and other delivery tools.

39. The Appellant did not comply with the action plan during the rest of the 2019-2020 school year.

40. On June 26, 2020, Mr. S■■■■ informed the Appellant that the action plan would continue into the 2020-2021 school year.

41. The Appellant missed a Social Studies staff meeting on September 2, 2020.

42. The Appellant did not attend virtual back-to-school-night on September 10, 2020, which was an important event but not mandatory for teachers.

43. HCPSS amended the Appellant's action plan on September 11, 2020. The deadline for submitting lesson plans for controversial issues was reduced to three days prior to the lesson. The Appellant was instructed to meet with Mr. S█████ by October 7, 2020, to discuss and implement the plan.

44. The Appellant missed a Social Studies staff meeting on September 23, 2020.

45. The Appellant did not meet with Mr. S█████ to discuss implementation of the action plan.

46. The Appellant did not attend a scheduled meeting with Ms. Bos on October 28, 2020.

47. The Appellant missed a Social Studies staff meeting on January 7, 2021.

48. Ms. Bos conducted a virtual observation of the Appellant's class on January 7, 2021.

49. Ms. Bos saw no interaction between the Appellant and students. He did not ask the students any questions or engage them in learning.

50. Observation reports rate a teacher on a continuum of four levels: unsatisfactory, basic, proficient, and distinguished.

51. Ms. Bos rated the Appellant proficient in one area, basic in three areas, and unsatisfactory in two areas. She did not rate him at all in four areas because she did not observe the Appellant use those techniques.

52. The Appellant declined to meet with Ms. Bos after the observation.

53. The Appellant never complied with the provisions of his action plan, except for controversial issues training in 2019.

54. On January 12, 2021, Mr. W█████ recommended that the HCPSS superintendent terminate the Appellant's employment.

55. The Appellant and his attorney attended a due process meeting on January 15, 2021. Ms. Dennis served as the superintendent's designee at the meeting. Also in attendance were Dr. Cramer, Mr. W██████████, and P██████ M██████████, Director of Staff Relations.

56. On February 10, 2021, Dr. Michael J. Martirano, Superintendent of HCPSS, recommended that the County Board terminate the Appellant's employment.

57. On August 3, 2021, the County Board terminated the Appellant's employment without holding a hearing.⁹

DISCUSSION

The County Board has the burdens of production and persuasion in this case; the standard of proof is by a preponderance of the evidence. COMAR 13A.01.05.05F(3). The County Board dismissed the Appellant from his position under section 6-202 of the Education Article, Annotated Code of Maryland, which, in pertinent part, provides:

- (a)(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) (2018). The County Board relied on paragraphs (a)(1)(ii), (iii), (iv), and (v) as the basis for its decision.

Insubordination

The first allegation against the Appellant is insubordination. Black's Law Dictionary (11th ed. 2019) defines insubordination as "1. A willful disregard of an employer's instructions,

⁹ The circumstances of the County Board's failure to hold a hearing are explained in the Rulings on Motions issued December 8, 2021.

esp. behavior that gives the employer cause to terminate a worker's employment. 2. An act of disobedience to proper authority; esp., a refusal to obey an order that a superior officer is authorized to give." American Law Reports offers further illumination:

While the courts' definitions of "insubordination" in teacher dismissal cases have varied somewhat from one jurisdiction to another, it seems fairly clear that the term at least includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued by the school board or by an administrative superior.

78 A.L.R. 3d 83.

HCPSS Policy 7030, Employee Conduct and Discipline, makes it simpler, defining insubordination as "Failure to follow a valid directive from a person in a position of authority" and providing the following examples: "a. Failure to perform all work and duties assigned by a supervisor/administrator in charge b. Failure to follow the written or verbal instruction of a supervisor/administrator." County Board Ex. A.

