

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

GEORGIA B. COX,

CASE NO.: 2015 CV 1735

Appellant,

JUDGE BARBARA P. GORMAN

-vs-

OHIO DEPARTMENT OF EDUCATION, et al.,

DECISION, ORDER AND ENTRY
OVERRULING APPELLANT'S
ADMINISTRATIVE APPEAL; AFFIRMING
DECISION OF THE OHIO STATE BOARD
OF EDUCATION

Appellees.

This matter is before the Court on the *Notice of Appeal* filed by Appellant Georgia B. Cox.

The *Brief of Appellant* was filed. The *Brief of Appellee Ohio State Board of Education* was filed. The *Reply Brief of Appellant* was filed on July 22, 2015. This matter is properly before the Court.

I. FACTS

Appellant Georgia B. Cox ("Appellant") is administratively appealing the permanent revocation of her professional intervention specialist license by the State of Ohio Board of Education. The revocation followed an administrative hearing conducted by the Ohio Department of Education following an incident between Appellant and a special needs student ("Student 1") at the Dayton City public school where she worked as an intervention specialist. On June 28, 2013, Appellant was found guilty by the Common Pleas Court of Montgomery County of assaulting Student 1. Student 1 has multiple disabilities, as well as a cerebral palsy diagnosis and is partially paralyzed. At the time of the assault, Student 1 was 16 years old. The assault conviction was based on a videotape which showed Appellant hitting Student 1 twice in his wheelchair. Two staff members at the school also testified that

they heard Appellant say to Student 1, “If you hit me, I’ll hit back.” The Second District Court of Appeals upheld her conviction.

Appellant does not contest her conviction, but contends that she merely relied on her training and applied force to her own arm when Student grabbed it and began to laugh. Appellant denies ever striking Student 1 while trying to free herself from Student 1’s grasp.

Following her conviction, the State Board of Education held an adjudication hearing wherein the hearing officer found that Appellant “violated Ohio Revised Code 3319.31(B)(1), (B)(2)(a) and (B)(2)(b) due to conduct unbecoming an educator and felony assault conviction as set forth in Count 1.” The State Board of Education then considered objections filed by Appellant. Ultimately, the Board adopted the findings and conclusions of the hearing officer and revoked Appellant’s license and declared that Appellant is permanently ineligible to hold any future licenses through the State Board of Education. Appellant appeals the decision of the State Board of Education claiming that its findings of fact and conclusions of law were contrary to the evidence.

A. Standard of Review

Appellant appeals the decision of the State Board of Education pursuant to O.R.C. Section 119.12. ¶ When reviewing an order of an administrative agency, a common pleas court acts in a ☺ limited appellate capacity. ¶ *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339, 343; *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 18. Thus, the common pleas court is bound to affirm the order if it is supported by reliable, probative, and substantial evidence and is in accordance with the law; the court must give due deference to administrative resolution of evidentiary conflicts and must not substitute its judgment for that of administrative agency. R.C. § 119.12. *Diversified Benefit Plans Agency, Inc. v. Duryee* (1995), 101 Ohio App.3d 495, 655 N.E.2d 1353; *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621, 614 N.E.2d 748, 750.

B. The Agency Decision is supported by reliable, probative, and substantial evidence.

Appellant argues that O.R.C. Section 3319.31(B) lists the offenses for which the State Board of Education may suspend or revoke an educator's license. This section reads as follows:

(B) For any of the following reasons, the state board of education, in accordance with Chapter 119. and section 3319.311 of the Revised Code, may refuse to issue a license to an applicant; may limit a license it issues to an applicant; may suspend, revoke, or limit a license that has been issued to any person; or may revoke a license that has been issued to any person and has expired:

