

ALLEN WRIGHT,

Appellant

v.

BOARD OF EDUCATION OF  
CHARLES COUNTY,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-24

### OPINION

#### INTRODUCTION

In this appeal, the Appellant challenges the decision of the Charles County Board of Education (local board) to terminate him from his teaching position for misconduct in office and immorality based on his conduct involving sexual encounters with an instructional assistant on school grounds. Appellant served as a hiatus instructor at General Smallwood Middle School (General Smallwood) from the 2006-2007 school year through the 2010-2011 school year. Just prior to the Superintendent's termination recommendation, Appellant had received a promotion to the position of vice principal position at General Smallwood for the 2011-2012 school year.

As is required in certificated employee termination cases, the State Board referred this case to the Office of Administrative Hearings (OAH) for proposed findings of fact and conclusions of law by an Administrative Law Judge (ALJ). COMAR 13A.01.05.07A(2). The ALJ issued a decision proposing that the State Board uphold the termination of Appellant. Appellant filed exceptions to the ALJ's decision with the State Board and the local board responded.

#### FACTUAL BACKGROUND

The parties stipulated to the following facts during the hearing before the local hearing examiner:

1. Appellant was employed as a certificated employee by the Board of Education of Charles County from the 2006-2007 school year through the 2010-2011 school year.
2. Appellant was assigned to General Smallwood Middle School as a hiatus instructor (a certificated position) for the 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011 school years. He was selected to serve as a vice principal at General Smallwood Middle School for the 2011-2012 school year, immediately prior to the Superintendent's recommendation for his termination.

3. RL was an instructional assistant assigned to General Smallwood Middle School for the 2010-2011 school year. (RL is not currently a school employee for the 2011-2012 school year).
4. The Superintendent would have provided information at the hearing that in the fall of 2010, the Appellant began to show RL unwanted attention, including making inappropriate statements and requesting dates. The Appellant would have provided information at the hearing that he and RL struck up a friendship during the 2010-2011 school year, and that their relationship turned into a mutual sexual attraction. Either way, the parties agreed that the relationship resulted in consensual sexual encounters.
5. On six separate occasions between May 10, 2011, and June 8, 2011, the Appellant and RL had sexual intercourse in the Appellant's classroom/office at General Smallwood Middle School. Each sexual encounter occurred on a school day at the school, after school hours
6. Eventually, RL's husband found out about the sexual encounters and notified the administration at the Jesse L. Starkey Administration Building. Representatives from the Division of Human Resources conducted an investigation and met with the Appellant for his response to the accusations. The Appellant admitted to the sexual encounters at the school and offered no excuses acceptable to the representatives from Human Resources.
7. The Appellant was informed in a July 8, 2011, letter that the Superintendent's designee would be recommending his termination to the Board of Education for misconduct in office, insubordination, and immorality. The recommendation was presented to the Board at its August 9, 2011 board meeting.
8. On July 14, 2011, the Appellant sent the school system an "official notification of my resignation from Charles County Public Schools, effective July 15, 2011." At its August 9, 2011, Board meeting, the Board rejected that offer to resign.
9. Through his actions, the Appellant violated Board Policy 4820 and the expectations of the school system as set forth in the CCPS Employee Manual, which expressly prohibits "immoral conduct or indecency on system property."
10. The Appellant committed actions which constituted misconduct in office and immorality under Section 6-202 of the Education Article, and committed actions which the Superintendent believed constituted insubordination.
11. At all times the superintendent followed the law and Board Policy.
12. The parties also agree that the only outstanding issue now before the Board of Education concerns the appropriate discipline to be handed down by the Board.

(Ex.4, Stipulated Facts).

The local hearing examiner found that the superintendent's decision to terminate the Appellant was an arbitrary sanction. He stated that "[a]s inappropriate as Appellant's behavior might be, as offensive as his lapse in judgment might be, the Superintendent has not met the burden of showing that Appellant's misconduct bears on his fitness to teach to the extent that he is unfit to teach." (Ex.7, Hearing Examiner Recommendation at 10). The hearing examiner recommended that the local board reprimand the Appellant in writing, revoke his selection as vice principal, and extend his suspension without pay until the last day of the first trimester of the current school year. *Id.*

The local board rejected the Hearing examiner's recommendation, concluding that termination was the appropriate sanction. The local board reasoned that the Appellant's conduct adversely impacted his fitness to teach in that his indecent behavior occurred on school property, was not confined to a single event, and that the conduct was preceded by unwanted comments and sexual attention directed at an instructional assistant. (Ex.8).