A school system is not a military organization wherein one must obey orders strictly or face discipline. It is, however, a hierarchical entity governed (in descending order) by the school board, a superintendent, the central office, school principals, vice principals, and department heads. Teachers are subordinate to all of these and must follow policies promulgated by the school board, curricula approved by the central office, and day-to-day instructions of their principals and vice principals. Certainly, teachers have some flexibility in the way they deliver lessons, but they must conform to the overall policies and expectations of the school system.

Turning from these generalized statements about a teacher's place in the hierarchy to the specific allegations in this case, there is no doubt that the Appellant was insubordinate. Simply put, he willfully refused to do a number of things that his superiors required of him.

After the Appellant showed his class inappropriate videos depicting police brutality (discussed further below), Mr. W [REDACTED] made several attempts to meet with the Appellant to

discuss the matter. He emailed the Appellant two possible dates, but the Appellant did not respond. Mr. W■■■■ then scheduled a meeting for February 13, 2019, which the Appellant did not attend. Mr. W■■■■ rescheduled the meeting for February 25, but the Appellant took leave that day. The Appellant then cancelled a final attempt to meet on February 28, 2019. The Appellant ultimately received a Letter of Reprimand for these incidents on June 5, 2019.

On November 22, 2019, Mr. S■■■■ informed the Appellant that he had been placed on an action plan because of concerns about the Teaching of Controversial Issues and Selection of Instructional Materials policies. Mr. S■■■■, by email, scheduled a meeting with the Appellant for December 4, 2019 to discuss the action plan and the Appellant's SLO and goals for the school year. The Appellant did not respond to the email and failed to attend the meeting. On December 5, 2019, Mr. S■■■■ informed the Appellant that he was insubordinate for missing the meeting. On the same day, the Appellant responded as follows:

I do not feel comfortable meeting under the terms in which you presented. I have no issue meeting with you personally, to discuss my SLO goals, but as I mentioned to you yesterday morning in person, I need time to verify the validity of this unexpected Action Plan as it relates to my contractual protections. I will keep you posted when I hear back from my representation.

County Board Ex. 22.

The Appellant's response unequivocally conveys his deliberate decision not to attend the meeting with Mr. S■■■■ and his resistance to the action plan. The meeting of December 4, 2019 was not optional; the school administration required it to get the Appellant's goals on track, as well as implementation of the action plan. The Appellant had no authority to simply not attend the meeting because he did not agree with the action plan. This was an obvious instance of insubordination, for which the Appellant received a Letter of Reprimand on February 21, 2020.

As outlined in Findings of Fact 26 through 29, the Appellant did almost nothing to comply with his action plan during the 2019-2020 school year. Although he did attend a training

on controversial issues with the Social Studies team, he did not meet with Mr. S■■■■ to discuss implementing the plan, attended no monthly meetings, and submitted no lesson plans.

The school system was thrown into chaos in March 2020 when in-person learning was suspended because of the COVID-19 pandemic. All instruction immediately became virtual, with many attendant technical and other problems. Likewise, staff meetings and classroom observations had to be conducted by video. The evidence suggests that the Appellant's action plan was not a priority for anyone during the rest of the school year.

In an email to the Appellant on June 26, 2020, Mr. S■■■■ noted the Appellant's failure to cooperate with the action plan and informed him that the plan would continue in the 2020-2021 school year. Nevertheless, when school reconvened for the fall semester, the Appellant continued his campaign of noncompliance. The Appellant missed a Social Studies staff meeting on September 2, 2020 and did not attend virtual back-to-school-night on September 10, 2020, which was an important event but not mandatory for teachers.

HCPSS amended the Appellant's action plan on September 11, 2020. The deadline for submitting lesson plans for controversial issues was reduced to three days prior to the lesson. The Appellant was instructed to meet with Mr. S■■■■ by October 7, 2020, to discuss and implement the plan. The Appellant never met with Mr. S■■■■.

The action plan also included monthly meetings with Ms. Bos during the 2020-2021 school year. The Appellant did not attend a single monthly meeting and offered no explanations for his failures to appear.

