

BRYAN CARTER,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 22-11

OPINION

INTRODUCTION

The Appellant, who was employed by Baltimore City Public Schools as a certificated teacher since 1999, appeals the decision of the Baltimore City Board of School Commissioners (“local board”) terminating him from his position for insubordination, misconduct in office, willful neglect of duty and incompetence related to performance of his teaching duties during the 2020-2021 school year.

We transferred the case pursuant to COMAR 13A.01.05.07 to the Office of Administrative Hearings (“OAH”) for review by an Administrative Law Judge (“ALJ”). On March 22, 2022, the ALJ issued a Proposed Decision recommending that the State Board uphold the local board’s decision terminating the Appellant from employment.

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

FACTUAL BACKGROUND

The factual background in this case is set forth in the ALJ’s proposed decision, Findings of Fact, pp. 4-7.

STANDARD OF REVIEW

Because this appeal involves the termination of a certificated employee pursuant to §6-202 of the Education Article, the State Board exercises its independent judgment on the record before it in determining whether to sustain the termination. COMAR 13A.01.05.06F.

The State Board transferred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify or remand the ALJ’s proposed decision. The State Board’s final decision, however, must identify and state reasons for any changes, modifications or amendments to the proposed decision. *See* Md. Code Ann., State Gov’t §10-216(b). In reviewing the ALJ’s proposed decision, the State Board must give deference to the ALJ’s demeanor based credibility findings unless there are

strong reasons present that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

LEGAL ANALYSIS

Based on a preponderance of the evidence, the ALJ determined that the Appellant engaged in actions that amounted to insubordination, misconduct in office, willful neglect of duty and incompetence. The Appellant did not file any exceptions to the ALJ’s Proposed Decision.

We have reviewed the record and concur with the conclusions of the ALJ. Despite being given additional assistance and resources, the Appellant struggled with the virtual teaching platforms and methods and was unable to adapt to the virtual learning setting. Appellant failed to upload lesson plans and student assignments to virtual platforms, failed to properly assess student progress, failed to enter accurate grades, and gave passing grades to students who did not attend class or submit assignments. Appellant violated school system policies by using methods of teaching and grading that he admittedly knew were not approved by BCPS. The record supports the termination decision here.

CONCLUSION

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

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

BRYAN CARTER,
APPELLANT

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS

*** BEFORE TAMEIKA LUNN-EXINOR,**
*** ADMINISTRATIVE LAW JUDGE,**
*** MARYLAND OFFICE OF**
*** ADMINISTRATIVE HEARINGS**
*** OAH No.: MSDE-BE-01-21-25097**

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On or about February 4, 2021, the Chief Executive Officer of the Baltimore City Public Schools (BCPS) notified the Appellant, a teacher at [REDACTED] that it was recommending the Appellant’s termination for incompetence, insubordination, willful neglect of duty and misconduct. Md. Code Ann., Educ. § 6-202(a)(1) (Supp. 2021). The Appellant requested a hearing before the Baltimore City Board of School Commissioners (City Board), and on July 26, 2021, a hearing examiner recommended that the Appellant be terminated. *Id.* § 6-202(a)(2)-(3). On September 14, 2021, the City Board accepted the hearing examiner’s recommendation and terminated the Appellant.

On October 20, 2021, the Appellant appealed to the Maryland State Board of Education (State Board). Md. Code Ann., Educ. § 6-202(a)(4)(Supp. 2021). On October 28, 2021, the State Board referred the matter to the Office of Administrative Hearings (OAH) for further proceedings.

On January 6, 2022, I conducted a pre-hearing conference by WebEx video (Webex). On January 7, 2022, I issued a Pre-hearing Conference Report and Order. I conducted a hearing on February 16, 2022 by WebEx. The Appellant was self-represented. Sheryl H. Atkins, Esquire, represented the City Board.

Procedure is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board of Education, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); Code of Maryland Regulations (COMAR) 13A.01.05; COMAR 28.02.01.

ISSUE

Did the City Board properly terminate the Appellant?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Appellant:

- App. Ex. 1 - "Statement of the facts needed to understand the appeal", received December 20, 2021
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- App. Ex. 3 - Letter from A■■■■ S■■■■, undated
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- App. Ex. 6 - Letter from P■■■■ S■■■■, October 12, 2021
- App. Ex. 7 - Letter from D■■■■ W■■■■, MPP, October 14, 2021
- App. Ex. 8 - Letter from L■■■■ M■■■■, October 19, 2021

I admitted the following exhibits on behalf of the City Board¹:

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¹ Board Exs. 2 through 20 are the Local City Board record.

