KATHERINE CURETON,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
MONTGOMERY COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 10-21

OPINION

INTRODUCTION

In this appeal, Appellant challenges the decision of the Montgomery County Board of Education (local board) to terminate her for misconduct in office, insubordination, and neglect of duty.

We transferred this case pursuant to COMAR 13A.01.05.07 to the Office of Administrative Hearings (OAH) for a hearing before an Administrative Law Judge (ALJ). The ALJ issued a decision proposing that the State Board affirm the local board's termination decision. The Appellant and the local board have filed exceptions to the ALJ's proposed decision.

Pursuant to COMAR 13A.01.05.07F, the Board scheduled oral argument in this case for April 27, 2010 at 9:30 a.m. The Board provided the parties ample notice of this date and time, more than one month in advance. On the morning of April 27, the Appellant contacted the State Board office to advise that she was running approximately 15 minutes late due to traffic. The State Board postponed oral argument until 9:45 a.m. in order to accommodate Appellant's late arrival. Thereafter, the Appellant again contacted the State Board office to request further delay of oral argument as she was still on her way to the State Board meeting. The State Board determined at that time that it would not postpone oral argument any longer and noted the Appellant's failure to appear. At its option, the local board then waived oral argument.

FACTUAL BACKGROUND

The ALJ and the local hearing examiner have done a thorough job setting forth the factual background in this case. Rather than repeat the lengthy history here, we refer to the Findings of Fact at pp. 15 – 28 of the ALJ's Proposed Decision, and the Statement of Facts at pp. 1 – 21 of the Hearing Examiner's Decision . The following is a brief synopsis of the facts.

The Appellant began her employment with Montgomery County Public Schools in 2004. (ALJ's Proposed Decision, p. 15). She has held the positions of counselor and teacher at various times. In April of 2006, the Appellant suffered injuries from her involvement in an automobile accident on a school-related trip. She was on leave from work for an extended period and received workers' compensation. (*Id.*).

The Appellant returned to work in March 2007, assigned as an eighth grade teacher at Martin Luther King, Jr. Middle School (MLK). (*Id.*, p.16). The Appellant had various performance issues while in that position including tardiness for work, leaving work early without authorization, failing to submit medical documentation for sick leave, failure to chaperone a school activity, refusing to check her school e-mail address and respond as required, having negative interactions with students, lack of planning or effective teaching, and poor classroom management. (*Id.*, pp. 14, 20; BOE Exh. C, pp. 5, 8). The situation with the Appellant deteriorated to the point where the Principal of MLK, Marc Cohen, was unable to effectively communicate with her.

The Appellant was transferred to a counselor position at Paint Branch High School beginning July 2007. At Paint Branch, the Appellant continued to have tardiness issues, failed to give prior notice when leaving work for appointments, had negative interactions with parents and students which resulted in requests for counseling changes, and had an overall lack of professionalism in her dealings with other people. (BOE Exh. C, pp. 11-14).

On April 24, 2008, Jeanette Dixon, Principal of Paint Branch, requested that Montgomery County Public Schools ("MCPS") take disciplinary action against the Appellant. (BOE Exh. 85). Based on the Appellant's problematic performance and work history, the local Superintendent recommended that the local board dismiss the Appellant on the grounds of insubordination, misconduct in office, and willful neglect of duty. The matter was referred to a hearing examiner who supported the superintendent's recommendation. (BOE Exh. C). The local board adopted the hearing examiner's decision and terminated the Appellant.

ALJ's PROPOSED DECISION

The Appellant appealed the local board's decision to the State Board. We transferred the matter to an ALJ for review.

The ALJ rejected the Appellant's claim that she was denied due process because she was not present at the August 15, 2008 *Loudermill* meeting conducted by the Superintendent's designee. The ALJ noted that two union representatives were there on Appellant's behalf, and they presented evidence and argument in support of the Appellant's case. In addition, the ALJ did not find that the Appellant's due process rights were violated when the local hearing examiner permitted the board to file a memorandum on the FMLA issue after the established filing deadline because the Appellant's representatives filed an additional memorandum on this matter after the local board's submission. Furthermore, the ALJ determined that there was no

due process violation based on the local board's failure to give the Appellant access to various documents because all of the requested documents were provided to the Appellant, admitted into evidence at the OAH hearing, and considered by the ALJ in making his decision.

