

MELVIN RAWLES

Appellant,

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-54

OPINION

INTRODUCTION

Melvin A. Rawles ("Appellant") filed an appeal of the decision made by the Board of Education of Prince George's County ("local board") affirming his reassignment from an assistant principal to teaching position. The local board filed a response to the appeal. Appellant replied, and the local board responded.

FACTUAL BACKGROUND

Appellant has been an employee of Prince George's County Public Schools ("PGCPS") since 1995. In November 2012, he became the Assistant Principal at Benjamin D. Foulis Creative and Performing Arts Academy ("BFA"). In August 2014, ██████████ became the new Principal at BFA, and Appellant's direct supervisor. (Appeal, Ex. 5). The record demonstrates that Appellant and the Principal had a strained relationship during Appellant's tenure at BFA, especially as it related to Appellant's performance.

On October 26, 2016, the Principal received a complaint from a parent about the way that the school, and Appellant in particular, handled an investigation into her report of bullying/intimidation of her child. On November 1, the Principal emailed Appellant with several questions to follow-up on the complaint and the investigation. While Appellant and the Principal spoke about the incident on November 3, the Principal followed up with more questions on November 4 via email. The Principal sent two additional emails dated November 10 and November 17, requesting the information, then a meeting, as there had been no follow up by Appellant. (R. 0118-0119).

On November 1, 2016, the Principal emailed Appellant reminding him that his completed administrator observations were due October 28 and requesting that he immediately submit a draft. (R. 0117).

On November 3, 2016, the Principal issued an Administrator/Supervisor Observation Form, describing an incident in which Appellant failed to complete his assigned facilitation

duties for a meeting and sat apart from the other members of the meeting without engaging. The principal found this was not in alignment with PGCPs leadership standards. (R. 0109).

On December 1, 2016, the Principal emailed Appellant to advise him that he submitted a request to reopen the database where Appellant was required to enter professional observations so the Appellant could continue to enter his observations after the deadline and still receive credit towards his evaluation. (R. 0110).

On January 27, 2017, the Principal provided Appellant with midyear conference feedback. The Principal identified concerns with completion of performance objectives, including completion of formal teacher observations of which Appellant had completed only two of the twelve expected at that point in the year. (R. 0144-0147).

In February 2017, the Principal finalized a growth plan for the Appellant to improve performance. As a part of the growth plan, the Appellant was to participate in bi-weekly progress meetings. The Appellant was initially not in agreement with the growth plan, but eventually participated in it. (R. 0160-0164).

On March 9, 2017, the Principal emailed Appellant to thank him for attending a Data Wise meeting the prior month, but noted he had not been in attendance at the other weekly meetings. He stated that if Appellant was “occasionally unable to make it due to circumstances beyond [his] control” that the Appellant let him know or else he would assume Appellant would be in attendance. (R. 0121).

On March 13, 2017, the Principal emailed the Appellant to request suspension documentation from suspensions issued by the Appellant on March 3. The Office of Pupil Personnel Services reached out to the Principal to indicate that the suspensions had not been documented in the SchoolMax system, and to state that one of the parents claimed there was nothing written on the suspension regarding the infraction. (R. 0122).

On March 20, 2017, the Principal emailed the Appellant to inform him that he had not received his observation schedule from him for the week, as required by his Growth Plan. The Principal noted this was the second consecutive week the Appellant failed to submit the schedule. This followed an email reminder from the Principal the week before. (R. 0123-0124).

On May 2, 2017, the Principal issued a Letter of Reprimand to Appellant for insubordination. The Principal highlighted two areas of concern. First, the Appellant issued suspensions in March on outdated forms. The Principal claimed this was in violation of an email he sent on February 8, 2015 with updated forms and a directive that the Principal was to sign all suspension paperwork unless he was out of the building. The Principal also shared that the Pupil Personnel Worker informed him that as April 27, 2017, the March suspensions were not entered into the SchoolMax discipline portal. The Principal determined these actions constituted insubordination and a failure to follow PGCPs protocol. (R. 0125).

The Principal also referenced a call held between him and the Appellant on April 28, 2017, wherein the Principal claimed Appellant raised his voice and stated that if the Principal

had anything further to say about his performance, the Principal could speak with Appellant's attorney. The Principal noted a prior incident in October 2014 where the Appellant allegedly raised his voice. The Principal also found this behavior constituted inappropriate and unprofessional conduct and insubordination. (R. 0125-126).