Board Ex. 19 - Baltimore City Board of School Commissioners, Policy, Grading and Reporting, revised May 14, 2019

Board Ex. 20 - City Schools Grade Change Process (IKA-RA Attachment I), revised May 25, 2021

Testimony

The Appellant testified and did not present any additional witnesses.

The City Board submitted on the record below which was admitted into evidence.

FINDINGS OF FACT

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

1. The Appellant has been a teacher with the BCPS since 1999. (Board Ex. 10, p. 145, App. Test.)
2. In the Fall of the 2020-2021 school year, the Appellant was a surplus teacher assigned to the Special Education department of [REDACTED]. (Board Ex. 10, p. 14.)
3. The principal at [REDACTED] was Dr. C [REDACTED] B [REDACTED] (Principal B [REDACTED]). (Board Ex. 10, p. 13.)
4. Due to the COVID-19 pandemic, [REDACTED] conducted classes virtually utilizing Google Classrooms, Great Minds, and Infinite Campus platforms. (Board Ex. 10, p. 87, p. 148.)
5. The Appellant received training on the use of the virtual platforms but still had some technical difficulties. (Board Ex. 10, p. 17, pp. 146-149.)
6. The Appellant received assistance from a literacy coach and the Chair of the Special Education Department at [REDACTED]. (Board Ex. 10, pp. 17.)
7. In Google Classrooms, the Appellant was unable to upload a writeable PDF document so students could write their answers on the uploaded document. (Board Ex. 10 p. 91.)

8. Appellant did not upload his lesson plans in a timely manner to the folder on the 365-program (365) used by BCPS. (Board Ex. 10, pp. 17-18.)
9. In October 2020, the Appellant issued interim grades of 60% for students who had not reported to school for the 2020-2021 school year. (Board Ex. 10, pp. 19-20.)
10. The Appellant also gave a grade of 60% to students that accepted the invite to join Google Classrooms but did not participate in class. (Board Ex. 10, pp. 191-192.)
11. The Appellant admitted that he was utilizing an alternate method of grading in the beginning of the school year to encourage the students. (Board Ex. 10, pp. 100-102.)
12. In October 2020, at an Individualized Education Program (IEP) meeting the parent of Student █████ complained that the Appellant was giving █████ grades for work in World History that █████ did not complete. (Board Ex. 10, pp. 22-23.)
13. The Appellant gave Student █████ a grade of 100% for eight World History assignments that were never completed. (Board Ex. 10, pp. 60-62.)
14. The Appellant gave Student █████ a grade of 100% for incomplete work as a method of support. (Board Ex. 10, pp. 151-153.)
15. In November, students in the Appellant's World History and Biology classes received 1st quarter grades of 100% on every assignment. The same students did not upload or turn in assignments for any classes, including the Appellant's classes. (Board Ex. 10, p. 159.)
16. The Appellant used a unique method of tracking the student's grades. He allowed the students to read assignments on the telephone or online and submit verbal responses. This was the only method utilized by the Appellant. (Board Ex. 10, p. 101.)
17. The Appellant did not keep any notes from the student's verbal responses or record any of the verbal responses for his records. (Board Ex. 10, pp. 89-90.)

18. The Appellant did not have any assignments in his Google Classrooms. There were no worksheets or any documentation of any completed assignments. (Board Ex. 10, p. 27.)

19. The Appellant did not get approval from an Individualized Education Plan (IEP) team to use an alternate grading method or a unique way of tracking student's grades. (Board Ex. 10, p. 230.)

20. Assessments are used to determine how students learn. For special education students, tests, quizzes, reports, essays, projects, presentations, and verbal answers are methods of assessment. (Board Ex. 10, p. 104.)

21. It is required by the City Board that grades are recorded for each student based on the student's performance. (Board Ex. 19.)

22. On November 8, 2020, Principal B █████ told the Appellant that some of his 1st quarter grades were inaccurate. The Appellant wanted to fix the grades, but Principal B █████ informed him not to until she received guidance from BCPS. (Board Ex. 10, p. 164.)

23. On or about November 9, 2020, the Appellant adjusted students' 1st quarter grades without permission. (Board Ex. 10, p. 28.)

