

NANCY SNEAD,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-27

OPINION

In this appeal, Appellant contests the local board's affirmance of the superintendent's decision to uphold Appellant's overall unsatisfactory rating and the subsequent reclassification of Appellant's teaching certificate to second class, thereby denying Appellant a salary increment. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has filed an opposition to the local board's Motion.

FACTUAL BACKGROUND

Appellant was first employed as a guidance counselor at the Oxon Hill High School ("Oxon Hill") in Prince Georges County in the 2000-2001 school year. Appellant received a satisfactory evaluation for that year. However, her principal, Mr. Ronald Curtis, had several concerns about Appellant's performance. By memorandum dated June 1, 2001, Mr. Curtis notified Appellant of the following concerns:

1. Inability to follow directions;
2. Non-Adherence to sick leave policy;
3. Repeated problems with punctuality; and
4. Competency as a guidance counselor.

He also advised Appellant that if she did not successfully address these concerns in the 2001-2002 school year, she would not be asked to remain at Oxon Hill. (Memorandum, June 1, 2001.)

On October 23, 2001, Mr. Curtis issued an "unprofessional conduct warning" to Appellant. This memorandum noted that several members of the guidance department reported to Mr. Curtis Appellant's rude and/or unprofessional conduct in the presence of students and parents. He also noted that Appellant had experienced conflicts with four of the six guidance counselors and two out of three of the guidance support staff. He warned Appellant that if this type of negative behavior continued, he would impose more severe disciplinary action. (Memorandum, October 23, 2001)

On November 5, 2001, Appellant was subject to a classroom observation by Eric Griffith, her immediate supervisor in the guidance department. Mr. Griffith noted several areas in which Appellant performed well and also noted areas in which she could use improvement (Classroom Observation Form, November 5, 2001.) In November, 2001, Appellant also received a certificate for her "Commitment to Educating Students".

Mr. Curtis issued two additional memoranda to Appellant in November. The first concerned Appellant's transfer of a student contrary to the school's transfer policy. (Memorandum on scheduling, November 23, 2001). The second memorandum noted that Appellant had not been reporting to her assigned duty station promptly, even when specifically asked to do so by a member of the administrative team. Mr. Curtis noted that reporting punctually to her duty post is part of her formal evaluation as specified in Part II, Professionalism, Section d. He informed Appellant that failure to perform this professional responsibility would result in an unsatisfactory evaluation. (Memorandum on duty station, November 23, 2001.)

In December of 2001, Mr. Curtis issued a memorandum to Appellant regarding the senior contracts' activity. The memorandum documented improper conduct by Appellant by her failure to end a phone conversation when directed to do so by an administrator, by leaving students alone and unsupervised, by asking students to take control of their contracts when the counselor was responsible for these student records and by taking a 45 minute lunch when only a 30 minute lunch was authorized by school policy and negotiated agreement. The principal noted that he believed that Appellant's conduct was insubordinate and that her performance was incompetent. (Memorandum, December 13, 2001.)

Mr. Curtis received a memorandum from the school registrar, Mrs. Cabiness, on December 13, 2001, in which she raised concerns about having to provide the same information to Appellant on multiple occasions and providing Appellant with records that were actually already in Appellant's office. Mrs. Cabiness complained that this additional work was having a negative effect on her own productivity and that of the guidance department as a whole. (Memorandum, December 14, 2001.)

Mr. Curtis met with the six other guidance counselors in December 2001. They expressed their disappointment and discontent with having to perform Appellant's duties when she was present at the school and should have been doing her own work. (Affidavit of Ronald A. Curtis, p. 2)

On January 3, 2002, Mr. Curtis sent Appellant a memorandum noting a need for improvement in her performance. He indicated that Appellant was jeopardizing her future at Oxon Hill unless she made major improvements in her performance in the following areas:

Concern #1: Your interactions with students, staff, and parents need to be professional, caring and courteous at all times. It has

been brought to my attention on numerous occasions that you have been less than professional...

Concern # 2: A number of parent and student concerns have been brought to my attention regarding your competency as a Guidance Counselor. Seventeen students on your case load have been transferred to other counselors. All at the request of their parents. In addition your records are in disarray and you have not tallied your credits as I instructed you to do in early October. This is unacceptable.

(Memorandum, January 3, 2002).

