

\* BEFORE THE  
 \*  
 \* BOARD OF EDUCATION OF  
 \*  
 \* CARROLL COUNTY  
 \*

IN THE MATTER OF

\* \* \* \* \*

DECISION OF THE BOARD OF EDUCATION OF CARROLL COUNTY

This matter is before the Board of Education of Carroll County (the "Board") pursuant to Section 4-205(c) of the Education Article of the Annotated Code of Maryland pursuant to an appeal filed by \_\_\_\_\_ contesting the decision of Jonathan O'Neal, Assistant Superintendent of Administration, acting as the Superintendent's designee, to uphold the decision of \_\_\_\_\_, Principal of \_\_\_\_\_ and \_\_\_\_\_ Coordinator, to terminate \_\_\_\_\_ employment.<sup>1</sup>

The Board has reviewed all of the written material submitted by \_\_\_\_\_ as well as the documentation submitted on behalf of the Superintendent in response to \_\_\_\_\_ appeal. The Board has determined that this appeal may be decided under its rules of procedure without an evidentiary hearing or oral argument. For the reasons set forth below, the Board has determined that the Superintendent's decision should be affirmed.

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<sup>1</sup> As discussed below, \_\_\_\_\_ was employed as an hourly assistant at \_\_\_\_\_ As an hourly employee, \_\_\_\_\_ had no expectation of or entitlement to continued employment with the Board. As is practice within the Carroll County Public Schools, school principals and program coordinators are granted the discretion and authority to choose whether to avail themselves of the services of hourly assistants. In this case, \_\_\_\_\_ and \_\_\_\_\_ chose not to continue to use \_\_\_\_\_ services as an hourly assistant, and \_\_\_\_\_ appealed that decision directly to the Board. Mr. O'Neal, acting as the Superintendent's designee, filed a response in opposition to \_\_\_\_\_ appeal, and therefore although there is no independent decision by the Superintendent affirming \_\_\_\_\_ Mr. O'Neal's response letter serves as a *de facto* decision of the Superintendent.

## FINDINGS OF FACT

At all times relevant \_\_\_\_\_ was working as an hourly assistant at \_\_\_\_\_

On Friday, December 14, 2018, \_\_\_\_\_ informed \_\_\_\_\_, special educator, that another hourly assistant, \_\_\_\_\_, was a danger to staff and students.

\_\_\_\_\_ immediately reported the matter to \_\_\_\_\_ who in turn reported it to \_\_\_\_\_ considered \_\_\_\_\_ report vague and therefore decided to conduct an investigation.

\_\_\_\_\_ and \_\_\_\_\_ first informed the staff at \_\_\_\_\_ that they would meet with staff on Monday, December 17th to discuss the matter. On Sunday, December 16th, \_\_\_\_\_ texted \_\_\_\_\_ stating she was not coming to work on Monday or that entire coming week and that she might quit due to \_\_\_\_\_ behavior. \_\_\_\_\_ did not report to work on Monday, December 17th, nor did hourly assistants \_\_\_\_\_ and \_\_\_\_\_, so \_\_\_\_\_ arranged to interview them the following day, December 18th, at the Respite Inn. As to specifically, \_\_\_\_\_ texted \_\_\_\_\_ on December 17th inviting \_\_\_\_\_ to the December 18th interview but \_\_\_\_\_ declined, stating, "No like I said they [i.e., \_\_\_\_\_ and \_\_\_\_\_] can talk to [ \_\_\_\_\_ ] [and] ask him what he did. They have enough information to decide what to do with him. I also will not be around him."

On December 18th, \_\_\_\_\_ interviewed \_\_\_\_\_ and \_\_\_\_\_ at the Respite Inn. \_\_\_\_\_ stated that she thought \_\_\_\_\_ was rude and that he gave her a "bad vibe," but she could not provide any examples of

inappropriate comments or unsafe behavior with staff or students. [redacted] stated [redacted] and [redacted] do not feel safe with [redacted] and that he talks about his achievements and awards, but she could not provide any examples of any comments made directly to her. [redacted] stated that, due to his military experience, he is a direct person and that he had asked [redacted] to say please and thank you to him when working together. Based upon the interviews, [redacted] concluded that although it was clear that [redacted] and the other hourly assistants did not like [redacted] personally, there was no evidence to substantiate that [redacted] was a danger to staff or students.

On December 18, 2018, [redacted] failed to report to work for a second straight day, and [redacted] and [redacted] issued [redacted] a letter informing [redacted] "that [her] services with Carroll County Public Schools are no longer needed," and further informing [redacted] of her right to appeal that decision pursuant to Section 4-205 of the Education Article of the *Annotated Code of Maryland*.

On December 19, 2018, [redacted] reported to [redacted] to fill out her time card.<sup>2</sup> While there, [redacted] saw [redacted] and again stated that she felt unsafe working with [redacted] but she was unable to provide any examples as to why other than [redacted] talks about commendations he received while in the military and his many skills. According to [redacted], she told [redacted] "that if things did not get resolved [redacted] would let [redacted] know about my position," at which time [redacted] asked for [redacted] to return her badge. Once [redacted]

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<sup>2</sup> According to [redacted], she did not receive the December 18th termination letter until December 20th.

left office contacted Human Resources to inform them of what had occurred.

By letter dated January 9, 2019, appealed to the Board via a letter from Timothy Barkley, Esquire. In that letter, Mr. Barkley stated, " was terminated for the exercise of protected rights to notify her supervisor of a potentially dangerous co-worker who threatened and intimidated other employees and placed students in a compromised position." That letter further stated that "[r]ather than taking steps to address the situation or the actions of the other employee, the principal at and program coordinator terminated employment."