24. A teacher cannot adjust a report card grade unless there are extenuating circumstances, and the change is approved by the principal. (Board Ex. 20.)

25. Parents and Students are given interim progress reports at the mid-point of each marking period to provide them with information on each student's progress.

26. On January 12, 2021, a Loudermill hearing² was held and the Appellant was found in violation of the BCPS grading, reporting and grade changing policies. (Board Exs. 19 and 20.)

27. On February 3, 2021, a Statement of Charges was prepared after the Loudermill hearing and approved by Sonja B. Santelises, Chief Executive Officer. The Appellant was charged with insubordination, willful neglect of duty, and misconduct in office. (Board Ex. 17.)

28. On February 4, 2021, the Appellant received a copy of the Statement of Charges. (Board Ex. 2.)

29. On February 5, 2021, the Appellant was suspended without pay due to serious misconduct. (Board Ex. 18.)

30. On June 14, 2021, an appeals hearing was held virtually with a hearing examiner. The City Board presented the testimony of Principal B██████ and Gary Grant, a BCPS' Office of Labor Relations and Negotiations. The Appellant testified on his own behalf. (Board Ex. 4.)

31. On July 26, 2021, the Hearing Officer issued a decision recommending that the City Board uphold and affirm the decision of the CEO to terminate the Appellant on the grounds of willful neglect of duty, incompetence, insubordination, and misconduct. (Board Ex. 6.)

32. On September 14, 2021, the City Board accepted the hearing examiner's recommendation. (Board Ex. 9.)

² A "Loudermill" hearing is part of the "due process" requirement that must be provided to a public employee prior to removing or impacting the employment property right (e.g. imposing severe discipline). The purpose of a "Loudermill hearing" is to provide an employee an opportunity to present their side of the story before the employer makes a decision on discipline. Loudermill Hearings stem from *Loudermill v. Cleveland Board of Education* where the United States Supreme Court held that permanent employee civil servants had a property right to continued employment and such employment could not be denied to employees unless they were given an opportunity to hear and respond to the charges against them prior to being deprived of continued employment (https://www.senate.mn/committees/2021-2022/3096_Committee_on_Human_Services_Reform_Finance_and_Policy/Loudermill%20Hearings.pdf, last reviewed: March 16, 2022)

DISCUSSION

Burden of Proof

The City Board has the burdens of production and persuasion in this case; the standard of proof is by a preponderance of the evidence. COMAR 13A.01.05.06F(3). The City 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) (Supp. 2021). The City Board relied on paragraphs (a)(1) (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, 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 willful 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.

The City School Employee Handbook, Section 10.17 lists insubordination and other disrespectful conduct as grounds for immediate termination. The Handbook describes insubordination or disrespectful conduct as “use of profane or abusive language, verbal abuse, issuing threats of violence, fighting or refusal to perform assigned duties to carry out directions issued by management.” Board Ex. 18

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 failed to do several things that his superiors required of him.

The 2020-2021 school year started in a virtual setting due to the COVID 19 pandemic. The record is clear that although the students had experience with virtual learning starting in March of 2020 (the 2019-2020 school year), the Appellant did not as he was not employed in a school system in the Spring of 2020. Therefore, the 2020-2021 school year was the first virtual teaching experience for the Appellant. Principal B█████ testified in the case before the hearing examiner that the Appellant required additional resources to catch him up on the virtual learning tools and that those resources were provided. However, the Appellant did not upload his lesson plans into 365, he did not properly assess his student’s progress and enter accurate grades for his students, he gave passing grades to students who did not attend classes or submit

assignments. The record reflects that Principal B█████ told the Appellant that his grades were inaccurate and told him not to change any grades until she received guidance from the City Schools. Principal B█████ testified that when she reviewed the grades thereafter, the Appellant had altered them. At the hearing, the Appellant argued that he did have lesson plans and they were uploaded and that he did not change any grades. As for the assessment of students and entering accurate grades in the system, the Appellant described that he used an alternate method of assessments and grading to support the students. The problem with the Appellant's alternate methods of assessing and grading students is that his methods were not approved by the school system and in violation of its policies.

This charge against the Appellant is upheld and may be a basis for termination of employment.

