

IN THE MATTER OF
THE APPEAL OF

BEFORE THE
BOARD OF EDUCATION
OF CARROLL COUNTY

* * * * *

DECISION OF THE BOARD OF EDUCATION OF CARROLL COUNTY

The Appellant, _____, has brought this appeal before the Board of Education of Carroll County (the "Board" or "CCPS"), pursuant to Section 4-205(c) of the Education Article to the Annotated Code of Maryland. On February 6, 2013, _____, then employed in a probationary status as a Building Supervisor at _____ Elementary School, was terminated by Superintendent Stephen H. Guthrie. Subsequently, on February 12, 2013, _____ filed a timely appeal to the Board.

In his appeal, _____ states (1) that at no time during his employment was his job performance criticized or the subject of an unsatisfactory performance appraisal, (2) at no time during his employment with CCPS did _____ receive a reprimand, and (3) at the time of his termination no cause for his termination was offered. On March 7, 2013, in response to _____ appeal, the Superintendent's Designee, Assistant Superintendent of Administration, Jonathan D. O'Neal, submitted a memorandum and documentation in support of the Superintendent's decision to terminate _____ employment. On March 7, 2013, _____ was forwarded all documentation submitted by the Superintendent's Designee and was notified of his opportunity to submit responsive documentation. Although the period allotted for response has elapsed, no responsive documentation has been submitted. Finding that no genuine dispute of material fact exists between the parties, the Board declines to conduct an evidentiary

hearing or oral argument in this matter but shall, instead, render a decision based upon the written record presented by _____ and by the Superintendent's Designee.¹

For the reasons set forth in further detail below the Board will affirm the Superintendent's decision to terminate _____

FINDINGS OF FACT

_____ began his employment with CCPS on January 2, 2013, as a Building Supervisor at _____ Elementary School _____. Pursuant to the collective bargaining agreement applicable to _____ employment, _____ was subject to a ninety (90) day probationary period. On February 4, 2013, _____ Principal _____ wrote to CCPS Director of Human Resources, Jimmie Saylor, requesting that _____ probationary employment be terminated.

In her February 4, 2013, letter, Principal _____ indicated she had received reports that _____ had been making inappropriate comments about, and to, a female member of his custodial staff at _____. Specifically, the employee related to Principal _____ that _____ had made untruthful comments to other employees about her having sexual relations with a co-worker. The employee related to Principal _____ that in one instance, _____ knocked on the door and yelled "[p]ull up your pants. I am coming in. I know you are banging in there" prior to entering the room where _____

¹ The State Board has long held that there is no need for an evidentiary hearing or oral argument when, as in this case, the appeal does not involve an alleged liberty or property interest deprivation thereby invoking the protections of the Fourteenth Amendment Due Process Clause. See *Bricker v. Frederick County Board of Education*, 3 Op. MSBE 99 (1982); *Anderson and Blake v. Board of Education of Prince George's County*, 5 Op. MSBE 415, 417 (1989); *Board of Regents v. Roth*, 408 U.S. 564, 575 (1972) (recognizing that the non-retention of an untenured college teacher does implicate a liberty interest); *Bishop v. Wood*, 426 U.S. 341, 348 (1976) (recognizing no liberty or property is implicated in the "discharge of a public employee whose position is terminable at the will of the employer when there is no public disclosure of the reasons for the discharge.").

she and another co-worker were working. On another occasion, the employee stated that [redacted] had commented that another co-worker was a homosexual and therefore she couldn't be having sexual relations with him. Finally, the employee told Principal [redacted] that [redacted] had rearranged decorations in a storage closet resembling an elf and a snowman in order to depict sexual positions.