The Appellant missed another Social Studies staff meeting on September 23, 2020. He also did not attend a mandatory scheduled meeting with Ms. Bos on October 28, 2020. Finally, the Appellant missed a Social Studies staff meeting on January 7, 2021.

Meanwhile, the Appellant had done absolutely nothing to comply with his action plan during the 2020-2021 school year. On September 30, 2020, he wrote the following to Mr. S■■■■:

The validity and implementation of this Action Plan, upon further review is under question. As it proves an extra burden upon myself, the origins and legality of it, and is extremely confusing to the point, that I do not understand what is being required, among other things.

I will need the assistance of the union and will detail to them my justifications.

County Board Ex. 28. The Appellant's intention not to comply with the action plan could hardly be clearer.

Several of the County Board's witnesses testified that action plans for teachers are not disciplinary; rather, their purpose is to support a teacher who needs training and assistance in delivering lessons effectively or conforming to HCPSS policies. Although action plans are meant to be cooperative engagements between the teacher and a mentor or facilitator, a school principal has authority to impose an action plan on a teacher if necessary.

Mr. W■■■■, Ms. Bos, and Mr. S■■■■ were all the Appellant's superiors and were empowered to assign him duties and give him instructions. The Appellant willfully failed to attend mandatory meetings with each of them and was insubordinate by doing so. The Appellant also refused to comply with the action plan Mr. W■■■■ had put in place, which is another instance of insubordination. This charge against the Appellant is upheld and may be a basis for termination of employment.

Misconduct in Office

The second charge is misconduct in office. Black's Law Dictionary (11th ed. 2019) defines misconduct as "a dereliction of duty; unlawful, dishonest, or improper behavior, esp. by someone in a position of authority or trust."

In *Resetar v. State Board of Education*, 284 Md. 537 (1979), the Court of Appeals upheld the termination of a teacher who called students "jungle bunnies." The teacher had received prior

disciplinary reprimands. The Court of Appeals held that the teacher’s actions amounted to misconduct in office “within the meaning of the statute”¹⁰ and that the State Board had not acted arbitrarily, capriciously, or illegally when it took the teacher’s previous reprimands into account when deciding that termination was proper. *Id.* at 562.

HCPSS Policy 7030, Employee Conduct and Discipline, defines misconduct in office as “Any wrongdoing by an employee in relation to the duties and responsibilities of his/her assigned position.” County Board Ex. A. The policy gives many examples of misconduct in office, but the only example that may be relevant in this case is “Intimidation of students, staff, or citizens at large, including use of racial slurs and/or other derogatory remarks.” *Id.*

HCPSS Policy 8050, Teaching of Controversial Issues, defines controversial issues: “Significant academic, social, political, and ideological matters about which there exists opposing viewpoints and/or multiple perspectives.” County Board Ex. H. The policy requires the following:

- A. A controversial issue may be addressed in the classroom when the following conditions are met:
 - 1. The issue has political, economic, cultural, or social significance and is presented within curricular guidelines.
 - 2. Teachers have communicated to students how to practice civil discourse.
 - 3. Students are provided access to relevant and credible information pertaining to the issue under study.
 - 4. Students are able to form and express their own opinions on the issue without jeopardizing their relationships with teachers or the school.

- B. Controversial issues must be presented as follows:
 - 1. In an age appropriate manner.
 - 2. With a goal of encouraging discussion and building mutual understanding of the topic.
 - 3. With access to and respect for multiple perspectives and sources that are founded in relevant and credible information.

¹⁰ I.e., section 6-202 of the Education Article.

4. In a learning environment that is safe, supportive, inclusive, and focused on an academic examination of the issue.
5. In alignment with the school system's curriculum, mission, and vision.

County Board Ex. H.

The controversial issues that are relevant in this case are gay marriage and police brutality, which are both connected to the Social Studies curriculum. The Appellant's comments to students may not have been as racially offensive as "jungle bunnies" but they targeted several audiences with a large cumulative effect. His statements that homosexuality leads to pedophilia and is not much different from bestiality were undoubtedly hurtful to any LGBTQ¹¹ students in his class. The Appellant, through legal argument and questions he posed when cross-examining the County Board's witnesses, contended that he was "modeling" for students in the midst of a debate about gay marriage; that is, that he was merely expressing an opposing viewpoint rather than his own opinions. But the County Board's witnesses completely destroyed that contention in their responses to the Appellant's questions.

