

BEFORE THE BOARD OF EDUCATION OF CARROLL COUNTY

IN THE MATTER OF

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DECISION AND ORDER

Appellant”) appeals a nine-month suspension imposed by Superintendent of Schools Steven A. Lockard, Ph.D. (“Superintendent” or “Dr. Lockard”) on July 12, 2018. The suspension was the result of an incident that occurred on September 26, 2017, where Appellant, a \_\_\_\_\_ interacted with a student in an inappropriate manner. Initially, Appellant was terminated<sup>1</sup> as a result of her role in the September 26, 2017 incident; however, on appeal the Board of Education (“Board”) determined that, based on the totality of the circumstances, termination was unreasonable and remanded the matter to the Superintendent for imposition of a lesser punishment. Appellant now argues that Dr. Lockard’s decision to suspend without pay for nine months is arbitrary and unreasonable and asks the Board to overturn the suspension, impose a “reasonable discipline outcome,” and award Appellant appropriate back-pay and benefits.

FACTUAL AND PROCEDURAL HISTORY

Prior to the fall of 2017, Appellant was a \_\_\_\_\_ paraprofessional at \_\_\_\_\_

She worked at the school and for Carroll County Public Schools (“CCPS”) for twelve (12) years until her termination by Mr. Guthrie on October 6, 2017. Appellant was terminated for her “interactions with a student,” during which Mr. Guthrie found that she used “excessive force . . . in the tone and volume” of her voice, resulting in “a traumatic

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<sup>1</sup> Appellant was terminated by the previous Superintendent of Schools, Stephen H. Guthrie.

situation for the student.” [redacted] appealed her termination to the Board pursuant to §4-205(c) of the Education Article, Annotated Code of Maryland.

The Board-appointed hearing officer, James R. Whattam, Esquire, conducted an appeal hearing, reported his findings of fact and conclusions of law, and, in his March 13, 2018 report, recommended that [redacted] termination be affirmed. The Board heard oral argument on May 1, 2018, and deliberated in closed session following the arguments and again on May 30, 2018. Ultimately, the Board adopted the hearing officer’s findings of fact, but determined that as a result of [redacted]’s previously unblemished tenure with the school system and her position as a para-educator, wherein she is responsible for assisting and following the directives of the classroom teacher, termination was unwarranted. The Board remanded the matter to the Superintendent for imposition of a lesser punishment.

On July 12, 2018, after undertaking a thorough review of the record and the Board’s decision, the Superintendent determined that it was appropriate to reinstate Appellant at the conclusion of the 2017-2018 school year. This decision amounted to a nine-month (full school year) suspension. Appellant elected to retire rather than continue her career as a para-educator with Carroll County Public Schools. Appellant now appeals her nine-month suspension without pay, claiming it is arbitrary and unreasonable.

#### DECISION

The Board met in closed session on November 14, 2018, and considered the appeal information submitted by Appellant as well as the response provided by the Superintendent. As a result of Appellant’s prior appeal, the Board remained familiar with the relevant facts and, of course, with the Board’s prior decision to remand to the Superintendent for imposition of discipline less severe than termination. For the reasons set forth below, the Board upholds the decision of

the Superintendent to impose a nine-month suspension without pay based on the factual determinations made by the hearing officer in his March 13, 2018, report as adopted by the Board in its prior decision.

#### STANDARD OF REVIEW

The Board recognizes that the Superintendent has the legal authority to discipline and discharge non-certificated employees, subject to appeal to the Board pursuant to §4-205(c) of the Education Article, Annotated Code of Maryland. Because the Superintendent has decision-making authority, the Board's role is to determine whether the Superintendent's decision was exercised in a lawful and reasonable manner or whether the decision was arbitrary and unreasonable or illegal. Appellant did not assert that the decision was illegal; therefore, as was the case in previous appeal, the issue before the Board was whether the decision to impose a nine-month suspension on / was arbitrary and unreasonable based on all of the facts in the record.

The "arbitrary and unreasonable" standard of review is often formulated as the "reasoning mind" or "substantial evidence" standard. The Maryland State Board of Education articulated the standard, found in COMAR 13A.01.05.05, as follows:

A decision may be arbitrary and unreasonable if . . . [a] reasoning mind could not have reasonably reached the conclusion the . . . local superintendent reached.

In *Bullock v. Pelham Wood Apartments*, 283 Md. 505, 512, 390 A.2d 1119 (1978), the Maryland Court of Appeals, quoting *Snowden v. Mayor & C.C. of Balto.*, 224 Md. 443, 448, 168 A.2d 390 (1961), described the "substantial evidence" test for reviewing factual findings as:

. . . such relevant evidence as a reasonable mind might accept as adequate to support a conclusion . . . .

In *Pelham Wood, supra*, the Court of Appeals noted that the reasonableness or substantial evidence standard "is not limited to the facts themselves, but also includes inferences which can be

reasonably drawn from the facts.” *Id.* at p. 515. “[W]hether the inference drawn is the right one or whether a different inference would be better supported [is not the issue]. The test is reasonableness, not rightness.” *Id.* at p. 516, quoting, *Snowden*, 224 Md. at 448.

#### EXPLANATION OF DECISION

Appellant’s argument that the suspension is unreasonable is based on two main allegations: the hearing officer’s decision to credit the testimony of \_\_\_\_\_ and \_\_\_\_\_ over that of \_\_\_\_\_ was unreasonable, and there was no evidence in the record that the student suffered trauma as a result of the incident. Appellant also argues, as an overarching point, that a nine-month suspension is unreasonably long considering that the “previous maximum unpaid suspension received by an [sic] CCPS employee that the [Carroll Association of School Employees] is aware of consisted of five (5) days.” August 10, 2018, notice of appeal.

