

EXHIBIT 1

Parris N. Glendening
Governor

Rec'd
1-14-03



John W. Hardwick
Chief Administrative Law Judge

OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW BUILDING
11101 GILROY ROAD
HUNT VALLEY, MARYLAND 21031-8201

TEL: (410) 229-4101
TOLL FREE: 1-800-388-8805

FAX: (410) 229-4111
TTY: (410) 229-4267
TOLL FREE: TTY: 1-866-884-8577

February 1, 2002

Richard Seiden, Esquire
3024 Marnat Road
Baltimore, MD 21208-4502

Brian Williams, Esquire
BCPSS Office of Legal Counsel
200 East North Avenue, Room 208
Baltimore, MD 21202

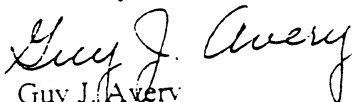
Re: Warren Wiggins
OAH Case No.: MSDE-BE-01-200000002

Dear Parties:

Enclosed is a copy of my proposed decision in the above-captioned case.

Objections may be filed in response to the proposed decision. Written objections shall be filed within ten (10) days of receipt of the proposed decision; parties may file written responses to the objections within ten (10) 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. Code of Maryland Regulations ("COMAR") 13A.01.01.03P(4).

Sincerely,


Guy J. Avery
Administrative Law Judge

GJA mem
Enclosure

cc: Warren Wiggins

WARREN WIGGINS

APPELLANT

v.

NEW BOARD OF SCHOOL

COMMISSIONERS OF BALTIMORE

CITY

* BEFORE GUY J. AVERY

* ADMINISTRATIVE LAW JUDGE,

* MARYLAND OFFICE OF

* ADMINISTRATIVE HEARINGS

* OAH No.: MSDE-BE-01-200000002

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On or about October 25, 1999, Warren Wiggins ("Appellant"), a teacher employed by the New Baltimore City Board of School Commissioners ("Board"), received notification from the Chief Executive Officer ("CEO") that he was recommending to the Board that the Appellant be terminated for willful neglect of duties. The Appellant filed an appeal, and a hearing before Hearing Examiner Elise Jude Mason was held on April 5, 2000. Md. Code Ann., Educ. § 6-203 (1999). On May 15, 2000, the Hearing Examiner found that the Appellant had willfully neglected his duties. She recommended to the Board that the Appellant be terminated. The Board voted to uphold the Hearing Examiner's recommendation, and the Appellant was informed of this decision on June 20, 2000.

The Appellant appealed the Board's order to the Maryland State Board of Education and the matter was scheduled before the Office of Administrative Hearings. Md. Code Ann., Educ. § 6-202(4) (1999).

A hearing was conducted on November 8th and 9th, 2001, before Guy J. Avery, Administrative Law Judge ("ALJ"), at the Office of Administrative Hearings, 11101 Gilroy Rd., Hunt Valley, Md. Richard Seiden, Esquire represented the Appellant. Brian Williams, Esquire represented the Board. Code of Maryland Regulations ("COMAR") 13A.01.01.03P.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board of Education, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1999 & Supp. 2001); COMAR 13A.01.01.03P; COMAR 28.02.01¹.

ISSUE

The issue on appeal is whether the termination imposed upon the Appellant pursuant to Md. Code Ann., Educ. § 6-202(a) (1999) for willful neglect of duties was proper.

SUMMARY OF THE EVIDENCE

A. Exhibits

The following exhibits were admitted into evidence on behalf of the Appellant:

App. Ex. 1 - St. Paul and Biddle Medical Associates. report of visit, dated June 3, 1999.

App. Ex. 2 - St. Paul and Biddle Medical Associates. reports of four visits, dated June 21, 1999, June 21, 1999, July 7, 1999, and August 11, 1999.

¹ The current regulations are published at 27:26 Md. Reg. 2360 (Dec. 29, 2000, effective Jan. 8, 2001) (proposed 27:18 Md. Reg. 1678-1684 (Sept. 8, 2000)) (to be codified at Code of Maryland Regulations ("COMAR"))

- App. Ex. 2 - Follow-Up visit report, dated August 26, 1999.
- App. Ex. 3 - Light Duty Slip. dated August 26, 1999.
- App. Ex. 4 - Memo. dated August 27, 1999, from Appellant to Assistant Principal.
- App. Ex. 5 - Report from St. Paul and Biddle Medical Associates. dated August 31, 1999.
- App. Ex. 6 - Sick Leave memo, dated September 1, 1999.
- App. Ex. 7- St. Paul and Biddle Medical Associates. follow-up visit, dated September 10, 1999.
- App. Ex. 8 - Report from St. Paul and Biddle Medical Associates, dated September 10, 1999.
- App. Ex. 9 - Fax Transmission Cover Sheet, dated September 7, 1999.
- App. Ex. 10 - Report from Division of Occupational Medicine, dated September 20, 1999.
- App. Ex. 11 - Sick Leave memo, dated September 22, 1999.
- App. Ex. 12 - Report from Division of Occupational Medicine, undated, referring to attempted Visits by Appellant on October 4, 1999 and October 5, 1999.
- App. Ex. 13 - Memo from Department of Personnel, dated December 15, 1997.
- App. Ex. 14 - Employee's Incident Report, October 6, 1999.
- App. Ex. 15 - Memo from Appellant to Principal, dated October 6, 1999.
- App. Ex. 16 - Memo from Appellant to Principal, dated October 17, 1999.
- App. Ex. 17 - Documents from St. Paul and Biddle Medical Associates, dated December 3, 1999; Marcel A. Reischer, M.D., dated January 14, 2000 and February 14, 2000; and, The Rehabilitation Team, dated October 1, 1999.
- App. Ex. 18 - Mayor's Citation to for Appellant. dated May 1, 1994, and Governor's Citation, Dated December 22, 1993.

