

PAMELA POWELL,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-04

OPINION

This is an appeal of the nonrenewal of a probationary teacher's contract. Appellant maintains that the nonrenewal recommendation was made in violation of guidelines included in the Teacher Evaluation System handbook. The local board has submitted a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

Appellant was employed as a 4<sup>th</sup> grade teacher at Highland Elementary School in Montgomery County for the 1999-2000 school year. On Appellant's first semester evaluation, she received a "Not Effective" rating on Performance Criterion #2 - Establishes learning objectives consistent with appraisal of student needs, requirements of MCPS curriculum framework, and knowledge of human growth and development. The supporting statement indicated that Appellant "continues to work to increase her knowledge about MCPS curriculum in order to plan consistent learning objectives. During the second semester she must request the assistance of the instructional support teacher and the reading specialist." Appellant received an "Effective" rating for the nine other performance criteria.

On Appellant's second semester evaluation she received two "Not Effective" and one "Needs Improvement" ratings. The "Not Effective" rating was again on Performance Criterion #2. The supporting statement discussed Appellant's deficiencies in her performance, including difficulty stating objectives so that students understand expectations; failure to match instructional activities with lesson objectives; inconsistent and inappropriate use of evaluative techniques; inconsistency in sequence and continuity of learning objectives; lack of preparedness; and questionable knowledge of the performance level of her students. The second "Not Effective" rating was on Performance Criterion #4 - Plans for and uses those instructional methods which motivate and enable each student to achieve learning objectives. The supporting statement indicated, in part:

Although Ms. Powell indicated in her plans that students' instructional levels varied, there was no evidence of differentiation in planning, instruction, assignments or evaluations. In many cases, all students received the same instruction, assignment and evaluation. In particular, Ms. Powell completely overlooked the needs of limited English proficient

students. She assigned a student to serve as interpreter for another student and did not monitor their participation or progress.

The comments also noted Appellant's problems with aligning student assessment with instruction. The "Needs Improvement" rating was on Performance Criterion #3 - Plans and provides for involvement of students in the learning process. The supporting statement explained, in part:

Ms. Powell did not articulate clear expectations that allowed students to engage in successful learning experiences. Observation notes indicate instances when Ms. Powell's delivery of instruction did not include the objectives stated in her lesson plans. Further observations illustrated instances when Ms. Powell was not prepared with materials and grouping procedures. Students were told to find a partner with whom to work without any criteria or expected outcome stated. During observations, Ms. Powell 'flipped' through materials to locate the place where groups should be working. It was evident that procedures had not been clearly planned which resulted in ineffective use of instructional time.

The school principal recommended that Appellant's contract not be renewed for the 2000-2001 school year based on "observations indicating ineffective teaching performance, lesson plan reviews indicating a lack of understanding of planning and delivery of effective instruction, strategies and assessments, and conference dialogues held with Ms. Powell." The principal's recommendation was forwarded to the superintendent who recommended that the local board not renew Appellant's probationary teacher contract. Appellant was advised of this recommendation by letter dated April 11, 2000. On April 25, 2000, the local board took action not to renew Appellant's contract of employment.

Appellant appealed the non-renewal decision asserting that the principal violated a guideline in the handbook on page 7 that gives direction to principals about completing Section E of the evaluation form, "Recommendation." It states in pertinent part: "Probationary teachers on year-end evaluation: Two or fewer "Not Effective" ratings - Continued Employment." In a unanimous decision issued July 6, 2000, the local board affirmed its decision not to renew Appellant's contract.

## ANALYSIS

It is well established that a local board does not have to demonstrate cause as a basis for deciding not to renew a probationary teacher's contract. *See Ewing v. Cecil County Board of Education*, 6 Op. MSBE 818 (1995) (affirming local board decision not to renew probationary teacher's contract despite unsubstantiated claims of retaliation). COMAR 13A.07.02.01B sets forth the terms of the regular teacher's contract. It states in pertinent part:

(a) . . . either of the parties to this contract may terminate it at the end of the first and second school year or on the second anniversary date of employment in regard to employees hired after January 1 following the commencement of a school year by giving notice in writing to the other, as of the following dates:

(a)(i) In the case of employees employed before January 1 following the commencement of a school year, not later than May 1 of that year or of the second year;

Thus, under State Board regulation, for probationary certificated employees, the only process due the individual is written notice by May 1 of the decision not to renew the probationary contract. In this matter, Appellant does not allege untimely notice of the non-renewal decision in violation of COMAR 13A.07.02.01B.

