

JUSTIN KING,  
Appellant

v.

HARFORD COUNTY  
BOARD OF EDUCATION,  
Appellee.

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION  
Opinion No. 24-06

## OPINION

### INTRODUCTION

Justin King (“Appellant”) appeals the decision of the Harford County Board of Education (“local board”) suspending him for five days from his position as a custodian based on misconduct for striking another employee on school property. The local board responded to the appeal maintaining that its decision was not arbitrary, unreasonable or illegal. Appellant responded and the local board replied.

### FACTUAL BACKGROUND

Appellant began his employment as a custodian with Harford County Public Schools (“HCPS”) on June 30, 2022, and was assigned to North Harford High School (“NHHS”).

On January 28, 2023, the Appellant received a satisfactory performance rating on his six-month evaluation. (Appeal, 1/23 Evaluation Form).

During the summer of 2023, NHHS was assigned a new Assistant Principal, Erin Mock, and a new Chief Custodian (Appellant’s supervisor), Mike Braun. After this assignment of new personnel, things began to change for the Appellant. (Appeal). On August 3, 2023, the custodial supervisory team met with the Appellant to discuss his aggressive behavior toward a colleague, performance concerns, and meeting expectations. (Appeal, 8/23 Evaluation Form).

On August 10, 2023, the Appellant had an out of sequence evaluation conducted by Vice Principal Mock due to concerns with the Appellant’s ability to complete his job responsibilities and reports of aggressive behavior towards colleagues. *Id.* Comments from Ms. Mock noted that the Appellant does not complete tasks independently or well, that he does not handle constructive feedback in a positive manner, and that he does not effectively communicate with his colleagues. Appellant gets agitated and yells at colleagues when he is angry. And, he has been observed watching videos on his phone during work time. *Id.* Ms. Mock gave the Appellant an unsatisfactory evaluation, placed him on a plan of assistance, and advised him that his performance expectations would be monitored. *Id.*

Thereafter, on September 8, 2023, Chief Custodian Braun reported that the Appellant “hit [him] in the back with both hands” during a work-related discussion on September 7, 2023.

(R.00005, 0007-0008). Just prior to the incident, Mr. Braun told the Appellant to reclean the vents and to mop the kitchen floor again because it was still dirty. He then corrected the Appellant's mopping method because he was mopping without water. As Mr. Braun turned and was leaving the room, the Appellant hit him in the back with both hands and stated that Braun was bullying him. *Id.*

Assistant Principal Mock met with the Appellant on September 8 to discuss Mr. Braun's allegations. During that meeting, the Appellant admitted to becoming angry with Mr. Braun and to pounding him on his back with his fists. The Appellant signed a corresponding written statement to that effect. (R. 0006-0008). Ms. Mock referred the Appellant to the Superintendent for disciplinary action for failure to meet the standard of professional conduct expected by HCPS employees, specifically, "accepting and complying with any reasonable direction given by someone of proper authority to do so, and behaving at all times in a manner than upholds and reflects the values, integrity and reputation of HCPS." (*Id.*; R. 00014).

On September 11, 2023, C. Mae Alfree, Director of Staff and Labor Relations, advised the Appellant that he was being placed on administrative leave with pay pending the outcome of a *Loudermill* hearing. (R. 0009). A letter dated September 12, 2023, advised the Appellant that the *Loudermill* hearing was scheduled to address the disciplinary charge of misconduct for striking another employee while on school property. (Appeal, 9/12/23 letter from Alfree).

In response, the Appellant provided a statement indicating that he had "patted [Mr. Braun] on the back. (R. 00010). The Appellant also stated the following:

- On September 7, Mr. Braun "got out of his truck, he kicked the front of my vehicle and motioned he was watching me."
- On September 7, Mr. Braun "took photos of me with his cell phone, told me to smile. He laughed at me. He said this is going to be funny tomorrow."
- On September 7, Mr. Braun "told me I did not check to see if the doors were locked by the pre-k. I did check those doors and all the other doors on my rounds and they were locked."
- Mr. Braun "rarely talks to me at work."
- "I feel some of the items [Mr. Braun] has said I did not do were not on the list from Bobby Jean our new supervisor."
- Mr. Braun said "I did not clean the vents which I was not informed to clean prior."

*Id.*

On September 27, 2023, Cornell S. Brown, Jr., Assistant Superintendent for Operations, acting as the Superintendent's Designee, conducted the *Loudermill* hearing during which the Appellant had the opportunity to respond to the misconduct charge. (R. 00012-00013). Jo Reidel, AFSCME Maryland Council 2 Field Representative, attended and served as the Appellant's Union Representative. During the hearing, the Appellant recalled "patting" Mr. Braun on his back/shoulders. The Superintendent's Designee noted that this conflicted with the Appellant's signed statement from September 8, in which the Appellant admitted to being upset and hitting Mr. Braun on the back. The Designee also noted that "similar 'aggressive behavior' has been a

concern” and that the behavior previously resulted in a performance plan and monthly evaluations. *Id.*

On October 10, 2023, the Superintendent’s Designee suspended the Appellant for five days without pay for misconduct. *Id.* The Designee also referred the Appellant to Daniel Reimers, Human Resources Staff and Labor Relations Specialist, for training to review effective communication strategies, appropriate and inappropriate responses to conflict in the workplace, chain of command clarification, and proper reporting of allegations of harassment and discrimination. The Designee advised the Appellant that he must adhere to the HCPS Employee Code of Conduct and that future similar incidents could result in further disciplinary action, up to or including termination. *Id.*

On October 12, 2023, the Appellant’s Union Representative, on the Appellant’s behalf, appealed the suspension decision to the local board. A six-person panel of the local board conducted a hearing on November 22, 2023. (R. 0001). By a vote of 5-1, the local board determined that the Appellant had failed to establish by a preponderance of the evidence that the suspension was arbitrary, unreasonable, or illegal. The local board found that the suspension decision was issued in objective good faith and was reasonable based on the facts in the record. (R. 0001-0003).