The following exhibits were submitted on behalf of the Board:

- Bd. Ex. 1 - Memo from Theodore Thornton, Director. Department of Human Resources, to Principal, dated August 29, 1999.
- Bd.Ex. 2 - Certified mail to Appellant. from Theodore Thornton. dated September 10, 1999.

- Bd. Ex. 4 - Fax sheet to Medical Care Operations, dated September 7, 1999 (same as Appellant's Exhibit number 9).²
- Bd. Ex. 6 - Fax from Doug Norris, Principal, to Anne Carusi, Southern Area Executive Officer, and Art Chenoworth, dated September 12, 1999.
- Bd. Ex. 7 - Memo from Principal to Anne Carusi, dated September 15, 1999.
- Bd. Ex. 8 - Memo from Anne Carusi to Principal, dated September 16, 1999.
- Bd. Ex. 9 - Memo, dated September 17, 1999, from the Principal to Anne Carusi.
- Bd. Ex. 10 - Memo from Principal to Anne Carusi, dated September 20, 1999.
- Bd. Ex. 11 - Memo, by fax, to Ms. A. Dillow, Secretary to Principal, dated September 17, 1999.
- Bd. Ex. 12 - Memo from the Principal to Douglas Norris, dated September 21, 1999.
- Bd. Ex. 13 - Memo from Principal to Anne Carusi, dated September 22, 1999.
- Bd. Ex. 14 - Letter to Anne Carusi, Southern area Executive Director, from Douglas M. Norris, dated September 29, 1999, enclosing a certified letter sent to the Appellant by the Principal on September 23, 1999.
- Bd. Ex. 15 - Memo from Anne Carusi to Michael Mayer, Director of the Office of Labor Relations, dated September 30, 1999.
- Bd. Ex. 16 - Memo from Robert Booker, Chief Executive Officer, to the Board, containing the Statement of Charges, dated October 25, 1999.
- Bd. Ex. 17 - Attendance Reliability and Analysis Program, manual for teachers and paraprofessionals, approved March 1986.

B. Testimony

The following witnesses presented testimony on behalf of the Appellant:

- (1) Neil T. Ross, Baltimore Teachers Union, Field Representative.
- (2) Rita Turner, Department of Health and Mental Hygiene.
- (3) The Appellant testified on his own behalf.

The following witnesses testified on behalf of the Board:

- (1) Douglas Norris, Principal at Morrell Park Elementary/Middle School.

FINDINGS OF FACT

After careful consideration of the record and the additional testimony presented, I find, by a preponderance of the evidence, the following facts:

1. The Appellant was a newly assigned teacher at Morrell Park Elementary/Middle School in 1999; he had previously been assigned to Patterson High School.
2. His reporting date was August 23, 1999.
3. He reported to work on August 23, 1999; but called in sick on August 25, 1999 and August 26, 1999. Also on August 26, 2001, he submitted a "light duty" slip from St. Paul and Biddle Medical Associates, dated August 26, 1999.
4. He failed to report to work on August 27, 1999, but called the Assistant Principal and stated that he would be continuing sick leave use, "possibly until the following Wednesday."
5. The Appellant did not report for work; he faxed a memorandum to the Principal on September 1, 1999, stating that he would be using sick leave on September 1, 2, and 3, 1999, but that he would be returning to work on September 7, 1999.
6. He faxed the Principal again on September 7, 1999, stating that he would be out on sick leave until further notice, and that a doctor's slip would follow.
7. He received a letter from Theodore Thornton, Department of Human Resources, on September 10, 1999, sent by certified mail, informing him that teaching was classified as a sedentary position, and his status on light duty permitted him to work as a classroom teacher. The letter also informed him that he was expected to report for duty upon receipt of the letter, and that failure to do so would result in personnel action.
8. He called the school on September 10, 1999, and informed the school secretary that he would be reporting to work on Monday, September 13, 1999.
9. On Monday September 13th, a woman called on his behalf, stating that he would not be reporting to work that day.

² Board Exhibits 3 and 5 were not admitted.