On February 27, 2019, the Board acknowledged receipt of appeal and sent her an Appeal Information Form. completed that form and submitted it to the Board on or about March 6, 2019.<sup>3</sup> In the section of the Appeal Information Form which requests the appellant to "[e]xplain fully the legal and factual basis for your appeal," stated, "I was terminated without good cause either factually or without basis of law." In the section of the Appeal Information Form which states, "If you believe that an evidentiary hearing . . . is necessary, explain why an evidentiary hearing would aid the Board . . . to decide this appeal[.]" stated, "3 witnesses and my personal employment file needed to present the basis of my appeal and wrongful discharge[.]"

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<sup>3</sup> The Appeal Information Form appears to have been completed by Richard Shapiro, Esquire, who indicated he would be representing in this appeal.

By letter dated March 14, 2019, Andrea Lucido, the Board's Executive Assistant, informed [redacted] that the Board had voted to postpone a decision on her request for a hearing pending additional information. More specifically, Ms. Lucido stated:

Specifically, item #4 on the Appeal Information Form request[s] that you "fully explain the legal and factual basis for your appeal. Attach additional pages if necessary." The Board requests that you provide greater detail for the basis of your appeal prior to them deciding on your request for a hearing. For example, this might include: specific dates, times, and details of any actions alleged to be illegal, arbitrary or unreasonable; any detailed notes of any alleged actions; sworn affidavits of witnesses testifying to knowledge of any alleged actions.

[redacted] closed by requesting that [redacted] submit the additional information requested within ten business days. [redacted] did not provide any additional information within the time requested, and the Board subsequently denied her request for an evidentiary hearing.

On April 25, 2019, Mr. O'Neal, acting as the Superintendent's designee, submitted his response to [redacted] appeal, requesting that the Board uphold [redacted] and [redacted] decision.

On or about June 3, 2019, the Board received a packet of materials via facsimile from the office of Richard Shapiro, Esquire, which included a "Letter of response" to [redacted] summary of investigation.

#### STANDARD OF REVIEW

Under Section 4-205(c)(2) of Education Article, the Superintendent is charged with "decid[ing] all controversies and disputes that involve: (i) The rules and regulations of the county board; and (ii) The proper administration of the county public

school system.” Where, as here, an appellant challenges a Superintendent’s decision, the appellant bears the burden of demonstrating that the Superintendent’s decision was arbitrary, unreasonable, or illegal. See COMAR 13A.01.05.05.<sup>4</sup>

### CONCLUSIONS OF LAW

We conclude that the Superintendent’s decision was not arbitrary, unreasonable, or illegal as those terms are defined.

Although unclear, it appears that \_\_\_\_\_ argues that the Superintendent’s decision was arbitrary and unreasonable because, as stated in her Appeal Information Form, she “was terminated without good cause either factually or without basis of law.” The record, however, indicates otherwise. In response to her initial report that \_\_\_\_\_ was a danger to staff and students, \_\_\_\_\_ immediately initiated an investigation despite the fact that they considered \_\_\_\_\_ report vague. That

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<sup>4</sup> Although COMAR 13A.01.05.05 sets forth the Maryland State Board of Education’s standard of review with regard to the State Board’s review of decisions of local boards, this standard is widely used by local boards to review the decisions of local superintendents. COMAR 13A.01.05.05 reads, in relevant part:

- A. General. Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal.
- B. A decision may be arbitrary or unreasonable if it is one or more of the following:
  - (1) It is contrary to sound educational policy; or
  - (2) A reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.
- C. A decision may be illegal if it is one or more of the following:
  - (1) Unconstitutional;
  - (2) Exceeds the statutory authority or jurisdiction of the local board;
  - (3) Misconstrues the law;
  - (4) Results from an unlawful procedure;
  - (5) Is an abuse of discretionary powers; or
  - (6) Is affected by any other error of law.
- D. The appellant shall have the burden of proof by a preponderance of the evidence.

investigation did not reveal any evidence to substantiate anything other than interpersonal conflicts between [redacted] and other hourly assistants, including [redacted]. [redacted] refused to be interviewed when given the opportunity to do so,<sup>5</sup> and even assuming for the sake of argument that [redacted] version of her December 19th conversation with [redacted] is accurate, we do not believe that [redacted] communicated any information which should have caused [redacted] to reconsider her investigation conclusion or excused [redacted] continued refusal to report to work.

Nor do we find persuasive [redacted] allegation that the Superintendent's decision was illegal because she was "terminated for the exercise of protected rights to notify her supervisor of a potentially dangerous co-worker" as alleged in her initial appeal letter. Even assuming for the sake of argument that such a claim has a legal basis, [redacted] and [redacted] did not terminate [redacted] employment for reporting [redacted] as a potential danger to staff and students. To the contrary, instead of retaliating against [redacted] for having made that report, they undertook a thorough investigation, and ultimately terminated [redacted] for failure to report to work despite the results of the investigation.

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<sup>5</sup> [redacted] argues that she did not refuse to be interviewed generally but instead only refused to be interviewed on December 18th at the Respite Inn because [redacted] would be present. While that may be true, it is worth noting that [redacted] and [redacted] agreed to be interviewed despite having similar concerns.

DECISION

We conclude that the Superintendent's decision to affirm the decision of \_\_\_\_\_ and \_\_\_\_\_ not to avail themselves of \_\_\_\_\_ services was not arbitrary, unreasonable, or illegal. We therefore affirm the Superintendent's decision.

July 10, 2019  
Date

Donna M. Sivigny  
Donna M. Sivigny, President

Marsha B. Herbert  
Marsha B. Herbert, Vice President

Tara A. Battaglia  
Tara A. Battaglia

Kenneth A. Kiler  
Kenneth A. Kiler

DISSENTING

Patricia S. Dorsey  
Patricia S. Dorsey