Mr. S■■■■, the assistant principal, testified that, regardless of why they were made, the Appellant's statements were inappropriate under the Teaching of Controversial Issues policy, even if the Appellant were quoting government officials. The Appellant's comments violated several HCPSS policies and deprived his students of a safe and supporting environment, according to Mr. S■■■■, who went on to say that the Appellant's comments were "clearly inappropriate in any classroom at any time." Similarly, Mr. W■■■■ testified that the Appellant's statements were "inappropriate in any context."

Ms. Bos, the Coordinator of Secondary Social Studies, testified that the Appellant's statements about homosexuality did not address the issue of gay marriage and attacked the

¹¹ Lesbian, gay, bisexual, transgender, queer.

LGBTQ community. She further stated that a teacher must never express personal biases in the classroom.¹²

In addition to his comments about homosexuality, the Appellant was somewhat of equal opportunity insulter. He made disparaging comments about female Asian drivers, told a Muslim student that he or she probably rode home on a “magic carpet,” mocked and insulted a cheerleader who asked to be excused to perform at an assembly, and called another student a “burnt marshmallow.”¹³

All the County Board’s witnesses emphasized that teachers must follow the approved curriculum and HCPSS policies, especially when teaching controversial issues. This would be particularly true for the Appellant, a high school Social Studies teacher of history and government in whose classes such issues arise regularly. The point, according to the witnesses, is not that topics such as gay marriage or police brutality cannot be taught, but that the teaching must conform to established policies. As Ms. Bos put it, there is a difference between teaching controversial issues and making controversial statements.

The Appellant’s classroom when he made inappropriate comments about homosexuality, Asian females, and Muslims was not a safe, supportive, and inclusive environment. Some students were offended to the point that they complained to school administrators. Despite his arguments to the contrary, it is clear that the Appellant was announcing his personal biases to the students rather than trying to promote a balanced discussion.

On the subject of police brutality, the Appellant also violated HCPSS Policy 8040, Selection of Instructional Materials, by showing his class two videos containing scenes of physical violence. According to Policy 8040, the videos would be categorized as “Supplemental

¹² This testimony referred to the 2020 revision of the Teaching of Controversial Issues policy. Under the prior version, teachers were allowed to express personal opinions if they clearly identified them as such for the students.

¹³ The record contains some elaboration – that the term means black on the outside but white on the inside. The evidence is insufficient to establish this definition as a fact.

Instructional Materials – Teacher-selected resources, other than approved course specific resources, used to support or reinforce instruction.” County Board Ex. E. Policy 8040 requires the following: “All instructional materials, including supplemental, that are selected to be used with students will be approved using HCPSS established procedures and selection criteria.” *Id.*

The videos the Appellant used, “Rob Hustle – Call the Cops” and “Police Officer Slams S.C. High School Student to the Ground,” were not part of the approved HCPSS curriculum. The Appellant did not seek approval of the videos from █████ HS administrators or the Social Studies department. Again, the school administration became aware of the Appellant’s actions after students complained.

Additionally, the Appellant had a significant history of recent discipline by the time Mr. W█████ recommended his dismissal, having received four Letters of Reprimand between January 10, 2019 and January 12, 2021.¹⁴

The *Resetar* court provided the following guidance concerning misconduct in office:

Bearing in mind the grant of power by the General Assembly to the State Board to “explain the true intent and meaning of the (school) law,” we are of the view that the State Board could well have concluded that the remark of the teacher here might undermine his future classroom performance and overall impact on his students, to paraphrase the language used in Wright. Accordingly, we find no error of law on the part of the State Board in its conclusion that the “jungle bunny” episode constituted misconduct in office.

Resetar at 561.

