

DARYL K. ANDERSON,

Appellant

v.

BALTIMORE CITY BOARD OF SCHOOL  
COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-50

## OPINION

### INTRODUCTION

In this appeal, Appellant challenges the decision of the Baltimore City Board of School Commissioners (local board) to terminate him from his position as Assistant Principal at Frederick Douglass High School (Douglass) for misconduct in office.

We transferred the case pursuant to COMAR 13A.01.05.07 to the Office of Administrative Hearings (OAH) for a hearing before an Administrative Law Judge (ALJ). The ALJ issued a decision proposing that the State Board affirm the local board's termination decision. The Appellant did not file exceptions to the ALJ's proposed decision.

### FACTUAL BACKGROUND

The ALJ has done a thorough job setting forth the factual background in this case and we refer to the Stipulations of the Parties and the Findings of Fact at pp. 5 – 9 of the ALJ's Proposed Decision. The following is a synopsis of the ALJ's factual findings.

Appellant began his employment with the local board as a Staff Associate on December 20, 2007. He became Assistant Principal at Douglass on October 25, 2008. (ALJ Proposed Decision, p. 6). Prior to the incident at issue in this case, the Appellant had one prior incident involving a physical altercation with a student for which he was admonished by the school principal. (*Id.*, p. 9).

On February 3, 2009, the Appellant was involved in an altercation with Student X. At approximately 9:00 a.m. that morning, the Appellant was at his post on the third floor hallway when he observed Student X, a tenth grade student, and three other students on the third floor where they were not supposed to be during class time. Appellant ordered all of the students to

leave the third floor. Student X eventually complied with the order but used profanity and as he was doing so, threatened to harm the Appellant after school. Appellant called the school resource officer (SRO) for assistance. (*Id.*, p.7).

Instead of waiting for the SRO, the Appellant followed Student X down to the second floor. Student X continued to threaten Appellant and use profanity against him. Appellant ordered Student X to report to the school security office, but Student X instead entered a classroom. Appellant entered the classroom and ordered Student X to leave the classroom. Student X walked into the hallway, continuing to use profanity and threaten the Appellant. The Appellant directed Student X to enter the second floor teacher's lounge where students are generally not allowed. (*Id.*, pp.7--8).

Once inside the lounge, there was a physical struggle between the Appellant and Student X. Appellant maintains that Student X grabbed him and in response Appellant pinned Student X against the wall. The two struggled and fell to the ground.<sup>1</sup> When they got up, they were facing each other. At this point, the SRO entered the room and separated them. The Appellant left the lounge after the SRO asked him twice to leave. Student X returned to his classroom without being processed in the school security office.<sup>2</sup> (*Id.*, p.8). According to the school video recording of the second floor hallway, Appellant and Student X were in the lounge for approximately 19 seconds before the SRO entered. The SRO did not witness the Appellant physically touch Student X. (*Id.*, p.5).

Appellant did not immediately report the incident to the school principal or the principal's designee, nor was he forthcoming with all of the specifics when he did report. On February 3, at a sports game after school, Appellant advised the principal's designee that Student X had "put his hands" on the Appellant.<sup>3</sup> On February 6, Appellant advised the school principal of the physical altercation and Student X's threats and use of profanity, but did not inform him of the full extent of the incident.<sup>4</sup> (*Id.*, p.9).

On June 22, 2009, the CEO filed a Statement of Charges against Appellant recommending his dismissal based on misconduct related to the incident. (App's Mtn. for Summary Decision). The Statement of Charges specified that based on the school system's investigation, the Office of Staff Investigations had concluded that the Appellant had been involved in a physical altercation with a student, despite the fact that the Department of Social Services had "ruled out" child abuse. It states that:

---

<sup>1</sup> Student X claimed that Appellant grabbed him by his shirt and rammed him into the wall near the vending machine, struck the left side of his face, slammed him on the floor, and placed his right knee into his throat, at which point the SRO pulled Appellant off of him. (Investigator's Report). Neither the Hearing Examiner nor the ALJ found Student X to be credible.

<sup>2</sup> Student X did not report any injuries. He also claimed that he did not report the incident to the school police because he feared expulsion. (Investigator's Report).

<sup>3</sup> Appellant believed that the principal was not at school that day.

<sup>4</sup> The principal was not present at the school on February 5 or 6. (*Id.*, p.8).

After numerous interviews and document review, the Office of Staff investigations concluded that Assistant Principal Anderson ordered the student into the teachers lounge and engaged in a physical altercation. While Assistant Principal Anderson's account of the incident to the DSS investigator states that the altercation took place in the hall after the student grabbed him by the shirt, video evidence shows Assistant Principal Anderson and the student enter the lounge.

The Office of Staff Investigations found the student's account to be credible, whereas Assistant Principal Anderson made conflicting statements and denies a series of occurrences that were either heard by independent witnesses or stated by Mr. Anderson directly. Mr. Anderson's actions were indefensible and potentially place City Schools at risk of liability suits, he reportedly made poor decisions which could easily have been handled differently and as a result he provoked the physical altercation.

(*Id.*).

The Appellant appealed the recommendation for termination.

