

CHARLENE KING,

Appellant

v.

BALTIMORE CITY BOARD  
OF SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-19

### OPINION

#### INTRODUCTION

Appellant has appealed her termination as a substitute teacher for Baltimore City Public Schools (BCPS). The Baltimore City Board of School Commissioners (“local board”) has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has replied and the local board responded.

#### FACTUAL BACKGROUND

Appellant was hired as a substitute teacher on February 23, 2012. On December 7, 2012, she was working as a substitute teacher at Callaway Elementary School, part of Baltimore City Public Schools (“BCPS”). At the end of that school day, Principal Lisa Smith informed Appellant that she would no longer be called as a substitute teacher. In a letter dated December 11, 2012, Dr. Kim Lewis, the designee for the Chief Executive Officer of BCPS, formally terminated Appellant. The letter informed Appellant that she was a temporary, “at will” employee who could be fired at any point with or without cause.<sup>1</sup>

Appellant appealed to the local board, denying any issues with her performance and arguing that she was unlawfully discriminated against because she was a substitute and not a permanent teacher. She requested a hearing where she could challenge any allegations about her performance, arguing that a constitutionally-protected right was at stake. The local board assigned a hearing examiner to review the case and offer a recommendation.

The hearing examiner issued a report and recommendations on June 6, 2013. The hearing examiner concluded that Appellant had failed to allege a factual or legal ground that would require an evidentiary hearing or oral arguments. As a result, the hearing examiner issued recommendations based solely on the documents presented. The hearing examiner concluded that Appellant was an at will employee who could be terminated at any time without cause. The hearing examiner stated that Appellant had failed to cite any statutory or constitutional authority that would have prohibited her from being fired. Accordingly, the hearing examiner concluded

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<sup>1</sup> The record indicates that BCPS had a reason for terminating Appellant. Because Appellant was not entitled to a hearing prior to her termination, we will refrain from including any specific allegations here.

that Appellant's termination was not based on arbitrary, unreasonable, or illegal grounds. The hearing examiner stated it was unnecessary to consider any specific allegations about Appellant's performance.

On July 11, 2013, the local board voted to adopt the hearing examiner's recommendations and uphold the decision to terminate Appellant. This appeal to the State Board followed.

### STANDARD OF REVIEW

This substitute teacher termination appeal arises out of a decision of the local board under Md. Code, Education Article §4-205. The decision of the local board is presumed to be *prima facie* correct. COMAR 13A.01.05.05A. The State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable or illegal. *Id.* Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05D.

### LEGAL ANALYSIS

Appellant argues that her termination was illegal or discriminatory for a variety of reasons, therefore rendering the local board's decision arbitrary, unreasonable, or illegal.<sup>2</sup>

#### *At will employment*

Appellant does not dispute that she was an at will employee. "An employer can terminate an at-will relationship for any reason – good or bad, fair or unfair, and at anytime – so long as the motivation for the termination does not violate some clear mandate of public policy or some statutory prohibition against such termination." MARYLAND EMPLOYMENT LAW § 3.03 (2013). "As a general rule, therefore, at-will employees cannot bring an action based on contract theory regarding the termination of their employment, or seek prospective relief, but instead are limited to contractual claims for backpay and consideration already earned as a result of their prior service." *Id.* In short, as an at will employee, Appellant could be fired with or without cause so long as the reason for her termination was not illegal, discriminatory, or against Maryland public policy. *See Coleman v. Baltimore City Bd. of School Comm'rs*, MSBE Op. No. 11-25 (2011); *Porterfield v. Mascari II, Inc.*, 374 Md. 402, 417-18 (2003). Accordingly, we must look to see whether Appellant's termination was based on any of these impermissible reasons.

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<sup>2</sup> Appellant presents additional questions for consideration that do not fall within the jurisdiction of the State Board. These include whether Appellant is entitled to unemployment insurance benefits, whether her termination was based on gross misconduct for unemployment law purposes, and whether she is entitled to compensation for defamation of character, lost income, and mental anguish. In addition to being outside the State Board's jurisdiction, these issues were not presented to the local board. Appellant also raises several policy-related questions, such as the safety of teachers in the classroom and the adequacy of instruction within Baltimore City schools, which are beyond the scope of this appeal.

A termination can be illegal because it violates a state statute. For instance, employees cannot be fired because they have filed workers' compensation claims or because they missed work because of jury duty. *Suburban Hosp. v. Dwiggins*, 324 Md. 294, 303 (1991) (citing state statutes). State law also prohibits an employer for firing an employee because of "race, color, religion, sex, age, national origin, marital status, or physical or mental handicap." *Porterfield*, 374 Md. at 422 (citing state statute). Appellant has not alleged that her termination violated any particular statutes and we are not aware of any that apply to the facts of her situation.

Terminating an at will employee may also be unlawful if it contravenes a "clear mandate of public policy." *Porterfield*, 374 Md. at 422 (citing *Adler v. Am. Standard Corp.*, 291 Md. 31, 43 (1981)). For example, there is a clear public policy mandate against terminating employees for reporting suspected criminal activities to law enforcement. *Id.* (citing *Wholey v. Sears, Roebuck & Co.*, 370 Md. 38, 43 (2002)). Instructive here are situations in which courts have held that an employer's actions did not violate clear mandates of public policy. In *Caldor, Inc. v. Bowden*, 330 Md. 632, 636-37 (1993), the Court of Appeals considered a wrongful termination claim brought by the 16-year-old employee of a retail store who had been accused of theft. The employee claimed his employer used coercive tactics in order to get him to falsely confess to stealing money from the company, thereby violating public policy. *Id.* at 646. The Court of Appeals concluded that the evidence "shows the defendants treated [the employee] in a harsh and reprehensible manner." *Id.* Nevertheless, the Court stated that the evidence failed to show that the employer was "driven by an improper motive." *Id.* at 646-47. The Court noted that "mere suspicion of theft can serve as the basis for discharging an at-will employee." *Id.* at 647. Whether the suspicion was misplaced or the termination "based on a factually incorrect premise," ultimately did not matter. *Id.*<sup>3</sup>