As to the merits of the case, the ALJ has recommended that the State Board affirm the local board's decision to terminate the Appellant for insubordination, misconduct in office, and neglect of duty.

The ALJ found that he Appellant had engaged in misconduct in office based on the fact that the Appellant had numerous absences, late arrivals and early departures from school without justification or authorization. The Appellant's late arrivals went beyond the 10 minute grace period allowed by Principal Dixon as an accommodation for the drowsiness effects of the Appellant's medication. The ALJ stated:

> While working at Paint Branch under Principal Dixon, the Appellant called in late more than 30 times. There were over 70 instances when the Appellant arrived after 7:25 a.m., *i.e.* beyond the 15 minute grace period she requested. There were numerous times when she was later but did not call in. She was late 6 times because of car problems or traffic. There were 14 times when the appellant arrived at the school at 8:00 a.m. or later and several times when she arrived after 10:00 a.m. I believe that the Appellant abused the 10 minute grace period she was granted, and as I mentioned, the fact that the Appellant was not granted a 15 minute grace period as she requested is insignificant. The medical documentation presented by the Appellant does not demonstrate a medical condition that would cause the numerous late arrivals and early departures she had after returning to work.

(ALJ Proposed Decision, p. 40).

The ALJ determined that the Appellant committed insubordination by refusing to comply with directives from her school principals. Some examples of those insubordinate actions include the Appellant's failure to check daily and respond to e-mail messages within 48 hours, refusal to meet with school administrators, refusal to sign in upon arriving at school, refusal to sign up for chaperone duty, and failure to provide lesson plans. (ALJ Proposed Decision, pp. 41-44).

The ALJ also found evidence of neglect of duty based on the Appellant's actions which resulted in significant loss of instructional time for the students. The ALJ pointed to evidence of Appellant's lack of preparation and planning, lack of coordination with co-teachers, and failure to provide meaningful instruction. (ALJ's Proposed Decision, pp. 45-47).

The ALJ disagreed with the Appellant's claim that she was entitled to leave under the FMLA, and that the school system failed to provide her with notice of her FMLA rights in violation of the law. (ALJ's Proposed Decision at 47-48). The ALJ also found no credible evidence to support the Appellant's argument that her termination was a result of racial discrimination and as retaliation for filing a workers' compensation claim with the Equal Employment Opportunity Commission. (ALJ's Proposed Decision, pp. 48-49).

The ALJ rejected the local board's argument that the Appellant had engaged in misconduct or insubordination by failing to reimburse workers' compensation proceeds she received from the local board out of the State Farm settlement check paid to the Appellant (and the Montgomery County Self Insurance Fund) for her work related car accident. The ALJ believed that the Appellant did not comprehend the subrogation issues and that the Appellant believes that she is not under any obligation to repay the local board, despite being advised otherwise by the school system's representatives. The ALJ characterized the repayment of the money as a legal dispute over a subrogation issue between the Appellant and the school system, and not an issue that bears on the Appellant's fitness to teach. (ALJ Proposed Decision,. pp. 35-36).

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) and (2). The local board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05(F)(3).

The State Board referred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify, or remand the ALJ's Proposed Decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications, or amendments to the Proposed Decision. *See* Md. Code Ann., State Gov't § 10-216. In reviewing the ALJ's Proposed Decision, the State Board must give deference to the ALJ's demeanor based witness credibility findings unless there are strong reasons present that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

ANALYSIS

The record in this case is replete with examples of the Appellant's conduct that supports her termination from employment with MCPS. Except as discussed below, this Board adopts the ALJ's proposed decision recommending that the State Board uphold the Appellant's termination for misconduct, insubordination, and neglect of duty.

LOCAL BOARD'S EXCEPTIONS TO ALJ's PROPOSED DECISION

Misconduct

The local board maintains that the ALJ erred in determining that it was not misconduct when the Appellant failed to remit monies to the local board that she received in settlement of a work-related personal injury claim.