It is also well established that the only legal basis for a reversal of a non-renewal decision is if the decision were made for illegal or constitutionally discriminatory reasons. In *Board of Regents v. Roth*, 408 U.S. 564 (1972), the Supreme Court reviewed a decision not to rehire a non-tenured teacher for a second year. The Court held that the extent of the property interest in a teaching contract is the fulfillment of the one-year term of the contract. The Court stated that

. . . the terms of the respondent's appointment secured absolutely no interest in re-employment for the next year. They supported absolutely no possible claim of entitlement to re-employment. Nor, significantly, was there any state statute or University rule or policy that secured his interest in re-employment or that created any legitimate claim to it. In these circumstances, the respondent surely had an abstract concern in being rehired, but he did not have a property interest sufficient to require the University authorities to give him a hearing when they declined to renew his contract of employment.

408 U.S. at 578. Thus, absent a constitutional violation, there is no other process due a non-tenured teacher. See 408 U.S. at 578-579. See also *Perry v. Sinderman*, 408 U.S. 593 (1992); *Stepper v. Board of Education of Anne Arundel County*, 7 Op. MSBE 324 (1996)(affirming non-renewal of probationary teacher's contract); *Jones v. Board of Education of Charles County*, 7 Op. MSBE 153 (1995)(affirming non-renewal decision where there were no specific factual allegations of a constitutional violation).

Appellant contends that her contract should have been renewed for the 2000-2001 school year because the Teacher Evaluation System handbook indicated that continued employment should be recommended for a probationary teacher who receives two or fewer "Not Effective" ratings on the year-end evaluation. See handbook at 7. As previously noted, Appellant received two "Not Effective" ratings and one "Needs Improvement" on the end of year evaluation. Appellant bases her argument on the *Accardi* Doctrine which provides that "[a]n agency of the government must scrupulously observe rules, regulations, or procedures which it has established."

The local board argues that the *Accardi* Doctrine is inapplicable and that the local board is not bound by the provisions in the handbook which serve only as a guideline to principals and other evaluators in evaluating the performance of teachers.

The Maryland Court of Special Appeals has recently dealt with this issue in *Bd. of Sch. Comm'rs of Baltimore City v. James*, 96 Md. App. 401 (1992).<sup>1</sup> *James* concerned two tenured Baltimore City teachers, each of whom was terminated by the school system for incompetency. Each teacher argued that the termination decision should be reversed because the local board violated its own procedures by failing to have a formal evaluation of each teacher conducted by a non-school based observer in accordance with the Baltimore City Public Schools Procedures for Evaluation of Teaching Staff ("Procedures"). The Court found that violation of the procedures did not automatically mandate reversal of the decision to terminate the teachers at the end of the school year because the primary purpose of the procedures was not to confer procedural benefits upon teachers. *Id.* at 425:

Thus the title, stated purpose, and effect of the Procedures and the finding by the State Board that their primary purpose was "not to confer procedural benefits," as well as the fact that there is no evidence that they were officially promulgated, lead us to conclude the State Board was correct in finding that the violations of the Procedures in the 1988-89 year did not 'automatically mandate reversal' of the decisions to termination Ms. James and Ms. Davis at the end of the 1989-90 year.

*See also Bd. of Educ. of Anne Arundel County v. Barbano*, 45 Md. App. 27 (1980) (Primary purpose of Guidelines for the Evaluation of Probationary Teachers prescribed by the State Board was to bestow upon students education by teachers of unquestionable competency and therefore absolute adherence to such guidelines was not required when determining not to renew a probationary teacher's contract.).

Similar to the situation in *James*, we do not believe that reversal is mandated in this case because The Teacher Evaluation System handbook does not primarily confer important procedural benefits upon Appellant. The handbook explicitly states that "[t]he **primary goal of the teacher evaluation system is to help teachers improve their effectiveness.**" (Emphasis added).<sup>2</sup> The secondary goals are listed as follows:

1. To achieve the goals of the Montgomery County

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<sup>1</sup>James was consolidated with *Bd. of Sch. Comm'rs of Baltimore City v. Davis*.

<sup>2</sup>We disagree with Appellant's claim that the handbook in this case is similar to the provisions at issue in *Bd. of Educ. of Baltimore County v. Ballard*, 67 Md. App. 235 (1986). *Ballard* concerned an officially promulgated personnel regulation of the local board entitled "Procedure for Penalizing or Terminating Teachers on Tenure Whose Work is not Satisfactory." Unlike the handbook at issue here, the applicable policies and procedures in *Ballard* made clear that the purpose was to confer "important procedural benefits and safeguards" upon tenured teachers. *Id.* at 243.

