

BEFORE THE BOARD OF EDUCATION OF CARROLL COUNTY

IN THE MATTER OF:

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DECISION

is a tenured teacher who has worked in the Carroll County Public Schools ("CCPS") since July 1, 2005. From her date of hire until the present time, she has been assigned to where she taught

. As a result of several incidents occurring during the fall of the 2014-2015 school year, she was placed on leave with pay to facilitate a formal investigation. On December 22, 2014, following conclusion of the investigation, Superintendent of Schools Stephen H. Guthrie recommended that her employment with CCPS be terminated on the grounds of misconduct in office, incompetency, and willful neglect of duty.

Pursuant to §6-202 of the Education Article, exercised her right to request a hearing. The Board of Education appointed Carolyn H. Thaler, Esquire, as its hearing officer to conduct the hearing on the Superintendent's recommendation and to report her findings of fact, conclusions of law, and recommendation to the Board of Education. Hearings were held on Thursday, March 12, 2015, and Friday, March 13, 2015. During the two days of hearing, the parties called a total of 19 witnesses and introduced extensive documentary evidence. Both parties were represented by counsel. The hearing officer issued her written report on June 11, 2015, finding that the Superintendent had met his burden of proof and recommending that the Board of Education adopt the Superintendent's recommendation for termination.

The Board of Education heard oral argument from the parties, through their respective

counsel, on July 8, 2015 and deliberated in closed session following the arguments. The parties were notified of the Board of Education's decision on July 9, 2015, and further informed that this written Decision and Order, explaining the reasoning for the decision, would be forthcoming.

Decision

For the reasons set forth below, the Board of Education ("Board") adopts the Hearing Examiner's Findings of Fact and Conclusions of Law, to the extent that they are not in conflict with this Decision and Order, and for the reasons set forth below adopts the Superintendent's recommendation that [redacted] employment with CCPS be terminated.

The Board acknowledges, as did the Superintendent, that [redacted] has had good evaluations, has talent as a teacher, is well-liked by most of her students, and has volunteered her time and talent [redacted] outside of those required by her job responsibilities. The significant events that resulted in the recommendation made by the Superintendent did not involve these attributes; rather, the events that led the Superintendent to recommend dismissal generally can be characterized as falling within the realm of professionalism and the ability, or in this case perhaps the willingness, to deliver required instruction, implement required grading practices, and establish rapport with students that maintains appropriate professional boundaries.

Instruction

Although the interpretation may vary, it is undisputed that [redacted] turned off the lights in the classroom and told students in her advisory class and in her Mod 1 to lie down on the risers, listen to music, and "nap." In the advisory class, it is undisputed that she was supposed to be teaching a lesson on skin cancer, but, in her view, the lesson was not a good one and so, when she was unable to show a film, which was the only part of the lesson she

thought was good, she elected not to teach the lesson on skin cancer. Instead, she “touched on it” (T. 526) and decided to have the student’s just listen to music. Although she said she knew she could tie the lesson into one of the other advisory goals (T. 518), she did not do that. She offered two different explanations for this dereliction of duty. At one point, she said she was beginning the groundwork for one of the other lessons coming up (T. 448) which she later identified at one point as relaxation (T. 374) and at another point as meditation (T. 517). However, when she was asked about the music the students listened to, she described the purpose as “a really good multicultural lead-in for the students” (T. 522). So, it is unclear what, if any, educational benefit the activity had. What is very clear is that the students were given no educational objective for the activity. They were not told to listen for anything in particular; they were not told the purpose of the activity, other than to lie down, relax, listen to music, and “nap.”¹

Students were given similar instructions in the Mod 1 class. According to _____, she told the students the following:

Today . . . since everyone is sick and I am so tired. I can’t do anything today. I’m going to take a nap. We’re going to take a ‘nap’ together. But I used my fingers, and they knew that I didn’t mean really take a nap.
(T. 436)

Apparently, her assessment was not entirely accurate because students were later talking in the cafeteria about being told to lie down, listen to music, and take a nap and several students wrote statements to that effect.² In any event, there again is no evidence that there was a lesson plan, despite _____ testimony that she had decided in advance that she was going “to do

¹ _____ attorney asked the school principal if “the students [could] do a relaxation listening exercise and have them listen to multicultural music and discuss it.” The question, however, bears no resemblance to what occurred factually in this case.

