

JOHN W [REDACTED]

Appellant,

v.

BALTIMORE COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 21-55

OPINION

INTRODUCTION

John W [REDACTED], (“Appellant”), appeals the decision of the Baltimore County Board of Education (“local board”) affirming the results of his 2019 observations and 2019-2020 mid-year evaluation and the non-renewal of Appellant’s non-tenured teaching contract. The local board responded to the appeal maintaining that its decision should be upheld because the observations, evaluation and the non-renewal were not based on illegal or discriminatory reasons, but rather on Appellant’s poor teaching and classroom management skills. The Appellant did not reply to the local board’s response.

FACTUAL BACKGROUND

The Appellant was a non-tenured probationary teacher employed by Baltimore County Public Schools (“BCPS”) under a regular teacher’s contract signed on August 13, 2018. (R. Ex. 4 – Joint Ex. 11). The regular teacher’s contract is set forth in COMAR 13A.07.02.01 and provides that the probationary period for a new teacher in a school system is three years and that either of the parties may terminate the contract at the end of the first, second or third anniversary date of employment by giving notice in writing. Appellant holds a certificate as a special education teacher and was initially hired by BCPS as a behavioral intervention teacher in the summer of 2018. (R. Ex. 5 at 2). Prior to the commencement of the 2018-2019 school year, the Appellant was assigned to teach mathematics at [REDACTED] Middle School (“[REDACTED]MS”) during the 2018-2019 school year. *Id.*

During the 2018-2019 school year, school administration conducted formal observations, and completed a mid-year and end-of-year evaluation for the Appellant. The Appellant was placed on an individualized teacher assistance plan on February 14, 2019, which was discontinued by the end of the school year. (R. Ex. 4 – Superintendent’s Ex. 2). Appellant received an overall developing rating on his mid-year and end-of-year evaluations. (R. Ex. 4 – Superintendent’s Exs. 1, 3). He inquired about having his score improved by .1 of a point to receive an effective rating on his final evaluation but he did not appeal his final evaluation and the rating was not changed. (R. Ex. 5 at 12). His contract was renewed for a second year. *Id.*

The Appellant's ██████ son was enrolled in ██████ MS's regional behavioral program for the 2019-2020 school year. Appellant's son experienced a behavior crisis that resulted in hospitalization for five months from October 2019 until March 2020 (R. Ex. 5 at 3). The Appellant and his wife advocated for a residential placement for their son during the 2019-2020 school year. In December 2019, the ██████ MS Individualized Education Plan ("IEP") team for the Appellant's son agreed with and supported a residential placement. (R. Ex. 5 at 13, 15).

For the 2019-2020 school year, at his request, the Appellant was reassigned to teach special education English Language Arts ("ELA") and social studies. School administration conducted four formal observations, and a mid-year and end-of-year evaluation and the Appellant was again placed on an individualized teacher assistance plan.

On Appellant's first formal observation, on October 24, 2019, he received an ineffective rating. (R. Ex. 4, Joint Ex. 1). The observation form indicates that the Appellant was unprepared for both the first and second pre-observation conferences. Ms. J█████ Pa█████, one of the assistant principals and also the observer, with regard to Domain 1 (planning and preparation), commended the Appellant for providing detailed information about the individual learners but found Appellant's "plans and practice display little understanding of the prerequisite relationships that are important to student learning of the ELA content...his selected outcomes for the lesson were not clear, lacked alignment with his selected activities, and did not align with a viable assessment method." *Id.* at 1. The observer, noted with regard to Domain 2 (classroom environment), the Appellant's student teacher interactions were appropriate but found he did not sufficiently address classroom behavior, lost instructional time and allowed an unsafe activity to occur (child spinning a chair). In Domain 3 (instruction), the observer noted that instructional delivery was primarily teacher directed and was difficult to follow, the students were not sufficiently engaged in the instruction and the Appellant did not communicate clearly to the students. In the teacher's comments to the observation, the Appellant disagreed with the observation rating of ineffective. He stated that he was forced to make unrealistic changes to his original plan by Ms. Pr█████, the special education department chair, Ms. K█████, the eighth grade department chair, and Ms. P█████. He also stated that Ms. Pa█████ failed to realize the complexity and severity of behaviors of his students and that she had a poor grasp of the needs of many of his students. *Id.*