Mr. Curtis issued an interim evaluation to Appellant which she signed on January 8, 2002. (Interim Evaluation, January 4, 2002).¹ Mr. Curtis rated Appellant unsatisfactory in three areas: (1) "Works cooperatively as an effective Team Member to achieve school goals and objectives; (2) "Follows established school policies and procedures"; and (3) "Relates without difficulty to staff members and parents". He rated her performance overall as unsatisfactory. Appellant filed comments on her evaluation with the Chief Divisional Administrator of Personnel of the Prince George's County Public Schools. ("PGCPS")

A conference was scheduled for January 31, 2002 for Appellant to meet with Joan Brown, Regional Executive Director. However, on the day of the conference Appellant called to cancel the meeting. She indicated that she had just received notice of the evaluation, that she wanted to obtain union representation, and that she did not have the documents she wanted to present to Ms. Brown.

After January 31, 2002, Appellant was absent from school for the remainder of the school year due to a medical condition. Thus, a second observation of Appellant's performance never took place.

Ms. Brown wrote to Appellant on February 7, 2002, indicating that she and Mr. Curtis reviewed the evaluation on January 31, 2002. Ms. Brown stated that she was ordering an audit of the senior records in Appellant's case load. She also indicated that Appellant's union representative had requested, on Appellant's behalf, that Appellant be re-assigned to another school. Ms. Brown noted that until they were able to hold a conference and develop an action plan, Appellant should comply with requests from Mr. Curtis. However, as stated above,

¹The interim evaluation is a management tool and not the equivalent of the final year-end evaluation that is subject to the requirements in COMAR. COMAR 13A.07.04.01B provides: "(1) 'Evaluation' means a written appraisal of professional performance for a school year based upon written criteria and procedures." A mid-year evaluation does not cover the entire school year.

Appellant never returned to Oxon Hill.²

At the end of the school year, Mr. Curtis provided a final evaluation for Appellant, based upon her performance at Oxon Hill for the time she actually worked at Oxon Hill. Mr. Curtis rated Appellant unsatisfactory in two areas: (1) “Works cooperatively as an effective Team Member to achieve school goals and objectives”; (2) “Follows established school policies and procedures”. Due to these two unsatisfactory ratings, Mr. Curtis rated Appellant unsatisfactory overall. (Evaluation, May 17, 2002). Because she received an overall unsatisfactory rating, Appellant’s teaching certificate was downgraded to second class and as a result she was denied a salary increment.³ (Letter of Iris Metts, July 22, 2002).

On October 16, 2002, Appellant through her union representative, requested that the Chief Executive Officer of the PGCPs, Iris Metts, review her final evaluation, overrule the unsatisfactory rating, and reinstate Appellant’s certificate to first class. In a follow-up letter, Appellant’s representative noted that if Dr. Metts did not overrule the rating, she should treat the request as an appeal to the Prince George’s County Board of Education.

Dr. Metts reviewed the circumstances surrounding the final evaluation and found nothing that “would persuade me that the evaluation be modified or amended, or removed from her personnel file; or that her second class certification status should be changed.” (Letter of January 22, 2003). Accordingly, Dr. Metts forwarded the matter as an appeal to the local board.

The local board reviewed submissions from Appellant and the school system and after hearing oral argument on October 23, 2003, the local board unanimously voted to uphold the CEO’s decision.

This appeal followed.

ANALYSIS

The standard of review applicable in this case is that the decision of a local board of education 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.01.01.03E(1).

²Appellant was administratively transferred to Bladensburg High School in mid-February or early March. However, counsel for the school system has confirmed that Appellant never reported for duty at Bladensburg High School.

³Section 6-301 of the Education Article provides that a “teacher or principal whose certificate is rated by a county superintendent as second class under § 6-102 of this title may not receive a salary increment based on experience.”

Appellant first alleges that her performance was only observed by one individual who was her immediate supervisor and that she was entitled to a second evaluation before receiving a year-end unsatisfactory evaluation.

COMAR 13A .07.04.02A provides, in pertinent part:

(1) An evaluation shall be based upon written criteria established by the local board of education, including but not limited to scholarship, instructional effectiveness, management skills, professional ethics and interpersonal relationships.

...

(4) An evaluation shall be based on at least two observations during the school year.

(5) An unsatisfactory evaluation shall include at least one observation by an individual other than the immediate supervisor.

Appellant alleges that she received only one observation by her immediate supervisor, Eric Griffith, Vice Principal and Guidance Supervisor, in November of 2001. She claims that because she did not receive a second observation by a person who was not her immediate supervisor, she could not, by law, be given an unsatisfactory year-end evaluation.