Appellant has raised no clear mandate of public policy that was violated by her termination. The law therefore provides great latitude to her employer in making its decision to terminate her. As the Court of Appeals has stated, "a jury may not review any aspect of the employer's decision to terminate" and "the employer may, absent a contravening public policy, terminate an employe[e] for any reason, even a reason that is arbitrary, capricious, or fundamentally unfair." *Towson Univ. v. Conte*, 384 Md. 68, 82 (2004). The Court has further held that there is no covenant of fair dealing in an employment at will situation. *Dwiggins*, 324 Md. at 309. An employer may fire an employee for an unfair reason. *Id.*

### *Lack of Due Process*

Appellant argues that her termination was illegal or discriminatory because of what she classifies as unethical practices on the part of BCPS. The unethical practices include firing her based on false accusations, not having reports to support the allegations, not properly investigating the allegations, not informing Appellant of the allegations, and not providing an evidentiary hearing or oral argument. These arguments can be generally characterized as a claim that Appellant was not afforded due process.

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<sup>3</sup> See also *Porterfield*, 374 Md. at 429 (no violation of specific public policy to terminate an employee who stated she had been advised to seek legal counsel concerning what she alleged were false statements in her employee evaluation form).

Due process protections are “based on a deprivation of a liberty or property interest protected by the Fourteenth Amendment by State action.” *Dozier v. Dep’t of Human Res.*, 164 Md. App. 526, 538 (2005). Courts have held that at will employment does not constitute a property interest for the purposes of due process. *Id.* (citing *Elliott v. Kupferman*, 58 Md. App. 510, 520 (1984)) (noting the general rule that “a non-tenured State or local government employee who serves ‘at will’ is not regarded as having a property right in continued public employment”). Because at will employees may be terminated with or without cause, employers are not required to provide the type of due process protections sought by Appellant. Informing an at will employee of a reason for the termination does not convey a property right to the employee that did not previously exist. BCPS was not required to give Appellant a reason for her termination, conduct an investigation, collect police or medical reports, hold an evidentiary hearing, or allow for oral argument. The local board’s decision was consistent with Maryland law concerning at will employment. Because of this, the local board did not act in an arbitrary, unreasonable, or illegal manner by applying existing Maryland law to the facts of this case.

In addition, Appellant raises the argument that she was treated differently than a regular teacher would have been because of her substitute status. As noted previously, Maryland law is clear that an at will employee may be terminated at any time without cause. Although Appellant may consider this an unfair result, it is not an illegal one.

#### *Retaliation*

Appellant next argues that her termination was illegal because BCPS was retaliating against her for filing an unemployment insurance claim. Because the termination occurred *prior* to Appellant’s filing of an unemployment claim, this could not have been the reason for her termination.

#### *Other claims*

Appellant raises two other claims that she argues renders the local board’s decision illegal or discriminatory. First, Appellant claims that school officials had previously failed to assist her when she called for backup in her classroom and ignored complaints about this threat to her safety. Thus, she appears to assert that the decision to terminate her was arbitrary and unreasonable.

The State Board has consistently held that an Appellant must support allegations of illegality with factual evidence. *See Breedon v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 08-34 (2008). Appellant has presented no evidence to suggest that her complaints about the lack of backup in the classroom were the reason for her termination. While Appellant may feel that her termination was unfair or unjustified, that does not make the local board’s decision illegal or discriminatory.

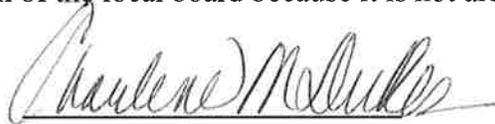
Second, Appellant argues she was not allowed to file an incident report against various students for harassing and bullying her. To the extent that such a denial would have made her termination illegal (which it would not), Appellant has offered no evidence to support her claim that she was denied the opportunity to file such a report.

*Summary*

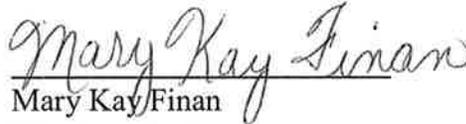
Because Appellant was an at will employee, the school system could terminate her for any reason or no reason at all so long as it did not fire her based on illegal or discriminatory motives or violate clear mandates of public policy. Appellant has not met her burden to show that the school system acted out of illegal or discriminatory motives or violated public policy. We are mindful, however, that unsubstantiated allegations against an employee can have a negative impact beyond the employee's termination. Because the local school system was not required to have a reason for Appellant's termination and did not conduct a full investigation, we believe that any allegations concerning the basis for Appellant's termination in this instance should be removed from her personnel file.

CONCLUSION

For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.



Charlene M. Dukes  
President



Mary Kay Finan  
Vice President

*Absent*

James H. DeGraffenreidt, Jr.



Linda Eberhart



S. James Gates, Jr.



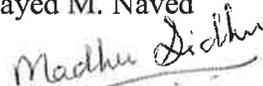
Larry Giammo



Luisa Montero-Diaz

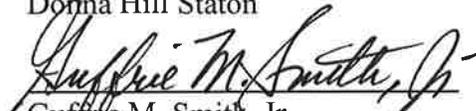


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Donna Hill Staton

  
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Guffie M. Smith, Jr.

April 22, 2014