On his second formal observation, on December 10, 2019, Appellant received a developing rating, although the observation noted that there was improvement. (R. Ex. 4, Joint Ex. 2). Principal Ph█████, the observer, stated that with regard to Domain 3, the Appellant inconsistently engaged students in learning and the Appellant was limited in his assessment of student learning as opportunities were missed to conduct informal assessments. In the teacher's comments, the Appellant stated that the lesson should be rated as effective and that he will attempt to differentiate reading materials for length and content. *Id.*

Appellant received an overall ineffective rating on his mid-year evaluation in January 2020. (R. Ex. 4, Joint Ex. 3). Principal Ph█████, the observer, stated that with regard to Domain 1, the Appellant had limited knowledge of content and pedagogy, difficulty with meaningful connections between and among concepts, and inconsistently demonstrated knowledge of his students' medical and learning needs. The Appellant received a developing rating for Domain 2

but it was noted that the student behavior was an issue. For Domain 3, the Appellant received an ineffective rating noting that:

- his instruction was lacking in precision and a general awareness of student engagement levels;
- the Appellant did not immediately respond to students' needs and the Appellant inconsistently used assessments during instruction and was unable to consistently monitor student learning and provide timely and effective feedback; and
- the Appellant did not maximize instructional time, permitting much free time, and down time, resulting in disengaged students.

For Domain 4 (professional responsibilities), the Appellant received a developing rating.

The Appellant disagreed with the results of the mid-year evaluation and appealed that evaluation. *Id.* In his teacher's comments to the mid-year evaluation, he argued that his first formal observation was conducted under extreme prejudice by Ms. Pa [REDACTED] as he was forced to make many last minute changes and he was not confident that Ms. Pa [REDACTED] was familiar with special education instruction. (R. Ex. 4 – Joint Ex. 3).

Another formal observation occurred on January 30, 2020, and the observer and a second assistant principal, Ms. M [REDACTED] D [REDACTED], provided an overall final rating of ineffective. (R. Ex. 4, Joint Ex. 4). With regard to Domain 1, the observer noted that there was no evidence of differentiation of content and process although the class consisted of various levels. For Domain 2, the observer stated that the classroom was chaotic with low expectations for student achievement. For Domain 3, the observer noted that the students did not demonstrate understanding of selected instructional outcomes. In the teacher's comments, the Appellant stated that his lesson plan was approved. He also stated there was a disruptive student kicking him during the lesson and he had to call for help and he blamed Ms. D [REDACTED] for failing to remove the disruptive student. He stated the observation should have been rated effective in all areas. (R. Ex. 4 – Joint Ex. 4).

On February 12, 2020, the Appellant was placed on an assistance plan. (R. Ex. 4 – Joint Ex. 5). Another formal observation occurred on February 24, 2020. Appellant received an overall developing rating by observer Principal Ph [REDACTED]. (R. Ex. 4 – Joint Ex. 6). For Domain 1, the observer noted that the Appellant was limited in his knowledge of content and pedagogy and that he missed a direct connection to story components. The observer described the Appellant as sporadic in his knowledge of students but satisfactory in his design of content instruction. The observer found that the Appellant was satisfactory for coherent instruction; however, the assessment criteria were not evident. Under Domain 2, the observer described that the Appellant's response to student misbehavior was uneven and disruptive behaviors were not addressed. Under Domain 3, the observer stated that the Appellant inconsistently engaged the students in learning and he failed to properly use assessments in instruction. In the teacher comments, the Appellant insisted he taught the exact lesson he developed in agreement with Ms. Phillips and it should have been rated highly effective. *Id.*

Appellant received an overall ineffective rating on 2019-2020 year end evaluation dated March 9, 2020, by observer Principal Ph [REDACTED]. (R. Ex. 4 – Joint Ex. 7). Appellant did not appeal the evaluation result.