#### 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) & (2). After considering the evidence *de novo*, the State Board may affirm, reverse, modify, or remand the ALJ's Proposed Decision.

#### ANALYSIS

Section 6-202 of the Education Article provides that a local board may suspend or dismiss a teacher for immorality, misconduct in office, insubordination, incompetency, or willful neglect of duty. The Appellant stipulated to the fact that his conduct constituted misconduct in office and immorality under §6-202. Thus, the only issue before this Board is whether termination was the appropriate sanction. The State Board's broad powers include the modification of a penalty imposed on school system personnel by a local board. *Board of Educ. of Howard County v. McCrumb*, 52 Md. App. 507, 514 (1982).

The ALJ concluded that termination was appropriate here and recommended that the State Board uphold the local board's decision. In reaching this decision, the ALJ noted the case of *Resetar v. State Bd. of Educ.*, 284 Md. 537, 561 (1979), in which the court found that, to warrant the sanction of termination, the conduct at issue "must bear upon a teacher's fitness to teach in such a manner as to render him unfit for the performance of his duties." The Court also stated in *Resetar* that each termination case must be judged on its own set of facts, taking the factual setting and circumstances of the misconduct into consideration. *Id.* at 562. It further noted that while it is appropriate for an agency to take an employee's previous disciplinary record, or lack thereof, into account when determining whether termination is warranted, there

may be situations in which dismissal for a single act of misconduct by a teacher with a clean record might be justified. *Id.* at 562-563.

The ALJ evaluated the appropriateness of the penalty in this case as follows:

It is undisputed that the Appellant had no prior disciplinary issues while employed by the school system. It is also undisputed that the Appellant's performance evaluations from 2006-2007, 2007-2008 and 2010-2011 had ratings of highly effective and satisfactory. However, it is also undisputed that the Appellant had six sexual encounters with an assistant teacher in his classroom/office after school hours. It is undisputed that the Appellant's conduct constitutes misconduct and immorality in office. Based on these undisputed facts, I find that the Appellant's conduct proves to be an enormous lapse in judgment that deems him unfit to teach. There is precedence in Maryland where termination of a teacher has been upheld based on the nature of the misconduct and there was no evidence of impact in the community or on other teachers. The conduct of the Appellant in this matter is enough to show that he does not possess the requisite character, judgment and common decorum to teach students in a public school setting.

(ALJ Proposed Decision at 13). We concur.

#### *Appellant's Exceptions*

The Appellant sets forth four exceptions to the ALJ's decision without any additional argument. We address each exception below.

1. *Appellant generally excepts to the Decision to the extent that it suggests that the Appellant's termination was justified.*

As explained above, Appellant had sexual encounters with another school system employee in the Appellant's classroom/office on school grounds after school hours. This behavior was not a one time occurrence, but rather a pattern of behavior in which the conduct took place on multiple occasions. Appellant's engagement in such behavior on school premises after school is egregious and demonstrates a breakdown in his ability to exercise good judgment and make sound decisions in the school setting. Therefore, termination in this instance is justified.

2. *Appellant specifically excepts to the Decision in that it states that the question at hand is whether the Board provided sufficient evidence to prove that Appellant's conduct deems him unfit to teach; yet it goes on to reason that no evidence is needed in certain circumstances.*

The ALJ found that the crux of this case hinged on whether the local board provided sufficient evidence to prove that the Appellant's conduct deemed him unfit to teach. Appellant's suggestion, however, that the ALJ reasoned that no evidence regarding fitness to teach was necessary is incorrect. Rather, the ALJ determined that in some cases, the conduct alone is sufficient evidence that the teacher is unfit to teach, without a showing of collateral evidence of the impact of the teacher's conduct on students, fellow teachers, and the community. The ALJ explained that, in this case, the Appellant's decision to have six separate sexual encounters with a married co-worker in his classroom/office after school hours, in and of itself, so thoroughly undermined any confidence the local board might have had that Appellant possessed the requisite character, judgment, and common decorum necessary to teach students that it impacted the Appellant's fitness to teach.