Misconduct in Office and Willful Neglect of Duty

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." The City School Employee Handbook, Section 10.17 describes misconduct as "misrepresentation of City Schools to a student, parent, family member or other customer, a prospective customer, the general public or another employee" and "unsatisfactory performance or conduct." (Board Ex. 18.) The Appellant's misconduct in this case involves unsatisfactory performance of his duties which ties into the third allegation of willful neglect of duty.

There are Employee Handbooks and Policies and Procedures that must be adhered to by all City School employees, including the teachers. As previously explained, there were numerous procedures and policies not followed by the Appellant that are a dereliction of his duty

as a special education teacher. Therefore, the charges are misconduct in office and willful neglect of duty 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. *Margaret Toland v. State Board of Education*, 35 Md. App. 389, 397-398 (1977). The court in *Board of Education of Charles County v. Margaret 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. June 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.”

The Appellant was an experienced teacher with more than twenty years of experience; however, he had no evaluations at [REDACTED] because he was new to the school in the Fall of 2020. The Appellant testified that he never had poor evaluations. The Appellant provided character letter from teachers he worked with at [REDACTED] and other schools as well as people he worked with in sports programs as a Coach. The letters are all glowing and express the Appellant's love and desire in educating kids in Baltimore City. (App. Exs. 2-8.) However, these letters are not evaluations of the Appellant's ability to perform his work duties.

As stated previously, the Appellant failed to properly submit lesson plans, failed to appropriately assess students, failed to provide accurate grades, and he struggled with the virtual teaching methods established by the City Schools in the Spring of 2020. The Appellant received additional assistance from the literacy teacher and the head of the special education department to help with submitting his lesson plans and virtual teaching methods. Even with the additional resources, the Appellant continued to not perform his duties and utilize alternative methods. The Appellant admits that he utilized alternate methods of teaching and grading his students which were not approved by the City schools. The Appellant stated during his testimony that as long as a student accepted his Google Meet invitation, he marked them as present even if they did not attend the actual virtual class. It is clear that 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.

The Appellant presented as an extremely pleasant man and obviously enjoyed being an educator in Baltimore City. He explained that he is a product of the Baltimore City school system and wanted to give back to his community. He testified that he has more than twenty years' experience teaching at various schools in the City. I found the testimony of the Appellant to be credible as he was forthcoming about his alternative methods of teaching and grading. He

understood that his alternative methods were not approved by the school. The Appellant expressed a desire to support his students and not give them failing grades within the first few months of school. He wanted to encourage them to do better and not give up. However, the record is overwhelmingly clear that the Appellant failed to follow the grading and assessment procedures and policies established by the school system and lacked the requisite knowledge to educate the students utilizing the virtual teaching platforms. The records included the attendance records for the Appellant's students and the students' grades, and it is obvious that there were students that failed to attend any classes or submit any assignments that received a 1st quarter grade of 60% which is passing. Therefore, despite the Appellant's desires to be a support system for his student's, I find that the termination of the Appellant for insubordination, misconduct in office, neglect of duty and incompetence be upheld.


CONCLUSION OF LAW

I conclude as a matter of law that the Baltimore City Board of School Commissioners properly terminated the Appellant's employment as a teacher. Md. Code Ann., Educ. § 6-202 (Supp. 2021); *Bd. of School Commissioners of Balto. City v. June James*, 96 Md. App. 401 (1993); City School Employee Handbook, Section 10.17 Serious Misconduct, Baltimore City Board of School Commissioners, Policy, Grading and Reporting, revised May 14, 2019 and City Schools Grade Change Process (IKA-RA Attachment I), revised May 25, 2021.

PROPOSED ORDER

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

March 22, 2022
Date Decision Mailed



Tameika Lunn-Exinor
Administrative Law Judge

TLE/at
#197224

NOTICE OF RIGHT TO FILE EXCEPTIONS

A party adversely affected by this Proposed Decision has the right to file written exceptions within fifteen (15) days of the Proposed Decision; written responses to the exceptions may be filed within fifteen (15) days of the filing of exceptions. COMAR 13A.01.05.07F. 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. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

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BRYAN CARTER, * **BEFORE TAMEIKA LUNN-EXINOR,**
APPELLANT * **ADMINISTRATIVE LAW JUDGE,**
v. * **MARYLAND OFFICE OF**
BALTIMORE CITY BOARD * **ADMINISTRATIVE HEARINGS**
OF SCHOOL COMMISSIONERS * **OAH No.: MSDE-BE-01-21-25097**

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