For the 2016-2017 school year, the Appellant received a score of 46.70 on his annual evaluation, resulting in an ineffective rating. The evaluation was composed of two parts: Professional Practice, wherein Appellant received a 13.30, and Student Growth Measures, wherein Appellant received a 33.50. (R. 0114-115).

Subsequently, the Principal requested the termination of Appellant. (See R. 0060-61). On August 8, 2017, a *Loudermill* meeting¹ was held with Appellant, his union representative, the Principal, the Associate Superintendent for Area 1, the Instructional Director for Cluster 2, and the Employee and Labor Relations Advisor, Ms. Wanda Battle, to address allegations of insubordination and willful neglect of duty by Appellant. Although the meeting occurred, the issues were not resolved before the Appellant went out on approved leave from March 1, 2018 until May 24, 2019. (R. 0001).

On September 21, 2017, Appellant filed a Discrimination or Harassment Incident Report with PGCPs pursuant to Administrative Procedure ("AP") 4170 claiming harassment by the Principal.² Appellant alleged that the Principal discriminated and/or harassed him by:

- Violating HIPAA by requesting medical information, to which he was not entitled;
- Not honoring employee confidentiality by giving a copy of a Letter of Reprimand for Appellant to the school secretary;
- Not adhering to basic labor and local board policies by: (1) requesting Appellant perform work while on sick leave; (2) giving Appellant an ineffective evaluation; (3) requesting to see Appellant's court documents; (4) forwarding an email to Appellant on Christmas day; and (5) not approving Appellant's request for bereavement leave;
- Issuing a Letter of Reprimand for failure to follow suspension protocol but not issuing the other Assistant Principal a Letter of Reprimand for the same infraction; and
- Creating a hostile work environment and "constantly tak[ing] other employees' word over [Appellant's]". (R. 0182).

EEO Advisor Amana Simmons investigated the allegations, and on January 16, 2018, issued a Letter of Determination. The letter explained that pursuant to AP 4170, "discrimination occurs when a person has, on the basis of their membership in a protected class (i.e., race, color,

¹ A *Loudermill* hearing, also known as a pre-termination hearing, is a conference where employees are given notice of the charges against them and provided with an opportunity to respond. The conference is named for the Supreme Court's decision in *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).

² Appellant first complained of alleged harassment in September 2015, wherein he was advised of the 4170 Complaint process. However, Appellant did not file a formal complaint until 2017.

sex, age, national origin, religion, marital status, sexual orientation or disability), been subjected to a hostile work environment or disparate treatment, including, but not limited to being: (a) precluded from participating in or denied the benefits of an employment activity; or (b) subjected to adverse employment action.” The EEO Advisor was unable to substantiate that any of the incidents were premised upon Appellant’s membership in a protected class. She concluded that the behavior “largely represents a personality conflict between [the Principal and Appellant].” While she did not find a violation of AP 4170, the EEO Advisor noted the Principal made questionable leadership decisions and recommended that the Principal receive support regarding positive approaches for leadership and community building. (R. 0187-0188).

Appellant returned to work on June 3, 2019. In June 2019, Appellant filed a lawsuit in federal court against PGCPs alleging a hostile work environment and unlawful race-based discrimination and retaliation under Title VII of the Civil Rights Act of 1964. (Appeal, Ex. 6).

On August 20, 2019, a second *Loudermill* meeting was held to again review the allegations of insubordination and willful neglect of duty. Present at the second meeting were Appellant, his two union representatives, the Director of the Employee and Labor Relations Office, and Ms. Battle. At the meeting, several documents previously submitted by the Principal were reviewed to support the request for termination. On September 9, 2019, following the second meeting, the Chief Executive Officer, Dr. Monica Goldson, issued a letter to Appellant in which she reassigned him to a PGCEA, Unit I position on the grounds of insubordination and willful neglect of duty. In support of her decision, the CEO cited the following:

- Ineffective end of year evaluation for the 2016-2017 school year
- Insubordination during the 2016-2017 and 2017-2018 school years
- Insufficient improvement in identified Leadership Standards as noted in the 2016-2017 Growth Plan and failure to comply with its terms. The same Standards were identified as in need of improvement for the 2015-2016 school year.
- Failure to attend required leadership team meetings and Data Wise meetings on a consistent basis.
- Consistent failure to meet established deadlines.
- Failure to adhere to timelines and complete formal observations per the guidelines provided by the Office of Employee Performance and Evaluation.
- Inappropriate, insubordinate behavior displayed towards your immediate supervisor.
- Failure to take advantage of professional development opportunities provided in an effort to provide additional support to Appellant. (R. 0001-0002).