Based on these allegations, Principal [redacted] interviewed other members of the custodial staff at [redacted]. All four other members of the custodial staff at [redacted] indicated that [redacted] had commented that he was keeping a list of teachers with whom he was planning to have sex. Several of the custodial staff members also indicated that [redacted] had made inappropriate sexual comments about the teachers on his list. All four custodial employees indicated that [redacted] had commented that all children are brats and that he hates children. One custodial staff member verified [redacted] comment to a co-worker about pulling up their pants before he entered the room.

Principal [redacted] subsequently interviewed four of the teachers reportedly on [redacted] list. Three of the teachers reported that [redacted] never made any comments of a sexual nature to them but that he had a tendency to ask personal questions and hang around them. The fourth teacher reported that [redacted] after cleaning up a spill in her room, sat down in a chair and just stared at her while she was teaching. The teacher stated that [redacted] conduct was odd and made her feel uncomfortable.

Principal [redacted] also reported in her letter that [redacted] had disclosed confidential information to his subordinates regarding an employee disciplinary matter, after being told directly by the Assistant Principal that the information was confidential.

As a result of her investigation Principal recommended that
be terminated during his probationary period for making inappropriate comments of a
sexual nature in the workplace, for conducting himself inappropriately around teachers
and making them feel uncomfortable, and for disclosing confidential information relating
to an employee disciplinary matter.

Mrs. Saylor reviewed the details of employment as related in
Principal letter and conferred with CCPS Supervisor of Maintenance Douglas
Gross, who concurred with Ms. Saylor's recommendation to terminate . On
February 5, 2013, Mrs. Saylor reviewed the matter with Assistant Superintendent of
Administration, Jonathan D. O'Neal. Subsequently, Mr. O'Neal obtained approval from
the Superintendent to terminate probationary employment.

CONCLUSIONS OF LAW

Non-certificated support personnel such as are entitled to an
administrative review of their terminations pursuant to § 4-205(c) of the Education
Article. *Livers v. Charles County Bd. Of Educ.*, 6 Op. MSBE 407 (1992), *aff'd* 101 Md.
App. 160, *cert. denied*, 336 Md. 594 (1993). The standard of review which the Maryland
State Board of Education ("State Board") applies to such a termination is that the local
board's decision is considered *prima facie* correct and the State Board will not substitute
its judgment for that of the local board absent a showing that the local board's decision
was arbitrary, unreasonable, or illegal. *Cf., Brown v. Wicomico County Bd. of Educ.*,
MSBE Op. No. 12-44 (2012).² A decision may be arbitrary or unreasonable if: a) it is
contrary to sound educational policy; or b) a reasoning mind could not have reasonably

² The Board of Education of Carroll County employs the same standard of review as the State Board when reviewing the termination of non-certificated personnel by the Superintendent.

reached the conclusion the Superintendent or his Designee reached. A decision may be illegal if it is one or more of the following: a) unconstitutional; b) exceeds the statutory authority or jurisdiction of the Superintendent; c) misconstrues the law; d) results from an unlawful procedure; e) is an abuse of discretionary powers; or f) is affected by any other error of law. See COMAR 13A.01.05.05.

_____ makes three allegations of error regarding the Superintendent's decision to terminate him on February 6, 2013. (1) _____ had never been given an unsatisfactory performance evaluation. (2) _____ was never reprimanded during his employment for CCPS. (3) _____ was offered no cause for his termination on February 6, 2013. For the reasons set forth in further detail below, the Board finds that none of _____ allegations of error render the Superintendent's termination decision arbitrary, unreasonable, or illegal.

The Superintendent does not dispute that _____ was never given an unsatisfactory performance evaluation, reprimand, or description of the cause for his termination. However, it is worth pointing out that _____ had a very brief period of employment with CCPS. _____ began his employment with CCPS on January 2, 2013, and was terminated slightly over a month later on February 6, 2013.

_____ employment was subject to the negotiated agreement between CCPS and AFSCME Local 2741/Council 67. Article VI, Section 2 of this negotiated agreement states that "[d]uring the first ninety (90) days of employment, employees shall be considered probationary employees." For this reason, _____ was in a probationary status at the time of his termination and, therefore, no prior unsatisfactory

performance evaluation, reprimand, or articulation of cause for termination was necessary to support discharge.