There is no doubt that this matter is one with conflicting accounts concerning the events that occurred on September 26, 2017. As a result, the Board utilized a hearing officer during the initial appeal and charged him with the task of conducting an appeal hearing, reporting his findings of fact and conclusions of law, and recommending an appropriate disciplinary outcome to the Board. In completing this task, the hearing officer was required to assess the credibility of witnesses and determine which testimony he found credible. Although the Board acknowledged in its prior decision that it “struggled with the facts of this case,” it ultimately credited and adopted the factual findings of the hearing officer, including his credibility determinations. Importantly, “determinations concerning witness credibility are within the province of the ... trier of fact.” *Robinson v. Charles County Board of Education*, Opinions of the Maryland State Board of Education 11-21, p. 4 (April 26, 2011). Accordingly, the Board previously held:

When there is conflicting testimony, it is up to the fact-finder to determine whose testimony is to be credited and, unless it is clear that a witness has been untruthful, reasonable people might reasonably believe one version over the other. While it would have been helpful to have a more thorough explanation of why the hearing officer credit the PREP teacher and her teaching assistant, it is clear that when faced with contradictory, and, arguably, equally plausible testimony, a reasonable person could reasonably find that one was more credible than the other and we defer to the fact finder in this regard. Similarly, it is up to the fact finder to draw reasonable inferences from the facts and, therefore, we defer to the hearing officer's inference that the student's "accidents" resulted from [the trauma from] the earlier PREP bathroom incident.

We find no reason to now change or amend that holding. As a result, we continue to credit the factual account provided by \_\_\_\_\_ and \_\_\_\_\_ over that of \_\_\_\_\_, and consider the evidence of Student J's accidents following the incident as support for the finding that he was, in fact, traumatized by the events of that day.<sup>2</sup>

Appellant's remaining argument is that the nine-month suspension is unreasonable as a matter of course because prior disciplinary outcomes of which the Carroll Association of School Employees is aware do not exceed a five-day unpaid suspension. On this point the Board acknowledges that, while a nine-month suspension is lengthy, it remanded this matter to the Superintendent with the request that he impose a disciplinary outcome "other than termination." Prior Board Decision, p. 5. The Board's conclusion in the prior decision that termination was unreasonable was not based on disagreement with the findings of fact, but on the failure to give appropriate weight to Appellant's 12 years of incident-free service to the school system and the failure to take into account that, as a para-educator, Appellant worked under the direction of the classroom teacher and, thus, did not have primary responsibility for the decision to take the student

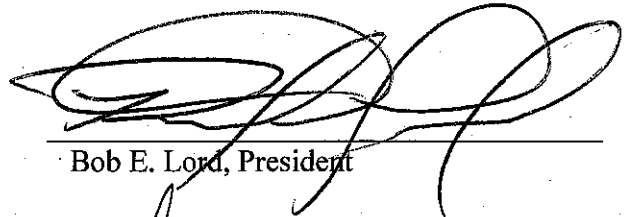
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<sup>2</sup> Although Appellant alleges that the hearing record does not contain evidence of the student's trauma, her contention is unfounded. Many of the witnesses spoke about Student J's accidents on the day of this incident, as well as his unwillingness to use the PREP room bathroom after this incident occurred and the fact that he had not had accidents at school prior to this incident.

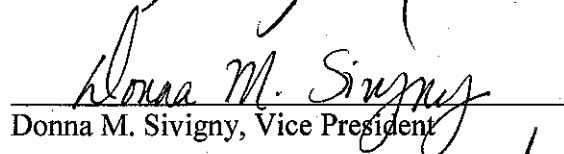
to the bathroom whenever he uttered words associated with bathroom activities even if the words were used to signal his reluctance to participate in a classroom assignment or activity.

Nevertheless, this was a serious incident, with an adverse impact on the child, and one where we believe it was reasonable for a superintendent to expect better judgment from an experienced para-educator who had worked with young children for 12 years. The Board finds that the nine-month suspension is not unreasonable or arbitrary and Appellant did not provide evidence to support her claim that the Superintendent's imposed suspension was so out of line with previous disciplinary decisions in one or more cases *with similar facts* as to be arbitrary.<sup>3</sup>

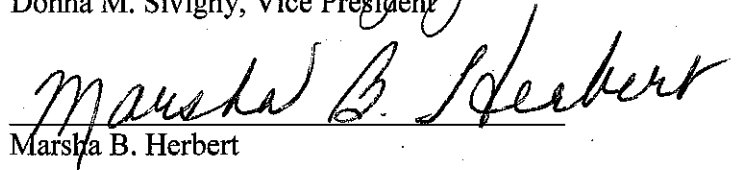
Based upon the hearing officer's findings of fact, which the Board adopted in its prior decision and continues to credit, the Board finds that Appellant has failed to meet her burden of showing, by a preponderance of the record evidence, that the discipline imposed by the Superintendent was unreasonable or arbitrary. Therefore, the decision to impose a nine-month unpaid suspension based upon the incident that occurred on September 26, 2017, and the impact the event had on Student J, is UPHELD.



Bob E. Lord, President



Donna M. Sivigny, Vice President



Marsha B. Herbert

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<sup>3</sup> Based on Appellant's representation that the Carroll Association of School Employees informed her that the "previous maximum unpaid suspension received by an [sic] CCPS employee that the [Carroll Association of School Employees] is aware of consisted of five (5) days."

*Virginia R. Harrison*  
Virginia R. Harrison

*Devon M. Rothschild*

Devon M. Rothschild

Date: December 12, 2018