To the contrary, based on this record we find it was Appellant's own actions that resulted in her not receiving a second observation. She went out on medical leave and never returned to school making a second observation impossible. This case is analogous to a case previously before the State Board, *Harmon v. Baltimore City Board of School Commissioners*, Op. No. 03-10 (February 26, 2003). In that case, the employee was absent from work due to various health reasons for a long period of time during the school year. He received a year-end unsatisfactory rating and appealed based upon alleged procedural violations. The Hearing Examiner found that almost all of the procedural timelines could not be met because of the employee's prolonged absence. On appeal, the State Board held:

Despite the April 15 deadline set forth in the negotiated agreement, we find from our review of the record in this case that compliance with the deadline was impossible through no fault of the school system...During Appellant's absence, the school system could not perform classroom observations, nor could the school system produce an annual evaluation by April 15, given Appellant's return date of April 17. Thus, we believe that Appellant's prolonged absence from work constituted a constructive waiver of the April 15 deadline.

Here, as in *Harmon*, we find that Appellant constructively waived the second observation by not returning to school. If this were not the case, any employee who received an unsatisfactory interim evaluation could avoid an unsatisfactory year-end evaluation by absenting himself or herself in order to ensure that no second observation takes place. The school system would then be forced to retain an employee whose performance it considered unsatisfactory.

Moreover, as stated above, an evaluation is not based solely upon the classroom observations. As the State Board has noted,

[No] evaluation of a teacher or supervisor is based solely on observations. Rather the observations provide one dimension of an annual evaluation which contains several elements and is based on a summation of an individual's performance over the course of a year.

In the Matter of COMAR 13A.07.04, Op. No. 02-46 (September 25, 2002).

In this case, the principal, Mr. Curtis, gave Appellant an interim rating of unsatisfactory based not just on Mr. Griffith's observation, but on the unsatisfactory conduct he had addressed through the various memoranda he issued to Appellant through the first half of the school year.

Appellant argues that she was not allowed time to improve her performance due to medical complications. However, when an employee is absent for the remainder of the school year, we find that there are only two courses of action: no evaluation at all or an evaluation based upon the time the employee was actually performing the job. In this case, Appellant was evaluated based upon her performance for the time she actually reported to work prior to her taking sick leave. There is no statute or regulation that precludes the issuance of a final evaluation under these circumstances.

Appellant further argues that Mr. Curtis used the wrong evaluation form and that she was improperly marked unsatisfactory in areas that were not addressed in the interim evaluation. However, the CEO noted that the areas that were incorrectly marked unsatisfactory were not used in the final evaluation and that the two areas that remained unsatisfactory were sufficient to justify an overall unsatisfactory rating. *See Metts' letter of 1/22/03.*

Appellant also alleges that Mr. Curtis should not have performed the evaluation because she was transferred to Bladensburg High School in mid February or early March, 2002. It should be noted, however, that Appellant requested this transfer and in fact never reported to duty at Bladensburg High School. Since no one at Bladensburg High school had witnessed Appellant's performance, the only person who could evaluate Appellant was Mr. Curtis.

Appellant additionally maintains that she was denied due process because she was only given 45 minutes' notice of a meeting with the Regional Director and that the Regional Director

refused to reschedule the meeting. However, in the memoranda provided by Appellant there were statements that Mr. Curtis had given her a letter concerning the time and place of the meeting the day before the scheduled meeting. Moreover, Appellant offers no evidence that the Regional Director refused to reschedule the meeting. In fact, Appellant never returned to school and the Regional Director sent Appellant a letter which discussed the Director's intent to reschedule the conference:

Until we are able to hold our conference and develop an action plan, I am directing you to comply with the requests made in your letters from Mr. Curtis.

(Letter of February 7, 2003)⁴

CONCLUSION

Based on our review of the record and for the reasons noted above, we believe that the local board's decision upholding the CEO's affirmation of the evaluation and subsequent reclassification of Appellant's certificate to second class is not arbitrary, unreasonable, or illegal. Accordingly, we affirm the decision of the Board of Education of Prince George's County.

Edward L. Root
President

JoAnn T. Bell
Vice President

Philip S. Benzil

Dunbar Brooks

Calvin D. Disney

⁴Appellant also argues that the student transfers she made after the deadline were made at the direction of the administration and should not be used to penalize her performance. Again, Appellant has presented no evidence that these transfers were the subject of Mr. Curtis' memorandum.

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Maria C. Torres-Queral

John L. Wisthoff

May 26, 2004