- (1) Engaging in an immoral act, incompetence, negligence, or conduct that is unbecoming to the applicant's or person's position;
- (2) A plea of guilty to, a finding of guilt by a jury or court of, or a conviction of any of the following:
 - (a) A felony other than a felony listed in division (C) of this section;
 - (b) An offense of violence other than an offense of violence listed in division (C) of this section;
 - (c) A theft offense, as defined in section 2913.01 of the Revised Code, other than a theft offense listed in division (C) of this section;
 - (d) A drug abuse offense, as defined in section 2925.01 of the Revised Code, that is not a minor misdemeanor, other than a drug abuse offense listed in division (C) of this section;
 - (e) A violation of an ordinance of a municipal corporation that is substantively comparable to an offense listed in divisions (B)(2)(a) to (d) of this section.
- (3) A judicial finding of eligibility for intervention in lieu of conviction under section 2951.041 of the Revised Code, or agreeing to participate in a pre-trial diversion program under section 2935.36 of the Revised Code, or a similar diversion program under rules of a court, for any offense listed in division (B)(2) or (C) of this section;
- (4) Failure to comply with section 3313.536, 3314.40, 3319.313, 3326.24, 3328.19, or 5126.253 of the Revised Code.

O.R.C. Section 3319.31(C) then identifies offenses for which the Board has no discretion in making an applicant ineligible to retain or acquire a teaching license. Appellant argues that the offense for which Appellant was convicted is not listed in O.R.C. Section 3319.31(C). Thus, according to Appellant, the Board was required to examine both the aggravating and mitigating factors set forth in OAC 3301-73-21.

As an initial matter, this Court notes that the factors to be considered in OAC 3301-73-21 are mandatory considerations only for revocations made under O.R.C. Section 3319.31(B)(1). Appellant's license was revoked for conduct that violated not only O.R.C. Section 3319.31(B)(1), but also O.R.C. Section 3319.31(B)(2)(a) and (b), the commission of a felony and the commission of an offense of violence. Appellant does not dispute that she was convicted of felony assault as a result of the incident with Student 1. Thus, the Board was not required to consider the factors set forth in OAC 3301-73-21 because Appellant's misconduct allowed the Board to take action under multiple statutory sections that did not require the consideration of mitigating factors.

Despite this, a review of the record demonstrates that the Board's hearing officer did in fact consider the mitigating factors. In his Report and Recommendation, the Hearing Officer stated that he considered all of the mandatory and optional factors set forth in OAC 3301-73-21 and discussed them in detail. Appellant's true argument appears to be that she disagrees with the sanction imposed by the Board, i.e., permanent revocation of her license. Such a disagreement does not lead to the conclusion that the Board's hearing officer failed to properly consider the evidence.

Appellant also contends that the Hearing Officer improperly excluded certain documentary evidence, which included personnel records of other Dayton Public School teachers disciplined by the school system. The transcript of the hearing demonstrates that the Hearing Officer reviewed the documents submitted by Appellant and ruled that Exhibits N, F, E and were inadmissible. Appellant did not object or make a proffer for the record. Without such, there is nothing in the record for this Court to review other than the ruling of the Hearing Officer which demonstrates that he considered the exhibits and found them to be irrelevant to Appellant's case.

Upon review of the record, this Court finds that the Board made proper findings of fact and conclusions of law, and further finds that the decision of the Board is supported by reliable, probative, and substantial evidence and is in accordance with the law.

Appellant's appeal is hereby OVERRULED.

III. CONCLUSION

Accordingly, the Appellant's Administrative Appeal from the Decision of the Ohio State Board of Education is hereby OVERRULED in its entirety. The Decision of the Ohio State Board of Education is AFFIRMED in its entirety.

This is a final appealable order, and there is no just cause for delay for purposes of Civil Rule 54. Pursuant to Appellate Rule 4, the party shall file a notice of appeal within thirty (30) days.

SO ORDERED:

JUDGE BARBARA P. GORMAN

The parties listed below were notified of this Entry through the electronic notification system of the Clerk of Court.

Byron L. Potts
Adam P. Bessler

Phyllis Treat, Bailiff (937) 225-4392 treatp@montcourt.org



General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Decision
Case Number: 2015 CV 01735
Case Title: GEORGIA B COX vs OHIO DEPARTMENT OF EDUCATION

So Ordered

Barbara Pegler Gorman