*3. Appellant specifically excepts to the Decision in that it reasons that Brown v. Baltimore City Bd. of Sch. Comm'rs and Harmon v. Baltimore City Bd. of Sch. Comm'rs are analogous to the instant case when Brown's behavior of slapping a student was criminal, and Harmon's behavior of falsifying documents was arguably criminal.*

The ALJ cited the State Board's decisions in *Brown v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 09-31 (2009) and *Harmon v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 04-14 (2004), for the proposition that a teacher's misconduct may undermine the teacher's character and professional judgment to the extent that the conduct belying the misconduct charge itself may support a finding that the teacher is unfit to teach.

The Appellant argues that the conduct in those cases was criminal or arguably criminal and, therefore, distinguishable from the conduct in the case at hand. In *Brown*, the local board terminated the Appellant for slapping a student across the face. In *Harmon*, the local board terminated the teacher for falsifying bereavement leave forms. The ALJ recognized that the facts of those cases were distinguishable but that the notion that a teacher's judgment bears on the ability to teach was equally applicable to this case.

Although the Appellant would like this Board to find that proof of Appellant's unfitness to teach may only be accomplished through the introduction of collateral evidence that shows his misconduct will impact his future classroom performance, students, staff or the community, we decline to do so. To hold such a position would render local board's powerless to discharge teachers for misconduct that is kept secret, no matter how offensive or abhorrent.

*4. Appellant specifically excepts to the Decision in that it fails to give due weight to the fact that Appellant had demonstrated that he was fit to teach. Specifically, he was found to be a highly effective and satisfactory teacher who was recently selected for a promotion. Despite all this evidence, the Decision upholds his termination when no evidence was presented to show that he was unfit to teach.*

The Appellant maintains that the ALJ failed to give due weight to the evidence he presented regarding his fitness to teach.

The ALJ reviewed the record which included the evidence concerning Appellant's performance ratings, clean disciplinary record, and promotion, all of which were mentioned in the proposed decision. (Proposed Decision at 3, 13). The ALJ gave weight to the record evidence and determined that despite that evidence, Appellant's conduct was "an enormous lapse in judgment that deems him unfit to teach." (*Id.* at 13). He concluded that the Appellant's conduct was sufficient to show that he did not possess the requisite character, judgment and common decorum to teach students in a public school setting. (*Id.*). We agree.

CONCLUSION

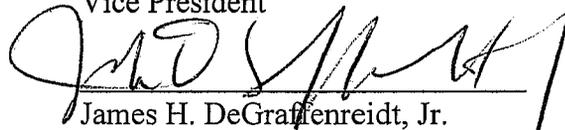
After hearing oral argument on the Exceptions, we find that the Charles County Board of Education has shown by a preponderance of the evidence that termination was a proper penalty for the acts of misconduct in office and immorality. Accordingly, we adopt the ALJ's Proposed Decision as our own.



Charlene M. Dukes  
President



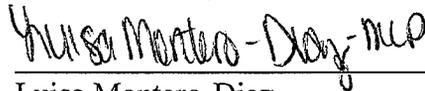
Mary Kay Finan  
Vice President



James H. DeGraffenreidt, Jr.



S. James Gates, Jr.



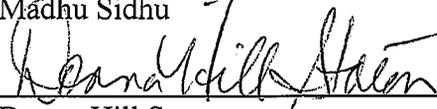
Luisa Montero-Diaz



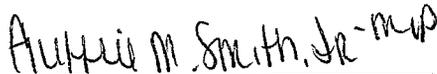
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffie M. Smith, Jr.

Linda Eberhart  
Linda Eberhart

April 23, 2013

ALLEN WRIGHT

v.

CHARLES COUNTY BOARD OF  
EDUCATION

\* BEFORE TAMEIKA LUNN-EXINOR,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: MSDE-BE-01-12-15293

\* \* \* \* \*

**PROPOSED RULING ON MOTIONS FOR SUMMARY DECISION**

STATEMENT OF THE CASE  
ISSUE  
EXHIBITS  
UNDISPUTED FACTS  
DISCUSSION  
CONCLUSIONS OF LAW  
ORDER

**STATEMENT OF THE CASE**

On July 8, 2011, the designee of the Superintendent of the Charles County Board of Education (Board) recommended that Allen Wright (Appellant) be terminated for misconduct in office, insubordination, and immorality, pursuant to section 6-202 of the Education Article of the Annotated Code of Maryland.<sup>1</sup> The Appellant was suspended without pay effective August 8, 2011.

