

GARY MCGRAW,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 25-17

OPINION

INTRODUCTION

This is an appeal of the Baltimore County Board of Education’s (“local board’s”) decision affirming the termination of Appellant following his insubordination based on his failure to timely document his long-term absence as required by local board policy. The local board filed a response to the appeal maintaining that its decision is not arbitrary, unreasonable, or illegal and should be upheld. Appellant responded, and the local board replied.

FACTUAL BACKGROUND

Gary McGraw (“Appellant”) served as a paraeducator with Baltimore County Public Schools (“BCPS”) as a noncertificated, 10-month employee since August 30, 2019. (R. 93-98). During the 2022-2023 school year, Appellant was assigned to the Rosedale Center. *Id.* On April 17, 2023, Appellant notified the school that he would be absent because of personal illness for the period of April 17, 2023 – May 22, 2023. (R. 65-66). The disability slip supplied by Appellant stated that he would be eligible to return to work on May 16, 2023 with no restrictions. (R. 66). As result of Appellant’s request for an extended medical leave, he was referred to the Integrated Disability Management Program (“IDMP”). (R. 74-77). The IDMP is managed by the Office of Employee Absence and Risk Management (“OEARM”) in the Division of Human Resources. Local Board Policy 4203, *Absences and Leaves*, Section I provides that the local board “expects regular attendance at work and believes that it has a profound and positive effect on student achievement, on the maintenance of a safe and orderly learning environment, and on the effective and efficient operation of the school system.” Superintendent’s Rule 4203, *Absences and Leaves*, establishes the employee absence and leaves of absence guidelines for BCPS. (R. 103-109). Section IV of Superintendent’s Rule 4203 provides that an employee is deemed absent when they are unavailable for work as assigned/scheduled. (R. 103). Section V(B) provides that an employee who fails to comply with the requirements of the absence monitoring programs may be subject to disciplinary action including termination. (R. 105). Section VI(D) provides that “[a]n employee who is in unpaid status for ten (10) consecutive duty days is considered to have no employment status unless the employee has applied for, and is on, an approved leave of absence.” (R. 106).

By letter dated May 1, 2023, OEARM notified Appellant that his absence would be monitored by OEARM and directed Appellant to provide medical documentation from his medical provider within 10 business days because the disability slip he provided did not contain the required medical documentation. (R. 52, 74-77). The letter also notified Appellant that failure to comply with the IDMP directives could lead to disciplinary action, up to and including termination. (R. 74-77). The letter also provided information about the Family Medical Leave Act (“FMLA”) and included an FMLA packet which stated that “[w]hile on leave, you will be required to furnish [OEARM] with periodic reports of your status and intent to return to work as often as every 30 days of intermittent and/or consecutive FMLA.” *Id.*

Appellant failed to meet the 10-business day deadline, which would have been May 15, 2023. By letter dated May 16, 2023, OEARM notified Appellant that he was out of compliance with the IDMP and that he was required to comply. (R. 78-79). The May letter outlined the requirements of Superintendent’s Rule 4203 and explained that he could be disciplined for his failure to comply. (R. 78-79, 103-109).

On May 17, 2023, Appellant requested FMLA leave. (R. 67-73). The medical documentation supplied by Appellant indicated that Appellant was unable to work from April 17, 2023 through May 22, 2023. *Id.* By letter dated August 21, 2023, sent to Appellant’s personal and work email addresses, Appellant’s FMLA leave was approved from April 17, 2023, until September 18, 2023.¹ (R. 115-117). Appellant was advised that he was expected to return to work on September 19, 2023 and that he was required to contact OEARM at least five business days prior to the end date of his approved leave. (R. 115-117). Appellant did not report back to work on September 19, 2023; did not request to extend his leave; and did not submit any documentation to substantiate his continued absence after the exhaustion of his FMLA leave on September 19, 2023. (R. 12).

By letter dated October 20, 2023, IDMP advised Appellant that OEARM had not received the required medical documentation and directed Appellant to submit medical documentation within 10 business days to substantiate his continued absence from duty. (R. 82-83). The letter also notified Appellant that his failure to comply could result in discipline, including termination. *Id.* By second letter dated October 20, 2023, OEARM notified Appellant that he had entered into unpaid status as of September 25, 2023, and the letter described the three ways Appellant could maintain his employment status. (R. 85-88). The letter also notified Appellant, “[I]f you have not achieved a paid status or been approved for an unpaid leave of absence by November 3, 2023, ten (10) business days from the date of this letter, a recommendation for your separation from employment will be made to the Chief Human Resources Officer.” (R. 85). Both letters were sent by electronic, regular, and certified mail. (R. 24, 82, 85).