Meanwhile, on October 10, 2023, the Appellant filed an employee discrimination and harassment complaint form claiming workplace harassment based on his disability. (Appeal, Complaint Form). The Appellant filed a second complaint form against Assistant Principal Mock and another employee on November 15, 2023. (Appeal, Complaint Form). There is no evidence in the record regarding the outcome of these matters.

At some point after the incident, HCPS reassigned the Appellant to North Harford Middle School after consultation with the Appellant and his Union Representative.<sup>1</sup>

On December 29, 2023, the Appellant’s Union Representative, on Appellant’s behalf, filed this appeal with the State Board.

### STANDARD OF REVIEW

A non-certified employee is entitled to administrative review of a termination pursuant to §4-205(c)(3) of the Education Article. *See Goines v. Prince George’s Cnty. Bd. of Educ.*, MSBE Op. No. 17-16 (2017). Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A.

### LEGAL ANALYSIS

The local board upheld the decision of the Superintendent’s Designee suspending the Appellant for five days for misconduct based on the Appellant hitting his supervisor, Mr. Braun, on the back on September 7, 2023. The Designee relied on the information provided to Assistant

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<sup>1</sup> The local board explains that the transfer was in response to a temporary legal order that the Appellant had obtained against a coworker assigned to NHHS. Although the assignment to NHMS is not a permanent assignment, HCPS does not have any plans to reassign the Appellant back to NHHS. (Bd. Response at 5).

Principal Mock during her meeting with the Appellant on September 8, which included a statement signed by the Appellant admitting to hitting his supervisor on the back with his fists because he was angry. The Designee found this evidence more persuasive than the Appellant's later conflicting claim that he only patted the employee on the back. To the extent that the latter claim may be viewed as evidence, it is up to the finder of fact to sort through conflicting evidence and reach factual conclusions. *See Karp v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15-39 (2015) (fact finders are not required to give equal weight to all of the evidence and their failure to agree with an Appellant's view of the evidence does not mean their decisions are arbitrary, unreasonable, or illegal). The Designee considered the evidence before him and reached a conclusion that is supported by the evidence. The only dispute is the force the Appellant used in hitting his supervisor. The essential fact that he hit his supervisor is not disputed. It was not arbitrary or unreasonable for the local board to uphold the Designee's decision.

The Appellant maintains, however, that he has an intellectual disability and provided the written statement to Ms. Mock under duress without being accommodated with representation, and after being subjected to bullying by co-workers. The local board maintains that HCPS first became aware of the Appellant's claim of disability during the *Loudermill* hearing, at which point the Americans with Disabilities Act ("ADA") coordinator provided the Appellant with information relating to accommodations. The Appellant declined to engage in the ADA interactive process or to otherwise pursue any accommodations.<sup>2</sup> There is simply no evidence in the record that the Appellant's statement was coerced or that he was denied any requested accommodations based on disability with regard to his meeting with Assistant Principal Mock. The underlying fact that Appellant hit his supervisor on the back is not disputed. He acknowledged as much in his statement to Vice Principal Mock and in the *Loudermill* hearing.

Nor is there sufficient persuasive evidence to support the Appellant's allegations of bullying that would warrant finding the suspension arbitrary, unreasonable, or illegal. We have repeatedly held that appellants must support allegations of illegality with evidence. *See King v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 14-19 (2014). While the Appellant makes various claims about Mr. Braun's behavior towards him, he has not submitted reliable evidence to support his claim by affidavit. He also has not refuted with any reliable evidence that Ms. Mock's unsatisfactory evaluation of the Appellant and concerns regarding his performance and prior aggressive behavior were baseless. Moreover, despite such claims, the five days suspension was a measured response to hitting his supervisor. The record shows that Appellant was given all due process protections to which he was entitled under the law. The matter was investigated before discipline was issued. He received a *Loudermill* hearing and a hearing before the local board. He was represented by his Union Representative on both occasions, as well as in his appeal before the State Board.

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<sup>2</sup> Although the Appellant maintains that HCPS knew he had a disability because he received written task lists to complete his work and because he had an IEP while he attended NHHS as a student, neither of these facts establish that he was a qualified individual with a disability or was considered disabled in terms of his employment. There is no evidence in the record that the Appellant ever sought employment accommodations from HCPS under the ADA. We note that a student record does not become a part of an employee personnel file and information contained in the Appellant's student IEP is not available to HCPS in the context of his employment.

CONCLUSION

For the reasons stated above, we find the Appellant has failed to show by a preponderance of the evidence that the local board's decision was arbitrary, unreasonable, or illegal. Accordingly, we affirm the decision of the local board.

Signatures on File:

\_\_\_\_\_  
Clarence C. Crawford  
President

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Susan J. Getty

\_\_\_\_\_  
Monica Goldson

\_\_\_\_\_  
Nick Greer

\_\_\_\_\_  
Irma E. Johnson

\_\_\_\_\_  
Rachel McCusker

\_\_\_\_\_  
Samir Paul

Absent:

Joshua L. Michael, Vice-President

Shawn D. Bartley

Chuen-Chin Bianca Chang

Joan Mele-McCarthy

Holly Wilcox

March 26, 2024