At the Appellant's request, a hearing was held on September 23, 2011 before Jeff Griffith, Esquire, Hearing Examiner. On November 9, 2011, Hearing Examiner Griffith issued a Recommended Decision modifying "the Superintendent's decision in this matter in accordance with the above conclusions of law." The Hearing Examiner found that the Superintendent failed to meet his/her burden of showing that the Appellant's misconduct bears on his fitness to teach.

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<sup>1</sup> All further citations are to the 2011 Supplement of the Education Article of the Annotated Code of Maryland unless otherwise stated.

Therefore, the Hearing Examiner recommended that the Board reprimand the Appellant in writing, revoke his selection as vice principal, and extend his suspension without pay until the last day of the first semester of the 2011-2012 school year. On January 10, 2012, oral argument was heard by the Board and on February 14, 2012, the Board found that the Appellant does not possess the requisite character, judgment, and common decorum to teach students in a public school setting and therefore, the Board accepted the original recommendation by the Superintendent's Designee and terminated the Appellant from his employment with Charles County Public Schools.

On March 12, 2012, the Appellant filed an appeal of the Board's decision with the Maryland State Department of Education (MSDE). On April 13, 2012, the MSDE forwarded the appeal to the Office of Administrative Hearings (OAH) for the scheduling of a hearing in accordance with section 6-202. On April 25, 2012, the OAH sent the parties a Notice of Telephone Prehearing Conference to be held on June 5, 2012, at 9:30 a.m.

On June 5, 2012, I conducted a telephone prehearing conference and on June 6, 2012, I issued a Prehearing Conference Report and Order (Prehearing Order). The Prehearing Order provided, among other things, that the parties would file any Motions for Summary Decision (Motions) by June 20, 2012. Response to the Motions was filed by June 27, 2012. The parties timely filed their Motions and Responses. On July 12, 2012, I converted the merits hearing into a motions hearing where the parties argued their positions.

#### **ISSUE**

- 1) Should the Board's Motion for Summary Decision be granted?
- 2) Should the Appellant's Motion for Summary Decision be granted?

## EXHIBITS

For the purposes of ruling on this Motion, I considered the record that was developed below, which included the following pertinent documents:

1. Transcript of the September 23, 2011 hearings before Hearing Examiner Jeff Griffith
2. Stipulated Facts
3. Superintendent's Exhibit
4. Appellant's Exhibit
5. Hearing Examiner's Findings of Fact, Conclusions of Law and Recommendation, dated November 9, 2011
6. Decision of the Board, dated February 14, 2012
7. Appellant's Notice of Appeal and Request for Hearing, dated April 13, 2012

## UNDISPUTED FACTS

The parties have stipulated to the following undisputed facts <sup>2</sup>:

1. Appellant was employed as a certified employee by the Board of Education of Charles County from the 2006-2007 school year through the 2010-2011 school year.
2. Appellant was assigned to General Smallwood Middle School as a hiatus instructor (a certified position) for the 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011 school years. He was selected to serve as a vice principal at General Smallwood Middle School for the 2011-2012 school year, immediately prior to the Superintendent's recommendation for his termination.
3. R.L. was an instructional assistant assigned to General Smallwood Middle School for the 2010-2011 school year. R.L. was not an employee during the 2011-2012 school year.

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<sup>2</sup> These same facts were stipulated to for the September 23, 2011 hearing before Hearing Examiner, Jeff Griffith. For this written decision, I utilized the exact same stipulated facts as written and agreed to in the hearing below.

4. The Appellant and R.L. started a relationship and consented to mutual sexual encounters. The Superintendent would have provided information at the hearing that in the fall of 2010, the Appellant began to show R.L. unwanted attention, including making inappropriate statements and requesting dates. The Appellant would have provided information at the hearing that he and R.L. struck up a friendship during the 2010-2011 school year, and their relationship turned into a mutual sexual attraction. Either way, the parties agree that the relationship resulted in consensual sexual encounters.

5. On six separate occasions between May 10, 2011, and June 8, 2011, Appellant and R.L. had sexual intercourse in the Appellant's classroom/office at General Smallwood Middle School. Each sexual encounter occurred on a school day at the school, after school hours.