Appellant failed to provide any medical documentation to substantiate his continued absence from work and also failed to resolve his unpaid status by the November 3, 2023 deadline. By letter dated November 21, 2023, Basheera James, Executive Director, Department of Human Resources Administration and Compliance, notified Appellant that he was recommended for termination because his conduct was in violation of local board policy and

¹ As a 10-month employee, Appellant would not have used his FMLA during the summer months, nor was that period counted towards his annual 12 weeks of eligible FMLA leave. (R. 74-77).

Superintendent's Rule 4203 due to Appellant's failure: to provide the required medical documentation to support his continued absence; to secure an approved leave of absence; to resolve the unpaid status; and to submit a resignation. (R. 89-92). The letter also notified Appellant that a pretermination hearing was scheduled with the Superintendent's Designee, Charles Smith, II, Manager of Employee and Student Hearings on December 6, 2023. (R. 91).

Appellant attended the pretermination hearing with Mr. Smith. Appellant expressed surprise that OEARM had not received any documents from Appellant since May 2023. (R. 93). Appellant explained that he had informed OEARM in April or May why he was unable to work; that he had not submitted any documentation in November, but he had in April, May and October and that he had trouble getting the required paperwork from his doctor. (R. 93). The Office of Employee and Student Hearings ("OESH") requested Appellant to provide all documents that he alleged he had provided to OEARM. *Id.* That same day following the hearing, Appellant forwarded to Mr. Smith a disability slip dated December 4, 2023, indicating that Appellant was unable to work from November 29, 2023 through February 21, 2024; and a partially completed sick leave bank slip seeking sick leave benefits for this same time period. (R. 93-94, 111-112). Appellant conceded that he had not provided these two documents to OEARM. (R. 94).

By letter dated December 21, 2023, Mr. Smith, as the Superintendent's Designee, concluded that Appellant had been absent from his work assignment since April 14, 2023, and despite having received ample opportunities to rectify and to clarify his situation, Appellant hadn't submitted the requested medical documentation to substantiate his continued absence after the exhaustion of his FMLA leave on September 19, 2023. Mr. Smith terminated Appellant effective December 21, 2023 for insubordination for his failure to timely provide the medical documentation as required by local board policy and the Superintendent's Rule 4203. (R. 96).

By letter dated January 16, 2024, Appellant appealed his termination to the local board. (R. 128). The matter was referred to Hearing Examiner Gregory Szoka for an evidentiary hearing which was held on June 25, 2024. (R. 5-50). At the June 25 hearing, Appellant submitted three exhibits. Appellant's Exhibit 1 is a statement that he was seen by a physician on September 15, 2023. (R. 119). Appellant's Exhibit 2 is a disability slip dated June 13, 2023 documenting Appellant was not able to work from May 23, 2023 to October 18, 2023. (R. 120). Appellant's Exhibit 3 is a partially completed sick leave bank form for the period of May 23, 2023 to October 18, 2023. (R. 121). Shannon Dawkins, Director, OEARM, testified that she was familiar with Appellant's file and that he had not submitted the three documents to OEARM. (R. 30-31). She also testified that Appellant had not submitted any medical documentation about his absence from work after exhaustion of his FMLA leave on September 19, 2023 and this is what triggered the notifications to Appellant that he was out of compliance and had entered unpaid status as of September 25, 2023. (R. 12). Hearing Examiner Szoka found that Appellant was advised four times in writing of what he needed to do to properly document his continued absence after he failed to return to work following the expiration of his FMLA leave on September 19, 2023. (R. 62). By September 25, 2023, Appellant entered unpaid leave status and was required to resolve his unpaid status by November 3, 2023. *Id.* His failure to resolve the issue prompted a recommendation for termination dated November 21, 2023. The Hearing Examiner stated:

While an employee may inform BCPS that he is under medical care, it must be substantiated by medical documentation. Accordingly, it is the employee's responsibility to secure and provide documentation which substantiates a continuing absence from work.

(R. 63). The Hearing Examiner concluded that Appellant failed to demonstrate by a preponderance of the evidence that the decision to terminate him for insubordination effective December 21, 2023, was arbitrary, unreasonable, or illegal and recommended that the local board uphold the termination. (R. 51-63).