Appellant appealed the CEO’s decision to the local board. On March 5, 2020, through counsel, Appellant submitted a memorandum in support of his appeal and a request for a hearing before a hearing examiner. In his brief, Appellant argued the local board should reverse his “demotion and transfer” because there was no evidence supporting a finding of insubordination; he did not engage in willful neglect of duty; and the actions of the Principal, which the CEO relied upon, constituted race-based discrimination, harassment, and retaliation. (R. 0019-0028).

On May 5, 2020, the CEO submitted a brief in support of her position that she had the authority to transfer Appellant under Md. Code, Education Article 6-201(b)(2). The CEO contended that her decision to reassign the Appellant was neither arbitrary nor unreasonable because the record provided substantial evidence that the Appellant had consistently demonstrated professional shortcomings, including his ineffective evaluation. The CEO also disputed her decision was illegal on the basis that the Principal treated Appellant in a disparate manner. The CEO pointed to the findings of the EEO Advisor, which stated there was insufficient evidence to support a finding of discrimination. (R. 0089-0100).

On June 8, 2020, Appellant filed a reply memorandum, which disputed the CEO's position that the Appellant was reassigned for performance deficiencies. Appellant argued the reassignment was a disciplinary demotion as evidenced by the CEO's letter, which stated the reassignment was "on the grounds of Insubordination and Willful Neglect of Duty." Appellant also argued that he produced sufficient evidence to overcome a determination that he was insubordinate and engaged in willful neglect of duty, as well as evidence to substantiate his claim of disparate treatment. (R. 0189-0195).

On February 9, 2021, the local board heard oral arguments from parties. (Appeal, 6). On May 4, 2021, the local board issued its decision and order in the matter. The local board found that the CEO acted within her authority under Md. Code, Education Article, § 6-201(b)(2) in reassigning Appellant to a teaching position. The local board determined that Appellant experienced a number of job performance issues during the 2016-2017 and 2017-2018 school years, including:

- failure to meet goals in his September 30, 2016 goal setting document;
- failure to submit Standards of Learning data in a timely fashion;
- failure to make satisfactory improvement on his Growth Plans;
- an ineffective rating for his 2016-2017 evaluation;
- the May 2, 2017 Letter of Reprimand; and
- failure to adhere to timelines for completion of formal observations.

Based on this evidence, the local board concluded that the CEO's decision to reassign Appellant was well supported and within her discretion to transfer personnel "as the needs of the system require." The local board acknowledged that while Appellant disputed a number of the underlying facts, "the totality of the facts and evidence...was sufficient information to support the CEO's concerns regarding Appellant's ability to continue to service in a leadership role[.]" (R. 0197-0203).

The local board also found that Appellant failed to appeal the EEO Advisor's determination of his 2017 AP 4170 complaint. The local board maintained this appeal was an untimely appeal of the 2017 determination; and to the extent a discrimination claim may serve as a basis for a reversal of the CEO's action, the local board found Appellant failed to meet his burden of proof. As such, the local board affirmed the CEO's decision to reassign Appellant. (R. 0203-0204).

This appeal followed.

STANDARD OF REVIEW

A local board's decision regarding the reassignment of a school administrator 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

In the matter before this Board, Appellant seeks a reversal of the local board's decision on the bases that the decision was arbitrary, unreasonable, and illegal. Appellant argues that the local board's decision is arbitrary and unreasonable because the local board did not rely on the CEO's reasoning for reassigning Appellant (i.e. insubordination and willful neglect of duty), and the local board ignored compelling evidence that the Appellant was neither insubordinate nor engaged in willful neglect of duty. Appellant also argues that the local board's decision was illegal as it was predicated upon discriminatory behavior and constitutes retaliation for engaging in protected activities. Appellant also claims the local board's denial of his request for an evidentiary hearing to determine genuine disputes of material fact denied him his due process rights, and he requests an evidentiary hearing of this Board.