6. Eventually, R.L.'s husband found out information about the sexual encounters and notified the administration at the Jesse L. Starkey Administration Building. Representatives from the Division of Human Resources conducted an investigation and met with the Appellant for his response to the accusations. The Appellant admitted to he sexual encounters at school and offered no excuses acceptable to the representatives from Human Resources.

7. The Appellant was informed in a July 8, 2011 letter that the Superintendent's designee would be recommending his termination to the Board of Education for misconduct in office, insubordination, and immorality. The recommendation was presented to the Board at its August 9, 2011 Board meeting.

8. On July 14, 2011, the Appellant sent the school system an "official notification of [his] resignation from Charles County Public Schools effective July 15, 2011." At its August 9, 2011 Board meeting the Board rejected that offer to resign.

9. Through his actions, the Appellant violated Board Policy 4820 and the expectations of the school system as set forth in the CCPS Employee Manual, which expressly prohibits “immoral conduct or indecency on system property.”

10. The Appellant committed actions which constituted misconduct in office and immorality under Section 6-202 of the Education Article, and committed actions which the Superintendent believed constituted insubordination.

11. At all times, the Superintendent followed the law and Board Policy.

## DISCUSSION

### Summary Decision Standard

The OAH Rules of Procedure permit an administrative law judge to grant a proposed or final summary decision. COMAR 28.02.01.12D(1) provides that “[a]ny party may file a motion for summary decision on all or part of an action, at any time, on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law.” The OAH summary decision rule and Maryland Rule 2-501 are consistent, and cases interpreting the court rule are instructive. *Compare* Rule 2-501(f) and COMAR 28.02.01.12D(4).

In deciding a motion for summary decision, I must determine if there is a genuine dispute of material fact; I may not weigh evidence. *Goodwich v. Sinai Hospital of Baltimore, Inc.*, 343 Md. 185, 206 (1996); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The existence of some dispute between the parties’ versions of the facts is insufficient to defeat a motion for summary decision; the dispute must be as to a material fact. *Seaboard Sur. Co. v. Richard F. Kline, Inc.*, 91 Md. App. 236 (1992). A material fact is a fact the resolution of which will somehow affect the outcome of the case. *Fearnow v. C. & P. Tel. Co.*, 104 Md. App. 1 (1995),

*rev'd on other grounds*, 342 Md. 363 (1996). A factual dispute about a matter that is not relevant or necessary to my decision will not affect the decision on the motion for summary decision. *Id.*

In order for the Appellant to prevent the entry of summary decision, he must present “evidence upon which [I] could reasonably find for [him].” *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 739 (1993). Conclusory statements or bald allegations will not defeat a motion for summary decision. *Barber v. Eastern Karting Co.*, 108 Md. App. 659 (1996), *cert. denied*, 343 Md. 334 (1996). Similarly, ambiguous statements do not create a factual dispute. *Sherman v. American Bankers Life Assurance Co.*, 264 Md. 239 (1972).

Genuine disputes of fact include disputes over both facts and factual inferences. *Fenwick Motor Co. v. Fenwick*, 258 Md. 134 (1970). Even if the underlying facts are undisputed, if the inferences from those facts are susceptible of more than one meaning, the inferences must be taken in the light most favorable to the Respondent. *Nationwide Mut. Fire Ins. Co. v. Tufts*, 118 Md. App. 180 (1997), *cert. denied*, 349 Md. 104 (1998).

### **Arguments of the Parties**

The parties stipulated to the facts in this matter therefore I find that there is no material fact in dispute and therefore summary judgment as matter of law is appropriate. Both parties in this matter submitted Motions for Summary Decision and oppositions. The Board submitted a response to the Appellant’s opposition.

The Board argued that this is purely a question of law, whether the Board’s decision to terminate the Appellant for his repeated sexual encounters with a married instructional assistant in his office/classroom after school, was appropriate. The Board submits that the Appellant’s termination was in accord with Section 6-202 of the Education Article of the Annotated Code of Maryland and applicable State Board precedence. The Board argues that under Section 6-202,

they may suspend or dismiss a teacher for immorality, misconduct in office, insubordination, incompetency, or willful neglect of duty. The Board argues that the Appellant's actions of having six sexual encounters with a married teaching assistant in his office/classroom after school hours deems the Appellant unfit to teach. The Board further argues that the Appellant does not have the requisite decorum and judgment necessary to serve as a role model for his students or to make sound decisions in the classroom.