MCPS self insures workers' compensation claims and makes payments to the Montgomery County Self Insurance Fund ("SIF"). After the Appellant's work-related car accident, she received approximately $18,000 in workers' compensation benefits from the local board via the SIF. The Appellant received a monetary settlement through State Farm from the third party who caused the accident and entered into a release of all claims. State Farm issued a joint check in the amount of $2,100 to the Appellant and the SIF in settlement of claims arising from the accident. The Appellant cashed the joint check without the endorsement of the SIF. (Hearing Examiner Decision, pp. 26-27). Both State Farm and Gallagher Bassett Services, Inc., MCPS's Third Party Administrator for the workers' compensation claims, advised the Appellant that she had to reimburse the worker's compensation monies to the school system. Appellant refused. (*Id.*).

Under 9-902(e) of the Labor and Employment Article, an injured employee who receives workers' compensation payments and subsequently recovers damages from a third party who is liable for the employee's injuries, must reimburse the self-insured employer for compensation already paid or awarded and any amounts paid for medical services or any other purpose under Subtitle 6 of the Workers' Compensation Act. The employee is entitled to retain payments from the at-fault party that exceeds those payments. The employer retains a subrogation interest in the reimbursement of the workers' compensation funds that the employer paid under the Act that acts as a statutory lien on the proceeds. *See Podgurski v. Onebeacon Insurance Co.*, 374 Md. 133, 140, 154 (2003). The same concept is embodied in the collective bargaining agreement between the Montgomery County Education Association ("MCEA") and the local board. (BOE Exh. 105).

The local board argues that the Appellant's failure to remit the money to the local board despite being advised to do so constitutes misconduct.

The Court of Appeals in *Resetar v. State Bd. of Educ.*, 284 Md. 537, 560-561 (1979) interpreted the term "misconduct":

> The word is sufficiently comprehensive to include misfeasance as well as malfeasance, and as applied to professional people it includes unprofessional acts even though such acts are not inherently wrongful. Whether a particular course of conduct will be regarded as misconduct is to be determined from the nature of

the conduct and not from its consequences.

The Court also noted that the teacher's conduct must bear on the teacher's fitness to teach in order to constitute misconduct. *Resetar*, 284 Md. 561, *citing Wright v. Superintending Sch. Comm., City of Portland*, 331 A.2d 640 (ME. 1975). *See also Kinsey v. Montgomery County Bd. of Educ.*, 5 Op. MSBE 287, 288 (1989) (To constitute "misconduct in office" a teacher must engage in unprofessional conduct "which bears upon a teacher's fitness to teach" such that it "undermines his future classroom performance and overall impact on his students).

We agree with the ALJ that this is a legal dispute between the parties that does not bear upon the Appellant's fitness to teach. It has been the Appellant's position that the check from State Farm was for bodily injury only, and not for medical benefits or wages paid by workers' compensation. (BOE Exh. C, p. 10). Moreover, the Appellant's refusal to return the money does not undermine her performance as a school counselor or impact her students in any way.

Two of the cases cited by the local board to support its argument are clearly not on point with the case before us. *In Richardson v. New Bd. of Sch. Comm'rs of Baltimore City*, MSBE Op. No. 99-20 (1999), the teacher was found guilty of misconduct for mishandling fund-raising proceeds that resulted in missing monies. In *Turner v. Somerset County Bd. of Educ.*, 4 Op. MSBE 182 (1985), the appellant, a Coordinator of the Multi-Service Community Center, was found guilty of misconduct and willful neglect of duty for his mishandling school system funds with which he was entrusted. In both cases, handling the money was a related function of the appellants' jobs. Their failure to appropriately carry out that job function resulted in a finding of misconduct. The requirement that the Appellant remit monies to the local board for payment to the SIF in this case is not part of her job function.