Appellant timely requested oral argument before the local board which was held on November 20, 2024. (R. 1-2). The local board conducted an independent review of this matter and by Order dated November 20, 2024, adopted the Hearing Examiner's recommendation and upheld the Superintendent's Designee's decision by a vote of 9 to 2.

This appeal followed.

STANDARD OF REVIEW

In *Venter v. Howard Cnty. Bd. of Educ.*, MSBE Op. No. 05-22 (2005), *aff'd* 185 Md. App. 648, *cert. denied*, 410 Md. 561 (2009), the State Board held that a non-certificated employee is entitled to an administrative appeal of a termination pursuant to §4-205(c)(3) of the Education Article. The standard of review that the State Board applies to such a termination is that the local board's decision is considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

LEGAL ANALYSIS

In his appeal to the State Board, Appellant argues that he did not receive the FLMA paperwork approving his FMLA leave through September 19, 2023. He asserts that he was under the impression that he was on approved leave until October 18, 2023. However, he admits that he received the October 20, 2023 letters from BCPS notifying him that he was out of compliance with the IDPM and that he had entered into unpaid status as of September 25, 2023.

These letters notified Appellant of the requirements of Superintendent's Rule 4203 and clearly specified he was required to provide the necessary medical certifications by November 3, 2023 to continue his leave following the expiration of his FMLA leave to avoid his pending termination of employment for his failure to submit the required medical documentation. Even if we assume that Appellant provided the disability slip dated June 13, 2023 to OEARM in a timely manner documenting his need for medical leave for the period of May 23, 2023 to October 18, 2023, the record before us demonstrates that Appellant failed to provide any medical documentation to support his absence from work for the period of October 19, 2023 through November 28, 2023. Moreover, Appellant did not supply any additional medical documentation for the period of November 29, 2023 through February 21, 2024 until after his termination hearing well after the November 3, 2023 deadline. Appellant was given numerous opportunities

to provide the necessary medical documentation, and he failed to comply with the clear directives from OEARM to do so as required by Superintendent's Rule 4203.

As stated in Local Board Policy 4203, *Absences and Leaves*, Section I, the local board "expects regular attendance at work and believes that it has a profound and positive effect on student achievement, on the maintenance of a safe and orderly learning environment, and on the effective and efficient operation of the school system." The record before us demonstrates that Appellant did not comply with the relevant policies and rules so that BCPS could appropriately plan for his absence. In *William Morrison v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. 15-19 (2015), we upheld a teacher's termination for violating the Board's attendance policy stating, that "Attendance matters, both for students and teachers." See also *Diana Lynne Ward v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. 01-22 (2001) (State Board determined that an educational assistant violated an established attendance policy when she failed to report for work without authorization.).

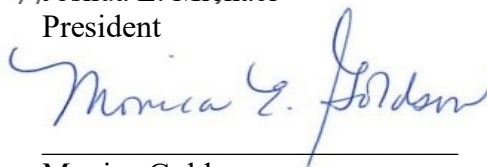
Although Appellant disagrees with the local board decision, his disagreement does not establish that his termination was arbitrary, unreasonable, or illegal.

CONCLUSION

For the reasons stated above, we find that Appellant has failed to show by a preponderance of the evidence that the decision of the local board was arbitrary, unreasonable, or illegal. Accordingly, we affirm the decision to terminate Appellant from his position with BCPS.


Joshua L. Michael

President

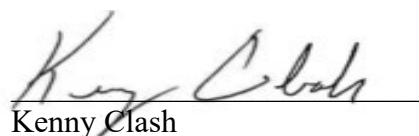


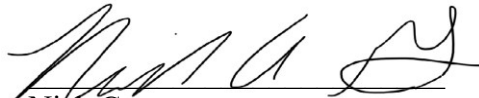
Monica Goldson


Vice-President



Chuen-Chin Bianca Chang

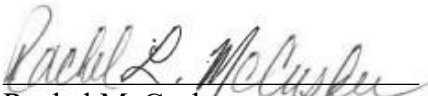

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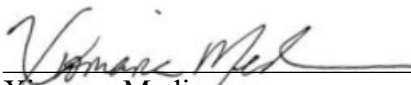

Nick Greer


Irma Johnson


Kim Lewis


Rachel McCusker


Joan Mele-McCarthy


Xiomara Medina


Samir Paul

Absent:
Clarence Crawford

April 29, 2025