The Appellant argued that the Motion should not be granted because the Board has the burden of proof and has failed to present evidence to justify a termination based on immorality and/or misconduct in office by the Appellant. The Appellant also argued that in order to terminate him, the Board must show that the offending conduct bears upon his fitness to teach in such a manner as to render him unfit. For these reasons, the Appellant argues that his Motion for Summary Decision should be granted.

**Preliminary Issues raised by the Appellant**

The parties agree that there are no material facts in dispute and that summary decision is appropriate in this matter. However, in his response to the Board's Motion for Summary decision, the Appellant raised two issues that I need to address in this decision before discussing the merits of the parties' Motions.

First, the Appellant argues that the Board has illegally drawn a conclusion from the record. More specifically, the Appellant states that the Board's Motion for Summary Decision states that a consensual sexual relationship between the Appellant and R.L., "was preceded by unwanted comments and sexual attention directed to his co-worker." The Appellant argues that there is no evidence to support this statement by the Board. In response to this argument, the Board agrees that the stipulated facts entered into by both parties indicates that the "Board would

have presented evidence regarding unwanted comments and sexual attention” and that such evidence was not presented. However, the board argues that findings regarding the conduct of the Appellant prior to his sexual relationship with R.L. is not necessary to support the legal conclusion that the Appellant’s behavior bears on his fitness to teach and constitutes misconduct.

The undisputed finding of fact relevant to this issue that is being considered in this decision states as follows:

The Superintendent *would have provided information at the hearing* that in the fall of 2010, the Appellant began to show R.L. unwanted attention, including making inappropriate statements and requesting dates. The Appellant would have provided information at the hearing that he and R.L. struck up a friendship during the 2010-2011 school year, and their relationship turned into a mutual sexual attraction. Either way, the parties agree that the relationship resulted in consensual sexual encounters.

(Finding of Fact No. 4. emphasis added)

It is clear based on this finding of fact, that the Board did not present any evidence to prove that there was unwanted attention, inappropriate statements or dates requested by the Appellant. Therefore, will give this finding of fact that was stipulated to by both parties, the appropriate weight I feel it deserves in making my decision in this matter.

Second, the Appellant argued that the Board’s Motion must fail because it was not supported by affidavits as required by COMAR 28.02.01.12D(1). The Board did not attach affidavits to its Motion but argues that an affidavit is not necessary in a case where the parties have stipulated that there are no material facts in dispute. The Board argues that the lack of an affidavit in this matter should not impede the granting of the Board’s Motion for Summary Decision.

The requirement for motions for summary decision to be supported by affidavits must be read within the context of the limited discovery available in most administrative proceedings

before the OAH. See, COMAR 28.02.01.13. There are no provisions for interrogatories or depositions in administrative hearings. It is not surprising then, that within this context of limited discovery; the regulation requires the motion to be supported by affidavits. COMAR 28.02.01.12D(3) provides that “[a]n affidavit supporting or opposing a motion for summary decision shall be made upon personal knowledge, shall set forth the facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.” I find that the Stipulated Statement of Facts that were admitted during an evidentiary hearing more than satisfies the requirements of an affidavit even though the information is not in the form of an affidavit. In fact, I find that the proffered undisputed facts have a higher degree of reliability as they were subjected to cross-examination before the Hearing Examiner and arguments as to inadmissibility.

The Appellant did not dispute any of the facts proffered by the Board as undisputed. As discussed above, the Appellant did not proffer that there are *any* disputed facts as opposed to allegedly incorrect legal conclusions or an incorrect procedural statement. To deny the Motion on the basis that it was not supported by affidavits, when it was instead supported by Stipulated Statement of Facts from an evidentiary hearing below, would exalt form over substance.

### **The Merits of the Motions for Summary Decision**

The parties agree that as there are no disputes of material facts. The Board argues that it is entitled to judgment as a matter of law on two interrelated issues: (1) the Appellant’s conduct constituted misconduct and immorality in office within the meaning of section 6-202 of the Education Article; and (2) the appropriate sanction for the Appellant’s conduct is termination.