Nor do we believe that *Smith v. Somerset County Bd. of Educ.*, MSBE Op. No. 00-53 (2000), supports the local board's claim. In *Smith*, the appellant, a school psychologist, did not work the additional 20 days required of 11 month employees, yet he accepted payment of wages for all 20 days. The ALJ found that the appellant had worked only 11 of the required days. In response to the appellant's argument that his failure to work the full 20 days was not misconduct because there was no impact on the school once he returned the money, the ALJ explained that "[a]ccepting a salary for work that was never performed is dishonest and impacts the school system as such actions affect the credibility and integrity of the school system." *Smith* at 9-10. Thus, it was the appellant's failure to work the required days that was the basis for the misconduct finding, not merely the acceptance of funds for which he was not legally entitled.

In the case at hand, the misconduct finding concerning the repayment of workers' compensation funds is purely confined to the Appellant's acceptance of money owed the SIF and her failure to remit that money to the local board. There is no link between that action and the Appellant's job requirements. We agree with the ALJ's findings on this issue.

Insubordination

The local board also maintains that the ALJ erred by concluding that Appellant's failure to reimburse the money to the SIF did not amount to insubordination. The local board explains that the local board's agent advised the Appellant both orally and in writing to remit the proceeds of her settlement to the SIF, and that she refused.

We reiterate what we stated above. We agree with the ALJ that this is a genuine legal dispute between the Appellant and the local board over workers' compensation monies stemming from a work related car accident. As presented here, such a dispute cannot be used as a basis for dismissal for insubordination.

APPELLANT'S EXCEPTIONS TO ALJ"S PROPOSED DECISION

The Appellant sets forth numerous exceptions to the ALJ's proposed decision. We have categorized the exceptions as either factual issues or legal issues.

Factual Issues

The Appellant maintains that the ALJ erroneously stated in the first paragraph of the Proposed Decision that her "most recent position was as a school counselor at Montgomery Blair High School." (ALJ's Proposed Decision, p.1). The Appellant is correct. Her most recent position was as a school counselor at Paint Branch High School. (BOE Exh. C, p. 10).

The Appellant takes exception to Finding of Fact #1 which states that the Appellant earned her Masters of Education degree from Wentworth University. (ALJ Proposed Decision, p.15). The local board concedes that this information appears to be the result of a transcription error in transcript of proceedings before the local board's hearing examiner. (T. 301). The Appellant earned her Masters of Education from Winthrop University.

The Appellant takes exception to Finding of Fact #10 which states that during Principal Cohen's initial meeting with the Appellant in March 2007, "the Appellant expressed that she did not want to be teaching the eighth grade." (Proposed Decision, p. 16). The Appellant denies making this statement. Principal Cohen testified, however, that the Appellant told him that she wanted to be in a counseling position and not a teaching position. (T. 118, 131). Both the ALJ and the local hearing examiner credited Principal Cohen's testimony, finding it to be credible. (ALJ's Proposed Decision, p. 16; Hearing Examiner's Decision, p. 4).

The Appellant takes issue with a portion of Finding of Fact #26 which states as follows:

> On May 3, 2007, Larry Bowers, Chief operating Officer for MCPS, responded to the Appellant's April 18, 2007 request for advance

> leave. The request for advanced personal leave was denied because the union contract did not provide for such an advance. The request for advanced sick leave was denied because the Appellant already had a negative balance of 48 hours of sick leave.
> . . .

(ALJ Proposed Decision, p. 21). The Appellant maintains that the request for advance personal illness leave was denied by Mr. Bowers "because there was a plot in place to terminate the [Appellant] at the end of the following school year as indicated by the evidence", and not because of limitations in the MCEA Collective Bargaining Agreement. The Appellant did not appeal the denial of advance sick leave, thereby waiving her right to appeal the basis of the denial in this appeal to the State Board.

The Appellant disagrees with Finding of Fact #27 which states that "[o]n May 4, 2007, Cohen directed the Appellant to meet with Tami Conley, Staff Development Teacher, and Gabriella Grayson, Student Support Specialist. The Appellant failed to do this." The Appellant claims that she met with Ms. Conley on April 26, 2007, registered for a professional development training scheduled in late May 2007, and received a teacher reference manual. The Appellant does not cite to any evidence in the record to support this exception.