- Public Schools, individual schools, and classrooms
- 2. To produce good morale through just and equitable personnel practices and develop greater self acceptance
- 3. To stimulate continuing improvement in teacher performance
- 4. To increase communication and cooperation among teachers, other members of the profession, students, and the community
- 5. To provide feedback which can be used
  - a) To identify inservice needs of teachers
  - b) To appraise the effectiveness of recruiting, selection, and placement
  - c) To appraise the effectiveness and adequacy of human and material supports for teachers

*See The Teacher Evaluation System handbook at 1. Based on these goals, it is clear that the primary focus of the handbook is the effectiveness of the teacher's performance and the improvement of that performance as opposed to providing job protection.*<sup>3</sup>

Appellant argues that the handbook has been formally adopted by the local board as a rule of procedure to protect all teachers being evaluated because the handbook is incorporated by reference into the negotiated agreement between the Montgomery County Education Association ("MCEA") and the local board, and in local board administrative regulation GJB-RA. Specifically, the negotiated agreement and administrative regulation GJB-RA provide that the handbook shall not be changed without prior notice and consultation with MCEA. *See Agreement at 40; Administrative Regulation GJB-RA at 5.*

While the handbook is mentioned in the agreement and the administrative regulation, it is not specifically incorporated by reference into these documents. Nor is the handbook published as a regulation by the school system or adopted as a policy by the local board. Moreover, we can find no legal requirement that the local board must strictly adhere to the handbook provisions. Thus, we believe that the handbook was intended to be an administrative guide designed to assist

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<sup>3</sup>Appellant asserts that an evaluation appeal board, which convened in March, 2000 to review the evaluation of another probationary teacher, recognized that the criterion regarding continued employment provided in the handbook was absolute and provided no discretion to the evaluator. *See Appellant's Exhibit B.* We believe Appellant is referring to the following statement in the appeal board report: "Non-renewal of contract option selected by principal is inconsistent with the guidelines presented for probationary teachers in the 1994 Teacher Evaluation System Handbook." The report is inapposite here, however, because the individual in that appeal had no areas in which he was rated as "Not Effective." *See Weast Memo of May 31, 2000 at n. 3.*

principals and other evaluators in evaluating the performance of teachers.<sup>4</sup>

Moreover, even if we were to construe the handbook as requiring the principal to recommend contract renewal in this case, the principal's recommendation is not the final word on the nonrenewal issue. Pursuant to Administrative Regulation GJB-RC, the principal's recommendation and all pertinent data are reviewed by the associate superintendent for personnel services who then forwards his/her recommendation to the superintendent. The superintendent then reviews the matter and submits a recommendation to the local board, which takes action on the recommendation. Neither the associate superintendent, the superintendent, nor the local board is bound to accept the principal's recommendation. Thus, there is no guarantee of contract renewal based solely on a principal's recommendation.

We also note that, although not legally required, the record in this case discloses that there was a performance basis for nonrenewal due to deficiencies in Appellant's teaching.<sup>5</sup> Appellant's year-end evaluation contained two "Not Effective" ratings and a "Needs Improvement" rating. In a detailed analysis of Appellant's teaching performance, the principal concluded that Appellant's contract should not be renewed based on her "ineffective" performance.

## CONCLUSION

For these reasons, we find that the local board did not act arbitrarily, unreasonably or illegally in accepting the nonrenewal recommendation. Accordingly, we affirm the nonrenewal decision made by the Board of Education of Montgomery County.

Philip S. Benzil  
President

Marilyn D. Maultsby  
Vice President

Raymond V. Bartlett

JoAnn T. Bell

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<sup>4</sup>In reviewing the handbook we note that board policy, required procedure, and suggested guidelines are intermingled. We urge the local board to revise the handbook and separate required policy and procedure from suggested guidance.

<sup>5</sup>As previously noted, a local board does not have to establish cause for a decision not to renew a probationary teacher's contract. The State Board has ruled that a local board may decide not to renew a probationary teacher's contract despite the fact that the teacher has received satisfactory evaluations. See *Bricker v. Frederick County Board of Education*, 3 Op. MSBE 99 (1982).

Reginald L. Dunn

George W. Fisher, Sr.

Walter S. Levin, Esquire

Judith A. McHale

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

January 31, 2001