10. He did not report to work on September 14, 15, or 17 (on September 16th, schools were closed). He did not explain any of his absences for that period of time.
11. On September 17, 1999, he faxed a memorandum to the Principal stating that he would return to work on Monday, September 20, 1999.
12. The Appellant did report for work on September 20, 1999. He was referred to the Baltimore Industrial Medical Clinic ("Clinic") for evaluation.
13. He was examined on September 20th, and it was determined that he was fit for work, and he was issued a return-to-work slip.
14. He called the school on September 20, 1999, and reported that he would not be reporting to work on September 21, 1999, and that he should be designated "sick" for that day.
15. He then called the Clinic and asked for another appointment, which was granted for October 4, 1999. In the meantime, he reported to the Clinic on September 22, 1999 asking for a return-to-work slip. The request was denied because he had not been properly referred.
16. Also on September 22, 1999, the Appellant faxed a memorandum to the Principal stating that, as a result of his Clinic visit of September 20, 1999, he would continue on sick leave until October 4, 1999.
17. The Appellant did not receive permission from the Clinic to be absent until October 4, 1999. The result of his Clinic visit of September 20, 1999 was that he was issued a return-to-work slip, not a sick leave slip.
18. The Appellant was recommended for termination on October 25, 1999; the Board terminated the Appellant on June 13, 2000.

DISCUSSION

The Board terminated the Appellant for "willful neglect of duty." because he failed, without reason, to report for work. His failure to report was intentional and knowing, as defined in *Nemish v. Anne Arundel County Bd. Of Educ.*, 4 Op. MSBE 836, 837 (1987).³ One reason for characterizing the Appellant's failure to report as "willful" is the certified letter of September 10, 1999, sent to him by the Director of Human Resources, informing him that his "light-duty" slip did not excuse him from his teaching job. It had no effect on his attendance.

Another is the September 20th return to work slip, which was issued after he was examined at the Baltimore City Health Clinic. In this connection, he called the school on September 20th and stated that he would be returning the next day. In fact, he did not return, but again went to the Clinic and asked for another return to work slip, which was denied because he had not been referred. Yet on September 22nd, he faxed the Principal telling him that he would not be returning to work until October 4, 1999, *as a result of his examination on September 20th*. This was simply not the truth, because, as already noted, the September 20th visit resulted in a return to work slip, not permission to remain out sick until his next appointment (which he scheduled for October 4, 1999).

The Appellant suffered a fall in May of 1999, at his former school, but the injuries which resulted, although not insignificant, did not prevent him from continuing his work.⁴ His primary argument now is that, on the first two days of duty for the 1999-2000 school year (August 23 and 24, 1999), he reinjured himself moving desks and books. However, his return to work slip notes that his complaint of right hip pain was *not* related to his accident in May of 1999.⁵

He also argues that the Employee's Incident Report, completed by the Principal, did not relate the incident in the "employee's own words,"⁶ as required. There appears to be some truth to this, because the Appellant had informed the Principal that he had aggravated the May injury on August 23rd and 24th. However, that does not change the fact that the Appellant had been examined many times after August 24, 1999, and, on September 20, 1999, received a return to work slip.

The number of examinations which showed that the Appellant could return to work, the deceitful nature of the Appellant's characterization of his September 20th examination as allowing

³ Cited in the Board's brief at p. 5.

⁴ Appellant's exhibits one and two.

⁵ Appellant's exhibit 10.

⁶ Appellant's exhibit 14, line 20; Appellant's exhibit 16.

him to remain out until October 4, 1999, his failure to contact the school at all on September 14, 15, and 17, 1999, combine to demonstrate a willful neglect of duty.

Additionally, there has been no showing of a due process violation, as alleged by the Appellant. The Appellant was notified of his original hearing and attended that hearing. He also appealed the Hearing Examiner's decision to the Board, and was granted a *de novo* hearing when he appealed the Board's decision to terminate him.

The Maryland Education Article⁷ provides, in pertinent part:

§ 6-202.

(a) (1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:

* * *

(v) Willful neglect of duty.

The Appellant's failure to properly inform the school of his various absences; his complete failure to inform the school of the reason for his absences on September 14, 15, and 17, 1999; his attempt to deceive the school regarding the contents of the September 20, 1999 examination; obviously constitute "Willful neglect of duty" under the statute. Additionally, I find no due process violations. The Board must prevail in this case.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Appellant, Warren Wiggins, a Teacher employed by the New Baltimore City Board of School Commissioners, was properly terminated because of willful neglect of duty. Md. Educ. Code Ann. §6-202(a).

PROPOSED ORDER

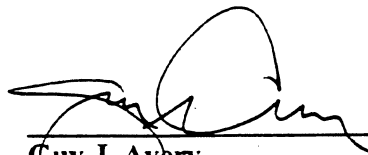
It is proposed that the decision of the New Baltimore Board of School Commissioners terminating] the Appellant for willful neglect of duty be **UPHELD**.

2-1-02

Date

***/**

3839



Guy J. Avery
Administrative Law Judge

NOTICE OF RIGHT TO FILE OBJECTIONS

Any party adversely affected by this Proposed Decision has the right to file written objections within ten (10) days of receipt of the decision; parties may file written responses to the objections within ten (10) 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.01.01.03P(4). The Office of Administrative Hearings is not a party to any review process.

⁷ Md. Educ. Code Ann. § 6-202(a) (1999).