² An adult aide to a student in _____ advisory confirmed that students had been allowed to lie down and nap. (T. 91) On page 17, the hearing officer states, incorrectly, that “the one-on-one person was actually in the academic section, not in the Mod or Advisory.”

hat day” with her Mod 1 class. There was no evidence that the students were told what to look for as they listened to what she termed “a listening example of a song of high quality of songs they [were] going to be doing.” (T. 504) She simply characterized it as something that was relaxing, something that the students enjoyed doing, and provided a good opportunity to make connections with her students. (T. 436) Whether [redacted] was kidding or not and whether her students understood that she was kidding or not, the clear message was that it was okay either to actually nap or mentally nap because there would be no educational activity that period and that is not what we expect to be happening in any classroom during the school year.

Grading Practices

Of greater concern than wasted instructional time is [redacted] grading practices.³ In December 2014, two students complained to the assistant principal about grades they had received in [redacted] class, including a grade that had been entered on day they were not in class. That triggered a review of [redacted] grade book. The students could not get an explanation of the basis of their grades from [redacted]. One student stated that “she gave me a 80 out of 100 on something she never saw me do” and “then told me that I should thank the lucky stars in the sky that I even got that grade.” (Supt. Exhibit 9) Another student said [redacted]. [redacted] asked her group to re-present their performance because she wasn’t watching, but there was not enough time left in the class “and she still did us without even watching our performance.” The student complained that there was no rubric or anything to state why the student received the grade she did.⁴ (Supt. Exhibit 5) Yet another student, interviewed by the

³ We do not include in this category the mix up regarding the two [redacted] students and did not consider that incident in arriving at our decision.

⁴ Although [redacted] argued that the document in Superintendent’s Exhibit 5, “How to get the grade,” was a rubric, it is more appropriately characterized as a mix of classroom rules and a syllabus. “A rubric is a scoring tool that explicitly represents the performance expectations for an assignment or piece of work.” (Emphasis supplied) Carnegie Mellon University, Eberly Center for Teaching Excellence & Educational Innovation. <http://www.cmu.edu/teaching/design/teach/rubrics.html>

principal, said no rubric was given before an assignment. (Supt. Exhibit 5, T. 203)

Even [redacted] could not explain specifically how she arrived at a grade for a student. When asked about the grade sheet she used to enter grades into the school's electronic grade book, she struggled to do so. When asked, "What date are these grades for?", she answered, "Some of them are for dates that have already been put in the book, and some of them are - the ones at the bottom right-hand of this, the ones at the bottom - - that it says pirouette at the top and it says 9/5 at the top were obviously not for 9/5." (T. 458-459) When asked further about check marks on 9/2, she testified that "9/2 was attendance, but it wasn't attendance for that day," although she had "no idea" what day the attendance was for. (T. 461) She tried to explain that all of the students start with 25 points and then points are deducted for failing to meet certain rules or perform certain tasks, but [redacted] explained further that she told the students that she was "not going to be responsible for telling you every time I take a point off your grade." (T. 383)⁵ Without that kind of communication, without a rubric that specified how points were to be deducted, and without a reliable grading system that documented when and why points were deducted, it is clear that neither the student nor the teacher, nor anyone else, could explain why any individual student received a particular grade or score.⁶ Without these pieces in place, the grading system has no integrity.

The hearing officer noted an exchange between [redacted] and counsel for the Superintendent at pages 48-49 of her report regarding formative and summative assessments. It is nothing short of incredible that, when asked how many formative and summative grades are to be posted each marking period, [redacted] with 10 years of experience in CCPS, could not

⁵ There is a typographical error in the last paragraph on page 22 of the hearing officer's report where the transcript reference 283:4 rather than 383:4.

⁶ We note that the record does not support the hearing officer's statement in the last paragraph of page 10 that testified that "Appellant would go back and alter things when there was a question about grades. (Tr. 78:16)"

answer the question.