Considering the Appellant’s classroom performance and impact on his students, I find that the evidence establishes that the Appellant committed misconduct in office. Like the teacher in *Resetar*, the Appellant had been disciplined previously. The Appellant showed callous disregard for his students’ ethnic backgrounds and sexual orientations. He interjected his personal biases into lessons and repeatedly violated HCPSS policies. His principal, the

¹⁴ I do not consider the warning letters the Appellant received in 2013 to 2016 relevant here.

superintendent, and the County Board correctly concluded that the Appellant was unfit to continue teaching. The charge of misconduct in office is upheld and may be used as a basis for termination of employment.

Willful Neglect of Duty

The third allegation in the Notice of Charges and Recommended Termination is willful neglect of duty. HCPSS Policy 7030 provides the following definition of this charge: “Failure to knowingly follow a requirement of public school law, Board policies, and HCPSS procedures, school system directives, or job duties and responsibilities.” County Board Ex. A. Most examples given in the policy relate to use of leave and unauthorized absences, but also include: “Failure to follow policies adopted by the Board and HCPSS implementation procedures.” *Id.*

As discussed previously, the Appellant violated HCPSS Policy 8050, Teaching of Controversial Issues, and Policy 8040, Selection of Instructional Materials. The Appellant committed these violations willfully; that is, he intended to announce his personal biases concerning homosexuality and female Asian drivers and to insult certain students. He also chose to show his students violent videos without seeking approval. The Appellant’s actions fall squarely within the definition and example of willful neglect of duty by not following established policies and procedures. This charge is upheld and may be used as a basis for termination of employment.

Incompetence

The final charge against the Appellant is incompetency. The Education Article and the regulations in COMAR Title 13A do not define incompetency (or, more correctly, incompetence). Section 6-202(c)(3) of the Education Article authorizes local school boards to establish their own “performance evaluation criteria” to measure a teacher’s performance and to determine competence. *See also* COMAR 13A.07.04.02.A(1): “An evaluation shall be based on

written criteria established by the local board of education, including but not limited to scholarship, instructional effectiveness, management skills, professional ethics, and interpersonal relationships.”

The Maryland courts have spoken in a limited fashion on the definition of teacher incompetence. Many absences, alone, do not amount to incompetence. *Toland v. State Bd. of Ed.*, 35 Md. App. 389, 397-398 (1977). The court in *Bd. of Ed. of Chas. Co. v. Crawford*, 284 Md. 245, 259 (1979) applied existing employment contract law, as follows: “Implicit in any employment contract is an implied promise on the part of an employee to perform his duties in a workmanlike manner. In the case of a teacher this must mean in accordance with established professional standards.”

In *Bd. of School Commissioners of Balto. City v. James*, 96 Md. App. 401 (1993), the court acknowledged that determining teacher incompetence was “necessarily qualitative in nature” and, quoting *Clark v. Whiting*, 607 F. 2d 634, 639 (4th Cir. 1979) stated, “teacher’s competence and qualifications . . . are by their very nature matters calling for highly subjective determinations, determinations which do not lend themselves to precise qualifications and are not susceptible to mechanical measurement or the use of standardized tests.”

HCPSS Policy 7030 defines incompetence: “Lacking in knowledge, skills, ability, or failing to adequately perform the duties and responsibilities of an assigned position.” County Board Ex. A. Examples stated in the policy are “Failing to complete work assignments” and “Performing work assignments in an inappropriate or unsatisfactory manner.” *Id.*

The Appellant had one evaluation and three classroom observations during the relevant time period. Mr. S■■■■ performed a mid-year evaluation on January 31, 2020 and informally observed the Appellant online on October 26, 2020, and Ms. Bos conducted an announced observation on February 28, 2020 and an unannounced virtual observation on January 7, 2021.