The Appellant takes exception to Finding of Fact #28 which states "[o]n May 7, 2007, the Appellant was not in school, but she failed to notify the substitute system that she would be out. She also failed to leave any lesson plans for this day." The Appellant asserts that she was in school until 1:30 that day and that she submitted a one hour leave slip to Principal Randy Gruber, who signed and authorized the Appellant's leave for the remainder of the day. Based on the record, it appears that the ALJ got the substance of the Finding correct but cited the incorrect date. Instead of May 7, the date should read May 8, 2007. (BOE Exhs. 36, 37, 42).

The Appellant takes Exception to Finding of Fact #38 which states as follows:

> For the 2007-2008 school year, the Appellant was assigned as a Counselor at Paint Branch High School (Paint Branch). On July 1, 2007, prior to the beginning of school, the Appellant informed Jeanette Dixon, the Principal, that she, the Appellant, needed flexibility in arriving at school in the mornings due to drowsiness from her medication. She presented a copy of Dr. Kilgore's note of April 30, 2007 that she had previously presented at MLK. By a letter dated June 4, 2007, Dixon acknowledged the Appellant's request for a flexible arrival time and suggested to the Appellant that she take her medication 15 minutes earlier in the evening to compensate for the drowsiness in the morning. Dixon also informed the Appellant that Paint Branch's work hours were from 7:10a.m. to 2:40 p.m. Dixon granted the Appellant a ten minute grace period for arriving at Paint Branch in the mornings.

The Appellant states in her exception that "[o]n approximately May 30, 2007, the Appellant while out of (sic) leave without pay for the remainder of the 2006-07 school year was contacted by the Principal Jeanette Dixon to come to Paint Branch High School for a meeting on June 1, 2007." Although the Appellant provides no explanation for this statement, it appears that she is seeking to provide additional information to the Finding of Fact rather than challenging the accuracy of the Finding. We do not see any relevant reason to add this information to the Finding, nor has the Appellant provided any reason to do so.

The Appellant takes exception to Finding of Fact #39 which states as follows:

> Being somewhat aware of the difficulties encountered at MLK, Dixon instructed her staff to retain copies of all correspondence with the Appellant and to keep a log of the times when the Appellant arrived at school or was absent. For the period between August 13, 2007 and June 27, 2008, the log shows more than 45 times when the Appellant was late in reporting for work, i.e. failing to report by 7:20 a.m. (7:10 a.m. start time plus 10 minutes grace period). Many of the Appellant's late arrivals were beyond 7:25 a.m., the time when classes started. The log also indicates numerous absences for illness, doctor's appointments for herself and her daughter, and for a death in the family.

The Appellant's exception states the following:

> Jeanette Dixon informed the Appellant that she had read the Appellant's file in the Office of Human Resources and informed the Appellant that she (Dixon) held a close relationship with Susan Marks, Associate Superintendent of Human Resources. Jeanette also informed the Appellant that the Appellant was not well thought of by the Montgomery County Board of Education for filing the EEOC charge of April 27, 2007.

The Appellant has failed to provide any explanation why her comments here are relevant to the Finding.

The Appellant takes exception to Finding of Fact #53. Finding of Fact #53 states "On July 2, 2008, the Appellant again requested advancement of sick leave, this time for the period June 26, 2008 through July 11, 2008. Larry Bowers denied the request and informed the Appellant that she would have to take leave without pay or personal leave." (ALJ's Proposed Decision, p. 26).

The Appellant denies that she requested advancement of sick leave on July 2. She states:

> On July 2, 2008 the Appellant didn't request an advancement of sick leave, personal illness leave of 80 hours had been granted to the Appellant effective July 1, 2008. Personal illness hours were used July 1 through July 11, 2008. The Appellant returned to work at Paint Branch High School as School Counselor July 14, 2008 and worked through August 11, 2008.

(App's. Exceptions at 2).