On March 9, 2020, Ms. Susan Truesdell, the community superintendent’s designee, issued a decision in which she upheld the 2019-2020 mid-year evaluation rating along with the ratings on the formal observations that had been conducted on October 24, 2019, and December 10, 2019. On March 17, 2020, Appellant appealed the mid-year evaluation and the 2019 observations to the Superintendent.

By letter dated April 16, 2020, the Acting Chief Human Resources Officer, Maria Lowry, informed Appellant that his teaching contract would not be renewed. (R. Ex. 4 – Joint Ex. 8). On April 17, 2020, Appellant appealed the non-renewal decision to the Superintendent. Allyson Huey, Manager of Employee and Student Appeals, acting as the Superintendent’s Designee, held a hearing with Appellant regarding the two appeals on June 8, 2020. On October 9, 2020, Ms. Huey, upheld the 2019 formal observations, the mid-year evaluation and the nonrenewal. (R. Ex. 4 – Joint Ex. 10).

Appellant appealed this decision, and the local board assigned the matter to Hearing Examiner Gregory A. Szoka (“Hearing Examiner”). The Hearing Examiner conducted an evidentiary hearing on February 17 and 24, 2021. He reviewed the Appellant’s claims, as well as supporting documentation from both parties and testimony from the hearing. On April 19, 2021, the Hearing Examiner issued a 28-page decision, including findings of fact, and recommended the local board uphold the decision of the CEO’s designee not to renew Appellant’s teaching contract. (R. Ex. 5). During the hearing, the Appellant argued that the evaluators were biased, he did not receive enough support and that the evaluators illegally retaliated against him for his advocacy on behalf of his son. The Hearing Examiner concluded that the factual record did not support the Appellant’s contentions and the Appellant’s non-renewal decision was predicated on the Appellant’s observations and overall ratings and was not arbitrary, unreasonable or illegal.

The local board heard oral argument from the parties on July 8, 2021. On July 13, 2021, the local board adopted the Hearing Examiner’s recommendation to affirm the decision of the Superintendent’s designee not to renew the Appellant’s non-tenured teacher contract for the 2020-2021 school year. (R. Ex. 8).

This appeal followed.

STANDARD OF REVIEW

A local board does not have to demonstrate cause as a basis for its decision not to renew a probationary teacher’s contract. *Zarrilli v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 21-04 (2021). However, a local board’s decision to non-renew cannot be based on illegal or discriminatory reasons. It is the Appellant’s burden to prove illegality “with factual assertions, under oath, based on personal knowledge.” *Greenan v. Worcester County Bd. of Educ.*, MSBE Op. No. 10-51 (2010); *Etefia v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-03 (2003).

A local board's decision regarding teacher observations and evaluations is presumed to be *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A.

LEGAL ANALYSIS

A local board may choose not to renew a non-tenured probationary teacher contract for any reason, or no reason at all, as long as it is not an illegal one that contravenes a clear mandate of public policy. *See Miller-Phoenix v. Baltimore City Bd. of School Comm.*, 246 Md. App. 286, 305 (2020). The State Board of Education has held that "school systems have a large degree of flexibility in deciding not to renew a probationary teacher's contract so long as the reason for the nonrenewal is not illegal or discriminatory." *Torres v. Balt. City Bd. of Sch. Comm'rs*, MSBE Op. 18-04 (2018). The local board does not have to establish any cause or reason for its decision not to renew. *Ewing v. Cecil County Bd. of Educ.*, 6 Op. MSBE 818 (1995). In fact, the State Board has held that a local board may non-renew a probationary teacher's contract despite satisfactory evaluations. *See Bricker v. Frederick County Bd. of Educ.*, 3 Op. MSBE 99 (1982).