Mr. S■■■■'s mid-year review was an evaluation of the Appellant's performance to that point in the school year. He rated the Appellant "unacceptable," primarily because the Appellant had not submitted SLO and teaching goals for the school year and had ignored his action plan. Mr. S■■■■ explained that he had chosen the Appellant's goals for the year because the Appellant had not provided them. Mr. S■■■■ gave the Appellant until February 3, 2020 to submit the missing material, but the Appellant never provided anything.

Because 2019-2020 was a full evaluation year for the Appellant, Ms. Bos planned an announced observation of the Appellant's classroom for February 28, 2020. Ms. Bos explained that the usual procedure for an announced observation is that the teacher would meet with the observer before the observation to go over the lessons planned for the day. Then there would be another meeting after the observation to review the observer's comments. The Appellant did not meet with Ms. Bos before or after the observation or submit any lesson plans for the day of the observation. When Ms. Bos arrived at the Appellant's classroom, the Appellant was administering an exam, negating most of the value of the observation because Ms. Bos did not see any teaching. Ms. Bos was able to review the test the Appellant was giving and saw that it did not align with the current State High School Assessment for Social Studies. Ms. Bos testified that the Appellant's actions surrounding this observation were "very unusual."

In the 2020-2021 school year, Mr. S■■■■ dropped into one of the Appellant's classes on October 26, 2020 for an informal observation. Mr. S■■■■ saw no interaction between the Appellant and his students; the Appellant merely presented the lesson. Mr. S■■■■ also noted that the Appellant was not using the lesson templates that the Social Studies department had prepared for the first quarter of the school year. Use of these templates was mandatory, and the Appellant had not requested help with any technical difficulties related to posting and using them.

The Appellant's last observation was by Ms. Bos on January 7, 2021. This was reported as an unannounced observation (County Board Exhibit 51), but the Appellant certainly knew about it beforehand because Ms. Bos had been trying to get the Appellant to submit paperwork for an observation for at least a month. On December 14, 2020, Ms. Bos's secretary emailed the Appellant to tell him that the observation was scheduled for January 7, 2021 and asking again for the paperwork.

The Appellant did not provide anything that Ms. Bos requested. Nevertheless, she went ahead with the observation on January 7 by joining the Appellant's virtual classroom. Ms. Bos described the Appellant's teaching as a "teacher monologue" – he did not ask the students any questions or engage them in learning. Ms. Bos's bottom line was that she could not tell if the students were learning anything. Ms. Bos rated the Appellant proficient in one area, basic in three areas, and unsatisfactory in two areas. She left several rating areas blank because she did not observe the Appellant demonstrate flexibility, use discussion techniques, engage students in learning, or manage student behavior. The Appellant declined to meet with Ms. Bos after the observation.

In summary, two of the Appellant's superiors, Mr. S■■■■ and Ms. Bos, evaluated the Appellant's performance as a teacher and found it unacceptable. The Appellant failed to adequately perform the duties and responsibilities of a teacher, thus meeting the definition of incompetence. This charge against the Appellant is sustained and is a proper basis for termination of employment.

Discrimination

After Mr. W■■■■ recommended the Appellant's termination, the Appellant and his counsel had a due process meeting on January 15, 2021 with Ms. Dennis; Dr. Cramer; P■■■

M■■■■, Director of Staff Relations; and Mr. W■■■■. The notes from that meeting contain the following allegations by the Appellant and his attorney:¹⁵

- “. . . this has to do with his request for reasonable accommodations, he has received no accommodation for his disability and the duties required of him are discriminatory in their nature.”
- “. . . the action plan is discriminatory and all items are discriminatory.”
- “. . . it is because he is a black man and he doesn’t make them feel comfortable.”
- “. . . other teachers do activities that are just as controversial, and their work is not scrutinized the way his is. The scrutiny is based on discrimination and it is his right to deal with the situation as best he knows how. Nobody listens to anything he has to say. Teachers who are not of the same gender and race have more influence over administration.”
- “. . . the action plan is discriminatory in nature and is why he filed a complaint. He won’t participate or comply with something that was done to discriminate against him.”
- “. . . the action plan is not clear and the instructions were not explained appropriately. He said it is not measurable and based on discrimination.”
- “. . . the individuals he is dealing with have bias.”
- “He would like to have a conversation with these people who are lying about him and discriminating against him, a black male highly qualified teacher who represents 2 percent of teachers.”
- “The action plan was discriminatory, and the technology failures were not [the Appellant’s] fault.”