The local board in response argues that its decision is neither arbitrary, unreasonable, nor illegal. The local board maintains that the record is full of evidence of Appellant's professional shortcomings and incompetency, which supports the CEO's reassignment. The local board also argues that Appellant's claims of discrimination and retaliation are improperly before this Board as Appellant failed to appeal the determination of his 2017 AP 4170 complaint. Furthermore, the local board contends the Appellant failed to produce legally sufficient evidence to support his claims.

We address these arguments in turn.

Request for Hearing

Appellant argues that, through his signed affidavit, he created genuine disputes of material fact, which should have been resolved by an evidentiary hearing before the local board. He requests that we transfer the case to the Office of Administrative Hearings ("OAH") for a full evidentiary hearing pursuant to COMAR 13A.01.05.07A(1)(c). A material fact is one that will alter the outcome of the appeal depending on how this Board resolves the dispute over the alleged fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("To be a "genuine" factual dispute, there must be more than a mere scintilla of evidence... the evidence must be such that a reasonable jury could return a verdict for the nonmoving party.)

While the Appellant has submitted a signed and sworn affidavit in support of his case, we must look at the full record to determine whether the allegations made in the affidavit are enough to create a genuine dispute of material fact such that an evidentiary hearing is required. In other

words, we must determine whether there are enough undisputed facts in evidence that we can make a decision without referring the matter to OAH.

In affirming the Appellant's reassignment, the local board cites to the May 2017 Letter of Reprimand, which in part contends Appellant raised his voice and was disrespectful towards the Principal. In his affidavit, Appellant disputes that he raised his voice to the Principal; therefore, there is a genuine dispute over this incident. However, the existence of one disputed fact does not stop our inquiry; we must consider whether there are other facts in evidence that allow us to resolve the matter at hand. We find that there are enough facts in evidence for us to decide this appeal.

For example, Appellant does not dispute the information provided in his January 2017 Midyear Conference Feedback from the Principal. Instead, he alleges that the other Assistant Principal and the Principal were behind in completing timely observations. Whether or not that is true, it does not cure the deficiencies in the Appellant's performance. Similarly, Appellant does not deny that he used incorrect suspension paperwork, but instead alleges that the other administrators also used outdated paperwork. He offers no rebuttal to the charge that he did not enter the suspension in the SchoolMax portal. As the Appellant does not disagree that he failed to follow protocol, but merely attempts to explain it away by alleging others also did not follow protocol, we find no dispute of fact in these matters.

Appellant also disputes that he did not meet the requirements of his growth improvement plan. However, it is noteworthy that Appellant states he "met the elements contained in the [growth improvement plan] that were achievable." There is an important distinction between meeting the growth improvement plan and meeting elements that the Appellant deems are achievable. Finally, the Appellant offers no evidence beyond his statement in his affidavit to support that his 2016-2017 school year ineffective rating was inappropriate.

Therefore, while there are some facts that may be in dispute, on balance – looking at the full record – we find that sufficient facts remain undisputed that allow us to move forward with addressing Appellant's arguments for a reversal of the local board decision. A transfer to the OAH is not warranted.

Basis for Reassignment

Appellant argues that the local board's decision is arbitrary and unreasonable, as it does not rely on the bases provided by the CEO (i.e. insubordination and willful neglect of duty), but "convert[s] Appellant's disciplinary demotion and transfer to a garden variety 'transfer.'" (Appeal, 6). Appellant argues that the local board "failed to apply this Board's standards for a disciplinary demotion based on misconduct." (Appeal, 7).

Appellant's argument lacks merit. This Board has consistently held that discipline for which cause must be shown, and to which the procedural requirements of Education Article §6-202 apply, relates specifically to suspensions and dismissals.³ See *Marcia Martin v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 06-25 (2006); *Brown v. Prince George's County Bd.*

³ Section 6-202 provides for notice of the charges and, upon request, an opportunity for a hearing prior to removal.

of Educ., MSBE Op. No. 01-21 (2001); *Chenowith v. Board of Educ. of Baltimore County*, 7 Op. MSBE 197 (1995). Furthermore, under § 6-201(b)(2), the CEO maintains broad authority to transfer personnel to positions of lower rank. See, e.g., *Mayhorne v. Harford County Bd. of Educ.*, MSBE Op. No. 00-17 (2000) (transfer from principal to teacher); *Hart v. Board of Educ. of St. Mary's County*, 7 Op. MSBE 740 (1997) (transfer from assistant principal to classroom teacher); *Cameron v. Board of Educ. of Baltimore County*, 6 Op. MSBE 814, 815 (1995) (transfer from assistant principal to classroom teacher).