Professional Boundaries

testified that she was talking to two students, and said she was tired and “I feel like I can’t do anything today.” She recounted that said, “same.” then responded, “Oh, you, too, are hung over, ?” (T.430) She said she was kidding and that laughed. written statement simply says: “She asked me if ‘I was hung over too?’ but I said no. We then all laid (sic) down and listened to songs we are singing for our concert.” (Supt. Exhibit 9) When she testified before the hearing officer, she added that: “And then we just kind of laughed and -- I mean, I knew it was a joke because we -- we just joke. (T. 662) testified similarly: “ was like, ‘I’m really not feeling it today.’ And she was like -- was like, ‘Oh, ha ha, do you have a hangover too?’ But she was kidding around with us” (T. 627) Both students testified that another student, overheard the comments. Both students confirmed that asked: “Is she serious?” It seems pretty clear to us that she asked because she did not know if she was serious or not.⁷ (T. 628, 662)

Whether taken seriously or not, teenage drinking is nothing to joke about and when someone in authority, such as , makes it a laughing matter, it conveys a message of tacit approval, intended or not. It is an example of extremely poor judgment on part. Unfortunately, it is not the only example.

It is uncontroverted that posted the following on a student’s public Facebook page in response to the student’s lament that she was over her due date and was tired of being pregnant: “Oh honey! Have a glass of wine and some ‘special time’ with daddy! If that

⁷ Although written statement said “immediately said she was kidding afterward,” the weight of the evidence supports the conclusion that was not sure if she was kidding or not. (See, Supt. Exhibit 9 in contrast to the testimony of

doesn't work, msg me!" (Supt. Exhibit 6) The student testified that she thought it was funny. She took a screen shot of it and sent it to a friend and said: "This is funny. Look who just commented on my status. I haven't seen her in forever, and it's funny. * * * My teacher commented on my status." (T. 599) had this student in her class as a freshman and as a sophomore. (T. 480, 595) Although she testified that she thought the student had graduated, she had her as a student only a year and half earlier. If she did not know she was still a student, she should have known. Even if she should not have known, she should have known, or at least thought it extremely likely, that the student would have friends who were still high school students who would read this public post. It is not the type of comment that we expect our professional employees to make in a public forum.

The comment to a student about being hung over and the comment on another student's Facebook page are unprofessional. described herself as her students' "school mom." (T. 350) She described her efforts to create an open and welcoming classroom. (T. 351) appears to have a fairly informal relationship with her students and she has been able, for the most part, to build a close rapport with her students. But that informal style and closeness cannot be at the expense of maintaining an appropriate teacher-pupil boundary and in these two instances, crossed that line.

Charges

The Superintendent has recommended termination on the grounds of willful neglect of duty, misconduct in office, and incompetency.

Willful Neglect of Duty - The Maryland State Board of Education (MSBE) has defined "willful neglect of duty" to mean that "the individual must have disregarded a manifest duty intentionally, consciously or knowingly, although not necessarily with malice or bad purpose."

Warren Wiggins v. Baltimore City Board of School Commissioners, MSBE Opinion No. 02-54 (October 30, 2002), quoting *Nemesh v. Anne Arundel County Bd. of Ed.*, 4 Op. MSBE 836, 837 (1987).

Misconduct in Office - As the hearing officer noted, the Maryland State Board of Education and the Maryland courts, also have defined “misconduct in office.” In *Resetar v. State Board of Education*, 284 Md. 537, 560-561 (1979), the Maryland Court of Appeals cited the following definitions of misconduct:

58 C.J.S. Misconduct (1948) says of the term used as a noun:

The word is sufficiently comprehensive to include misfeasance as well as malfeasance, and as applied to professional people it includes unprofessional acts even though such acts are not inherently wrongful. Whether a particular course of conduct will be regarded as misconduct is to be determined from the nature of the conduct and not from its consequences. (Id. at 818)

Black’s Law Dictionary (4th ed. 1968) says of “misconduct”:

A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness. (Citation omitted)

Incompetence – Typically, discipline on the ground of incompetency is based on a lack of knowledge of the subject matter or the inability to convey knowledge of the subject matter to students. Typically, it is measured by classroom observations and evaluations and often involves implementation of a “PIP” [Performance Improvement Plan] or other mechanisms to help the teacher improve. That is not the only meaning, however.