In his Motion and during the Motions hearing, the Appellant agreed that his conduct constituted misconduct and immorality in office within the meaning of section 6-202. However,

in his Motion for Summary Decision, he argues that the termination is not the appropriate sanction. The Appellant argues that the Board must show that the Appellant's conduct deems him unfit to teach. He argues that the Board has failed to provide evidence that he is unfit. After a careful review of the parties' Motions, oppositions, responses, additional arguments made at the Motions hearing and the cases cited, I agree with the Board that the Appellant's conduct constituted misconduct and immorality in office within the meaning of section 6-202. I also agree with the Board's decision to terminate the Appellant as his conduct deems him unfit to teach.

Since the Appellant agrees that his conduct in having sexual encounters with a married teaching assistant six times in his classroom/office after school hours was misconduct in office and immoral, it is not necessary for me to delve into this issue in this decision. The crux of this case and my decision to grant the Board's Motion for Summary Decision hinges on whether the Board provided sufficient evidence to prove that the Appellant's conduct deems him unfit to teach.

The Board noted that the seminal case of *Resetar v. State Bd. of Educ.*, 284 Md. 537, 561 (1979) found that in order for an instance of misconduct to warrant the sanction of termination, the teacher's misconduct "must bear upon a teacher's fitness to teach." In *Reseter*, a teacher was terminated for using a racially derogatory term "jungle bunnies" towards junior high school students. The Court of Appeals held that there was sufficient evidence to warrant termination. 78 C.J.S. *Schools and School Districts* § 202 (1952), states:

Among the causes which, either under statute or contract or as a proper exercise of discretionary power by the school board, have been held sufficient to constitute grounds for dismissal of a teacher. .. are included insubordination or violation of the rules and regulations of the school board; lack of cooperation; inability or incompetency; lack of efficiency in teaching or discipline; negligence in discharge of, or inattention to, duty; willful and persistent negligence; membership in a

subversive organization or engaging in subversive activities; refusal to waive immunity in appearing or testifying before a court or legislative committee; or improper conduct, or, according to other decisions on the question, immoral, or unprofessional conduct.

*Id.* at 1081-83

The Reseter court establishes that each situation must be judged on its own facts. *Reseter* at 562. The Appellant argues that there is no evidence that his conduct (1) would have an impact on his future classroom performance, (2) would have an overall impact on his students, and (3) news of his conduct had reached the community. The Appellant asserts that lack of proof of these factors shows that the Board does not have sufficient evidence to deem him unfit to teach.

In its opposition to the Appellant's Motion, the Board relies on *Brown v. Balt. City Bd. of Sch. Commissioners*, MSBE op. No. 09-31 (2009). In *Brown*, a teacher was terminated for misconduct when she slapped a student in the face. The Board adopted the proposed decision of the Administrative Law Judge (ALJ) to terminate Brown for her misconduct. The decision in *Brown* states that "professional composure is a critical attribute to teach effectively. Moreover, the exercise of good judgment, not poor judgment, bears on that ability also." *Id.* at pg. 7. The Board also refers to the case of *Harmon v. Balt. City Bd. of Sch. Commissioners*, MSBE op. No. 04-14 (2004) in which a teacher was terminated for falsifying bereavement leave forms. The Board adopted the proposed decision of the ALJ to terminate the teacher because the Board has a duty to educate children and to maintain a teacher who falsifies documents is contrary to the objectives of any school system. *Id.* at pg. 11. The Board states that the facts are distinguishable between these cases but the cases support its argument that a teacher's judgment bears on their ability to effectively teach. In *Brown* and *Harmon*, there was no evidence to show the impact of the teachers' actions on classroom performance, the impact on students or whether the teachers'

actions had reached the community, however, in both cases the teacher's lack of professionalism and lack of judgment caused them to be terminated.

In his opposition to the Board's Motion, the Appellant references the case of *Erb v. Iowa State Board of Public Instruction*, 216 N.W.2d 339 (1974) and notes that this decision is not binding authority, however, he points to the legal reasoning in *Erb* to support his argument that he should not be terminated. In *Erb*, the Supreme Court of Iowa found that a teacher's adultery was not grounds for revocation of his teaching certificate in absence of evidence that the isolated occurrence had an effect on his fitness to teach. The Court held that there was no evidence to show that Erb's isolated adulterous occurrence had an adverse affect on students, fellow teachers or the community. *Id.* at 344. The Erb court quotes the reasoning in *Jarvella v. Willoughby-Eastlake City Sch.*, 233 N.E.2d 143 (1967), which states as follows:

The private conduct of a man, who is also a teacher, is a proper concern to those who employ him only to the extent it mars him as a teacher, which is also a man. Where his professional achievement is unaffected, where the school community is placed in no jeopardy, his private acts are his own business and may not be the basis of discipline.