County Board Ex. 34.

Regarding the Appellant’s request for disability accommodations after his medical leave at the beginning of the 2019-2020 school year, Mr. S■■■■ and Mr. W■■■■ testified that the Appellant asked that a student be assigned to him as an aide, but such an assignment was not possible because no student was available, and the request came too late in the school year. This was the only request by the Appellant that HCPSS did not grant. The lack of a student aide had no effect on any of the charges against the Appellant.

At the due process meeting, the Appellant contended that his failures to attend certain meetings and back to school night were caused by technical problems. But Mr. W■■■■ and Mr. S■■■■ testified that the Appellant never complained of technical difficulties or requested

¹⁵ The quotations are from the notes of the meeting and do not purport to be the actual words spoken at the meeting.

help with virtual instruction or meetings. Based on the evidence, I conclude that the Appellant did not attend meetings because he chose not to, not because of any technical problems.

From his arguments at the hearing, it is clear that the Appellant contends that his termination, the action plan, and the reprimands he received were all the result of discrimination based on his race and gender. The Appellant had the opportunity to present whatever evidence he had of this allegation to the County Board but chose not to, as explained in the Rulings on Motions issued December 8, 2021.

Ms. Dennis testified that the Appellant's termination was based on his performance and had nothing to do with race. She stated that she has mentored many African American teachers on action plans, but that such plans are useless if, like the Appellant, the teacher makes no effort to cooperate. The Appellant, according to Ms. Dennis, was terminated because he refused to engage with the action plan, missed many meetings without adequate explanations, and violated HCPSS policies.

Dr. Cramer testified that he has seen discrimination in other instances and, when discrimination is claimed, he investigates it thoroughly. He noted that HCPSS has "an entire office" devoted to race, culture, diversity, equity, and inclusion issues. In this case, said Dr. Cramer, there was no evidence whatsoever of discrimination, and the Appellant's termination was not based on race.

The evidence in this case contains nothing that would support an allegation of discrimination against the Appellant. I find that the testimony of the County Board's witnesses on this issue is credible and convincing. The Appellant may feel that he has suffered discrimination by being disciplined and being placed on an action plan, but nothing in the record supports that belief.

Looking at the evidence objectively, it thoroughly supports the County Board's decision to terminate the Appellant's employment. His actions for two years, early 2019 until early 2021, were a study in defiance and non-cooperation. He refused to attend mandatory meetings. He refused to comply with the action plan. He willfully violated HCPSS policies. His performance as a teacher was below standards. Obviously, the Appellant felt that his superiors in the HCPSS hierarchy had no authority over him and that he could ignore their orders and directions with impunity. In the circumstances present in this case, the County Board had no real choice other than to terminate the Appellant's employment to maintain the integrity of ■■■HS and the school system as a whole.

PROPOSED CONCLUSION OF LAW

I conclude as a matter of law that the Board of Education of Howard County properly terminated the Appellant's employment as a teacher. Md. Code Ann., Educ. § 6-202 (2018); *Resetar v. State Board of Education*, 284 Md. 537 (1979); *Bd. of School Commissioners of Balto. City v. James*, 96 Md. App. 401 (1993); Howard County Public School System Policies 1000, 1010, 1040, 7030, 8040, and 8050.

RECOMMENDATION

I **RECOMMEND** that the Maryland State Board of Education **UPHOLD** the Board of Education of Howard County's decision to terminate the Appellant's employment because of insubordination, misconduct in office, willful neglect of duty, and incompetence.

February 8, 2022
Date Decision Issued


Richard O'Connor
Administrative Law Judge

ROC/emh
#196154

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. Exceptions and responses shall be filed with the Maryland State Department of Education, 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.

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