In *Josephat Mua v. Prince George’s County Board of Education*, MSBE Opinion No. 13-34 (June 25, 2013), the Maryland State Board of Education defined incompetence, at page 15, as existing “when an employee is lacking in knowledge, skills, and ability or failing to adequately

perform the duties of an assigned position.” (Emphasis supplied)

Conclusion

Whether characterized as willful neglect of duty, misconduct in office, or incompetence, [her] decision to have students lay down, listen to music, and “nap;” her inability to maintain a grading system that conformed to basic requirements and allowed her to explain to her students, or anyone else, how she arrived at a particular grade on an assignment; and her lack of professional judgment and ability to maintain appropriate student – teacher interactions, demonstrate an intentional “disregarded [of] a manifest duty,” a “dereliction from duty,” and a “fail[ure] to adequately perform the duties of [her] assigned position.”⁸

However, the question regarding appropriate discipline for these infractions remains. In deciding to adopt the Superintendent’s recommendation for termination, we were persuaded by the seriousness of the incidents and by [her] failure to accept any responsibility for any of the incidents. Instead, she argues that an assistant principal turned the school principal against her over lesson plans for substitute teachers and that precipitated a “witch hunt” that enveloped every other administrator who had any involvement in any aspect of the investigations and decision, including the Superintendent of Schools. It strains credibility to believe that one assistant principal possessed such power and does a disservice to the school principal and other administrators who were involved by giving them absolutely no credit for their professional experience or professional judgment. We see this argument as yet another example of her failure to take any responsibility for her actions. Her response to her failure to teach the advisory lesson on skin cancer was that the advisory lessons were “stupid.” (T. 365) After admitting that her grade book was “disorganized,” her response to questions about her incomprehensible grading

system⁹ was "I'm an artist. What can I say?" (T. 460, 462) Her response to at least one student who questioned a grade was that the student should be thankful for the grade she received. (Supt. Exhibit 9) Her ill-considered remarks about a "nap," being "hung over," and suggesting a wine and "special time" with daddy were shrugged off as joking. / summed up her position quite well when she told the hearing officer:

If people don't see that I'm a good teacher and they don't see that I'm using good teaching technique, it's because they are unable to recognize good teaching technique when they see it, and that is the problem. I'm not the problem here.
(T. 465)

Without even acknowledging that, perhaps, there is room for improvement, it does not appear that there is any reason to expect a change if the Board of Education opted for a suspension rather than termination.

Therefore, for all of the reasons stated herein and those findings of fact and conclusions of law we have accepted and adopted, the Board of Education hereby adopts the Superintendent's recommendation to dismiss / for misconduct in office, willful neglect of duty, and incompetency.

Date: August 12, 2015

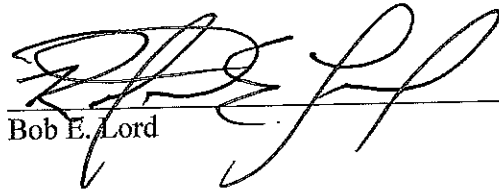
James L. Doolan
James L. Doolan, President

Jennifer A. Seidel
Jennifer A. Seidel, Vice President

Virginia R. Harrison
Virginia R. Harrison

⁸ We do not find that the evidence supports a conclusion that / was derelict in her duties with respect to leaving plans for her substitute teacher on October 10, 2014, and do not adopt the hearing officer's findings and conclusions with respect to this issue. (See e.g., Supt. Exhibit 1)


⁹ Although she testified that there was a "method to my madness," she was unable to explain how that method translated into an explanation for any individual grade on an activity/assessment for any individual student. (T. 462)



Bob E. Lord

OPINION
CONCURRING IN PART AND DISSENTING IN PART

While I concur with the factual findings and conclusions reached by the majority regarding the charges, however, given her 10-year tenure with CCPS and her acknowledged talents, I believe that termination is too harsh of a penalty and dissent from that portion of the Decision.



Devon M. Rothschild