Appellant argues that because the CEO cited insubordination and willful neglect of duty in her reassignment letter, it is arbitrary and unreasonable for the local board to uphold the CEO's decision for performance based issues. Appellant believes that the local board must find him insubordinate and/or in willful neglect of duty in order to affirm his reassignment. We disagree.

Given the broad authority of the CEO over personnel placement, we find that the local board must merely be able to articulate some basis for the reassignment that is neither arbitrary, unreasonable, nor illegal; it does not have to be insubordination or willful neglect of duty. In the matter at hand, the CEO provided ample evidence to the local board to support her decision to reassign the Appellant. Appellant was provided with an opportunity to refute this evidence at his *Loudermill* hearing and in his appeal. While there may be a dispute regarding some of the underlying facts, as noted above, they are not material disputes because enough evidence remains in the record to support the local board's decision, such as the ineffective evaluation. Therefore, we do not find the local board's decision arbitrary or unreasonable.

Discrimination

Appellant argues we should overturn the local board's decision as it is predicated on the alleged discriminatory actions of the Principal, and therefore, illegal. In his appeal, he alleges that the local board is "dismissive of [his] internal complaint of discrimination and ignored [his] substantial evidence supporting his claims." (Appeal, 13). The local board responds that Appellant is attempting to appeal the decision of the EEO Advisor, who investigated Appellant's AP 4170 complaint and did not find sufficient evidence to sustain allegations of discrimination and harassment, and such a claim is barred for failure to exhaust administrative remedies.

Regarding the local board's decision to affirm the CEO's reassignment of Appellant, Appellant has failed to produce any evidence of discrimination beyond the conclusory statements made in his affidavit. Conclusory statements without supporting factual specifics are insufficient to sustain a discrimination claim. See *Hurl v. Howard County Bd. of Educ.*, 6 MSBE Ops. 602 (1993). To the extent Appellant disagrees with the findings of the January 2018 decision by the EEO Advisor, we agree with the local board that he should have availed himself of his appeal rights at that time. Beyond those allegations, Appellant claims that the Principal "had a long history of pressuring and manufacturing performance and other "issues" with African American BFA teachers and staff[.]" (R. 0039). However, Appellant fails to produce any other evidence in support of this claim. As we have no facts in evidence before us that demonstrate discriminatory action, we decline to overturn the local board's decision as illegal.

Retaliation

Appellant also argues that the local board decision is illegal as it constitutes retaliation. In order to establish a *prima facie* case of retaliation, Appellant must show that (1) he 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. See *Jones v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15- 33 (2015) (citing *Burling N. & Santa Fe. Ry. Co. v. White*, 584 U.S. 53, 68 (2006)). The school system may then rebut the *prima facie* case by showing that there was a legitimate nondiscriminatory reason for the adverse action. *Id.* The burden then shifts back to the Appellant to show that the reasons given by the school system are pretextual. *Id.*

Appellant claims that filing the AP 4170 complaint, as well as his federal court case for a hostile work environment, constitutes protected activities; we agree. Appellant argues that given the close temporal proximity between his filing of his federal court case and his reassignment, a causal connection exists. This argument is disingenuous given that PGCPs first began the reassignment process with a *Loudermill* meeting in August 2017 – well before Appellant filed his AP 4170 complaint or his federal court case. The matter remained unresolved until 2019 when Appellant returned from approved extended leave. Furthermore, even if a causal connection were to exist, the local board has provided evidence, such as the ineffective rating, that its decision was based on non-discriminatory reasons. Appellant fails to provide any evidence that the performance based issues cited by the local board are pretextual. We do not find that the local board’s decision constitutes retaliation.

CONCLUSION

For the foregoing reasons, we deny Appellant’s request for a transfer to the Office of Administrative Hearings, and we affirm the local board’s decision because it is not arbitrary, unreasonable, or illegal.

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

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Joan Mele-McCarthy

Lori Morrow

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Holly C. Wilcox

December 7, 2021