#### *Local Hearing Examiner and Local Board Decisions*

The matter was heard before a local hearing examiner over a period of three days. The Hearing Examiner found that the charge of misconduct was not supported by the record and proposed that the local board reject the CEO's recommendation to dismiss Appellant. The Hearing Examiner found that Appellant did not engage Student X in a way that would provoke a fight. She instead found that the student violated the student code "in his communications with, threats against, responses to and violation of the lawful directives that were given to him by [Appellant], who was in the exercise of his authority as an Assistant Principal." (Hearing Examiner Decision, p.31). The Hearing Examiner believed that by ordering Student X into the lounge, Appellant was attempting to isolate him from the other students to prevent an audience and an escalation of the situation in an area where it was disruptive to learning while waiting for the SRO. (*Id.*, pp. 29, 32). She further believed that the Appellant's act of pinning Student X against the wall in the lounge was defensive. (*Id.*, p. 29).

The CEO filed exceptions to the Hearing Examiner's recommendation. On August 10, 2010, the local board rejected the recommendation of the Hearing Officer and terminated the Appellant based on the reasons contained in the CEO's recommendation for termination. (Local Bd. Order).

Appellant appealed the termination to the State Board and we referred the matter to OAH.

#### *ALJ's Decision*

After reviewing the entire record, the ALJ found that the Appellant engaged in misconduct based on the inappropriate manner in which he handled the situation with Student X

that ultimately resulted in a physical altercation between the two. The ALJ found that Appellant could have disengaged from the continuous interactions with Student X after calling the school SRO, particularly in light of the fact that Student X retreated to the second floor where he had classes and entered a classroom. Instead, the Appellant continued to follow the student into the classroom, acting as a catalyst for the student's anger and causing greater conflict. Appellant eventually directed Student X into the teacher's lounge, a secluded location, where the confrontation escalated to a point involving a physical altercation. The ALJ was convinced that the Appellant intended to show Student X that he was the "boss" based on the Appellant's attitude that faculty should not allow students to abuse, threaten, or "beat up on" them. The ALJ stated:

A physical altercation did occur in the teacher's lounge, although its ferocity is disputed by the Appellant. He claims to have only needed to lightly pin the Student. Nevertheless, there was prohibited physical contact that was either initiated by the Appellant to show the Student his superiority, or the Appellant was so careless as to bring an obviously angry child into a secluded area where violence could easily occur out of sight. The Appellant's need to isolate the student to avoid "an audience" was disingenuous. There were other actions he could have taken that would have kept the Student less likely to fight, including deescalating the situation by disengaging and allowing the student to remain in a classroom where he was seated until officers arrived.

(*Id.*, p.21).

The ALJ's proposed decision recommends that this Board affirm the local board's decision to terminate Appellant. The Appellant did not file any objections to the ALJ's Proposed Decision.

#### STANDARD OF REVIEW

Because this appeal involves the termination of a certificated employee pursuant to §6-202 of the Education Article, the State Board exercises its independent judgment on the record before it in determining whether to sustain the termination. COMAR 13A.01.05.05(F)(1) and (2). The local board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05(F)(3).

The State Board referred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify, or remand the ALJ's Proposed Decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications, or amendments to the Proposed Decision. *See* Md. Code Ann., State Gov't §10-216.

#### LEGAL ANALYSIS

The local board terminated the Appellant for misconduct. The Court of Appeals in

*Resetar v. State Bd. of Educ.*, 284 Md. 537, 560-561 (1979), interpreted the term "misconduct":

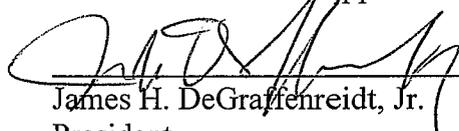
The word is sufficiently comprehensive to include misfeasance as well as malfeasance, and as applied to professional people it includes unprofessional acts even though such acts are not inherently wrongful. Whether a particular course of conduct will be regarded as misconduct is to be determined from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

The ALJ has found that the Appellant's termination for misconduct was justified and has recommended that the State Board affirm the local board's decision. The Appellant has not submitted any objections to the ALJ's proposed decision.

It is our view, that there is sufficient evidence in the record to conclude that the Appellant mishandled the situation with Student X, therefore contributing to the escalation of the events that resulted in the physical altercation with Student X. As the ALJ noted, the Appellant exercised poor judgment by continuing to follow the student and directing him to the teacher's lounge instead of waiting for the school police, and by not taking measures to deescalate the situation. Appellant's actions almost guaranteed further confrontation with a student who was already angry at him and who had already threatened him. The ALJ also noted that Appellant seemed out of control as the SRO had to move the two away from each other and ask Appellant twice to leave the lounge.

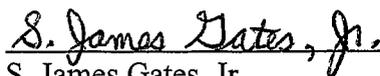
#### CONCLUSION

We agree with the ALJ's conclusions in this case. We, therefore, adopt the ALJ's Proposed Decision and affirm the local board's decision to terminate the Appellant.

  
James H. DeGraffenreidt, Jr.  
President

  
Charlene M. Dukes  
Vice President

  
Mary Kay Finan

  
S. James Gates, Jr.

*Luisa Montero Diaz* *EMK*  
Luisa Montero-Diaz

*Sayed M. Naved*  
Sayed M. Naved

*Madhu Sidhu*  
Madhu Sidhu

*Guffie M. Smith, Jr.*  
Guffie M. Smith, Jr.

*Donna Hill Staton* *EMK*  
Donna Hill Staton

*Ivan C.A. Walks* *EMK*  
Ivan C.A. Walks

*Kate Walsh*  
Kate Walsh

December 6, 2011