The Appellant disagrees with the rating of ineffective for his 2019 observations and his 2019-2020 mid-year evaluation and claims there was little rationale provided. The Appellant did not appeal his overall ineffective rating on 2019-2020 year end evaluation. The record supports the local board's conclusion that the non-renewal was based on the Appellant's observations and overall evaluation ratings. The evidence presented to the Hearing Examiner and considered by the local board included testimony by the school principal and the assistant principal who stated that the Appellant had ongoing difficulties with instructional pacing, differentiation of instruction, and content knowledge during both school years.

Rather than dispute the evidence that his teaching was consistently deficient with any factual assertions, the Appellant argued that the principal and the assistant principals were not "qualified" observers because they were not special education teachers and were not competent to properly evaluate him. He states in his appeal that he requested to be "observed by an outside special education specialist." *See*, Appeal at 2. State regulation requires that classroom observations be conducted by certified individuals who have completed training in identification of teacher behaviors, and that an ineffective rating on an evaluation report include at least one observation by an individual other than the immediate supervisor. COMAR 13A.07.09.04B(4)(a) and (c). Ms. Huey testified that the principal and the assistant principals who evaluated the Appellant were qualified observers and that there was no requirement under COMAR and the Master Agreement with the Teachers Association of Baltimore County that the observer had to be a special education teacher/specialist.

Appellant's speculations that his teaching was fully effective falls far short of the high evidentiary bar he must meet in order to demonstrate the local board's nonrenewal decision is illegal or discriminatory. The local school system was free to non-renew his teaching contract even if he was an effective teacher. The Appellant alleges that the observations and evaluations were "used as a weapon" against him because of his and his wife's advocacy for their autistic son who faced serious challenges during the 2019-2020 school year. Although we are

sympathetic to the challenges the Appellant and his family faced under these difficult circumstances, we do not find that the record supports his assertions of any unlawful retaliation.

The State Board of Education has recognized retaliation as an illegal reason for terminating an employee if it is done in response to an employee engaging in the protected activity of reporting illegal activity. *See Dorsey v. Carroll County Bd. of Educ.*, Op. No. 19-35 (2019), citing *Young v. Prince George's County Bd. of Educ.*, MSBE Op. No. 17-39 (2017). In order to establish a *prima facie* case of retaliation, an appellant must show that (1) he or she engaged in a protected activity, (2) that the school system took a materially adverse action against him, and (3) that a causal connection existed between the protected activity and the materially adverse action. *Young v. Prince George's County Bd. of Educ.*, MSBE Op. No. 17-39 (2017) (citing *Burling N. & Santa Fe Ry. Co. v. White*, 584 U.S. 53, 68 (2006)).

There is no dispute that Appellant's participation in IEP meetings and advocacy for his son under the Individuals with Disabilities Act are protected activities. The Hearing Examiner found that the Appellant failed to provide any evidence that establishes a causal connection between his advocacy, the evaluation ratings and the nonrenewal decision. Both Principal Ph [REDACTED] and Ms. Pa [REDACTED] testified that no retaliatory actions occurred and that they each supported the residential placement and did not participate in the IEP decision-making process. The exhibits submitted document a lack of teaching ability, a lack of curriculum understanding, and a lack of pedagogical knowledge. Appellant's speculations that his observations and evaluations were used against him because of the advocacy of his son are unfounded and not supported by the record. Examining all of the evidence in the record, we find the Appellant has failed to establish a *prima facie* case that the non-renewal was based on retaliation.

CONCLUSION

For all of these reasons, we find that the local board's decision on the non-renewal of Appellant's teaching contract is not illegal or discriminatory. Further, we find that the local board's decision upholding the results of the 2019 observations and the 2019-2020 mid-year evaluation is not arbitrary, unreasonable or illegal. Accordingly, we affirm.

Signatures on File:

Clarence C. Crawford
President

Charles R. Dashiell, Jr.
Vice-President

Shawn D. Bartley

Gail H. Bates

Chuen-Chin Bianca Chang

Susan J. Getty

Vermelle Greene

Jean C. Halle

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

December 7, 2021