*Id.* at 146.

The Appellant cites *Erb* as support because the facts are similar to the case at hand; however, I find a significant difference in the facts of these two cases. *Erb* had an affair with a co-worker outside of the school grounds on numerous occasions but the Appellant had an affair with a co-worker in the Appellant's classroom on six separate occasions. The fact that the Appellant's conduct occurred at the school is obvious proof of his inability to use appropriate judgment. The impact of the Appellant's conduct on the students, the school and the community is speculative but the facts are undisputed and the nature of the Appellant's conduct violates school

policy and undermines the Board's responsibility to ensure that the children are being taught by responsible adult role models with the ability to use judgment and make appropriate decisions.

At the hearing on September 23, 2011, the Hearing Examiner found that the Board's suggestion to terminate the Appellant was arbitrary and capricious as the Board failed to meet its burden of showing that the Appellant's misconduct bears on his fitness to teach to the extent that he is unfit to teach. The Hearing Examiner indicates that he refused to speculate where reasonable inferences were not available therefore he recommended that the Board reprimand the Appellant in writing, revoke his selection as vice-principal and extend his suspension without pay until the last day of the first semester of the 2011-2012 school year. I disagree.

I have carefully reviewed the record below and the arguments of both parties before me. Having done so, I conclude that the Board did establish that the termination of the Appellant should be upheld and that the Board's Motion for Summary Decision should prevail. It is undisputed that the Appellant had no prior disciplinary issues while employed by the school system. It is also undisputed that the Appellant's performance evaluations from 2006-2007, 2007-2008 and 2010-2011 had ratings of highly effective and satisfactory. However, it is also undisputed that the Appellant had six sexual encounters with an assistant teacher in his classroom/office after school hours. It is undisputed that the Appellant's conduct constitutes misconduct and immorality in office. Based on these undisputed facts, I find that the Appellant's conduct proves to be an enormous lapse in judgment that deems him unfit to teach. There is precedence in Maryland where termination of a teacher has been upheld based on the nature of the misconduct and there was no evidence of impact in the community or on other teachers. The conduct of the Appellant in this matter is enough to show that he does not possess the requisite character, judgment and common decorum to teach students in a public school setting.

I therefore conclude, as a matter of law, that the Appellant committed misconduct and immorality in office as contemplated by section 6-202. The Board argues that the appropriate sanction for the Appellant's conduct is termination. Section 6-202(a)(1)(ii) provides for the suspension or termination of a teacher, principal or other professional for misconduct. The board has proven that the Appellant is unfit to teach due to a lack of judgment. There are no disputed material facts and as a matter of law, the Board is entitled to impose the sanction of termination for misconduct.

### CONCLUSIONS OF LAW

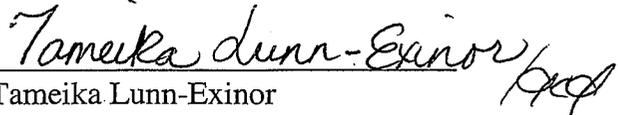
The Board has met its burden in demonstrating that there are no disputes of material facts and that it is entitled to judgment as a matter of law. COMAR 28.02.01.12D(1).

### PROPOSED ORDER

The Motion for Summary Decision filed by the Charles County Board of Education is **GRANTED** and the Board's decision to terminate the Appellant for misconduct and immorality is **UPHELD**.

The Motion for Summary Decision filed by Appellant is **DENIED**.

August 8, 2012  
Date Report Mailed

  
Tameika Lunn-Exinor  
Administrative Law Judge

Doc #136051  
TLE/kkc

**NOTICE OF RIGHT TO FILE OBJECTIONS**

Any party adversely affected by this Proposed Decision has the right to file written objections within fifteen days of receipt of the decision; parties may file written responses to the objections within fifteen days of receipt of the objections. Both the objections and the responses shall be filed with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

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