Employees who have a constitutionally protected property interest in their employment may not be terminated unless prior to their termination they are given notice of the charges against them and are afforded the opportunity to respond. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 537-41 (1985). However, an employee asserting that this due process rights have been violated by his employer's failure to afford him the rights described in *Loudermill*, must first demonstrate a property interest in his continued employment. *Id.* at 538 (citing *Board of Regents v. Roth*, 408 U.S. 564, 576-578 (1972)(holding that non-tenured professor had no property interest in his continued employment); see also; *Carroll v. Town of University Park*, 1998 U.S. App. LEXIS 14501, *7 (4th Cir. 1998)(holding that the termination of a probationary police officer did not violate due process because the police officer had no property interest in reference to a probationary position).

To be sure, in the instant matter, [redacted] was terminated without the opportunity to hear and respond to the charges against him. However, because

[redacted] was a probationary employee with no property interest in his continued employment, termination without articulated cause did not violate [redacted] due process rights. Similarly, the lack of a predicate unsatisfactory performance evaluation or reprimand does not render [redacted] termination during his probationary period reversible error.

Although [redacted] termination neither violated [redacted] *Loudermill* rights, the applicable negotiated agreement, nor local board policy, the Superintendent's

decision to terminate _____ is still subject to review to determine whether it was arbitrary or unreasonable. A decision is arbitrary or unreasonable if it is contrary to sound educational policy or embodies a result which no reasoning mind could reasonably reach.

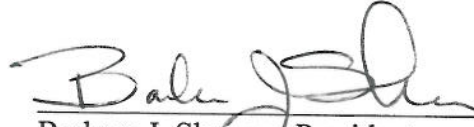
The decision to terminate _____ during his probationary period came in the wake of credible reports that (1) _____ was making frequent inappropriate comments of a sexual nature to his co-workers, (2) had made teachers at _____ feel uncomfortable because of his inappropriate conduct, and (3) had disclosed confidential information in reference to an employee disciplinary issue. There can be no doubt that an employee's inappropriate conduct which serves to interfere with or hamper instruction and which makes other employees uncomfortable, runs contrary to sound educational policy. Carroll County Public Schools is committed to providing its students with a safe and nurturing instructional environment in which they can flourish. Similarly, CCPS is committed to ensuring that its employees are afforded a workplace free from harassment and unwanted inappropriate sexual comments. The Board finds that the decision to terminate _____ during his probationary period was neither arbitrary nor unreasonable; instead, the Board finds the decision to have been wholly in accord with the sound administration of the Carroll County Public Schools.

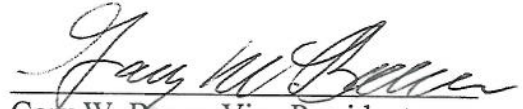
DECISION

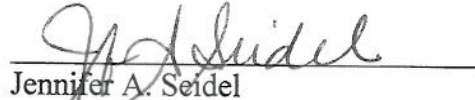
Accordingly, for the reasons discussed above, this Board affirms the Superintendent's decision to terminate _____ employment. Should _____ choose to do so, he may appeal this decision to the Maryland State Board of Education, 200 W. Baltimore Street, Baltimore Maryland 21201, if taken in writing within thirty (30) days after the date of this decision.

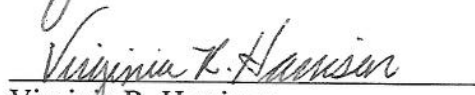
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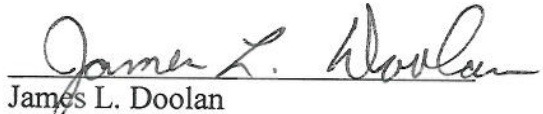
Date


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