The Finding of Fact is partially correct. On July 2, 2008, the Appellant completed a form requesting personal illness leave for the period of June 26 through July 11, 2008. (BOE Exh. 96). The local board explains, however, that the Appellant was automatically advanced 80 hours of unearned personal illness leave on July 1, 2008, that she returned to work as a counselor at Paint Branch on July 14, 2008, and then ceased working after August 11, 2008. (Local Board Response at 5). Although the documents clarifying this Finding are not a part of the record in this case, the parties seem to agree on these additional facts. Nonetheless, given that the second sentence of the Finding is not necessary to determining the issues in the appeal, we would delete that sentence from the Finding.

The Appellant takes exception to the statement below made by the ALJ in the Proposed Decision. (We have provided the entire paragraph to place the statement in context. The statement is underlined and in bold print).

> **While working under Principal Cohen, the Appellant was granted a grace period for arriving late.** In spite of this, she frequently arrived beyond the grace period. Cohen counseled the Appellant on several occasions concerning her tardiness as well as her early departures without authorizations, all to no avail as the late arrivals continued.

(ALJ's Proposed Decision, pp. 37-38). The Appellant asserts that Principal Cohen never granted her a grace period, despite her request to do so. (Exceptions at 2).

The Appellant is correct that Principal Cohen did not provide her a grace period. It was Principal Dixon who provided the Appellant a ten minute grace period for arriving late in the mornings. The Appellant did not submit her request for a flexible arrival time to Principal Cohen until May 1, 2007. (BOE Exhs. 32, 33). A few days later, the Appellant went out on leave and did not return to MLK for the remainder of the school year. (BOE Exhs. 38, 39). Cohen never acted on the request.

This fact, however, does not discount the rest of the ALJ's paragraph. Prior to May 1, Principal Cohen had issued a memorandum admonishing the Appellant for arriving late to work. He stated:

> In the April 12, 2007 memorandum, you were asked to notify the office in advance any day that you were going to arrive after the staff duty day begins (7:25 am). Your lateness to work continues to be a concern. You have arrived to work later than 7:25 many days since you started with us on March 13, 2007, sometimes requesting leave, other times, not; sometimes informing us in advance, sometimes, not. This lateness has translated into significant loss of instructional time for your first period students. In the memorandum, I directed you to provide documentation of the medical necessity of this chronic lateness. I am concerned for the students in your class that you have been wither unwilling or unable to provide them instruction during the entire class period each day. Please be sure to submit this medical documentation by Friday, April 27, 2007.

(BOE Exh. 31). Principal Cohen also testified that the Appellant was frequently late for classes, not just in the morning, but during the duty. (T. 81-82).

Given these facts, we would change the paragraph to the following:

> While working under Principal Cohen, the Appellant frequently arrived late to work, resulting in a loss of instructional time to students in her first period class. Cohen counseled the Appellant on several occasions concerning her tardiness as well as her early departures without authorizations, all to no avail as the late arrivals continued.

Legal Issues

The Appellant objects to the ALJ's use of evidence introduced by the local board during the evidentiary hearing that was not available for her review in her personnel file as of October 11, 2007. She alleges that she was misled as to the contents of her file in an October 11, 2007 e-mail exchange with Ms. Ann Kamenstein. The Appellant seeks to have a large portion of the record struck from the case consisting of local board exhibits 11 – 37 and 40 – 95. The Appellant failed to object to the admission of this evidence during the hearings before the local board and the ALJ, thereby waiving the issue.

The Appellant maintains that the school system violated the FMLA and that it had a duty to investigate her eligibility for leave under the Family Medical Leave Act (FMLA) or to notify her of eligibility for FMLA leave.

This Board recently held that an appeal to the State Board is not the proper venue in which to raise claims that an employer violated FMLA provisions. Rather, the FMLA prescribes

the sole enforcement mechanisms for such violations. *See Crookshanks v. Baltimore County Bd. of Educ.*, MSBE Op. No. 09-41. Thus, it is inappropriate for the State Board to consider the Appellant's FMLA claims.

The Appellant takes exception to the ALJ's decision that there is no credible evidence to support a claim of racial discrimination. The Appellant made no allegations of discrimination based on race in the appeal before the local board. In fact, during the hearing before the hearing examiner, when the superintendent's counsel questioned the Appellant about complaints that she filed with the EEOC, Appellant's attorney advised her not to respond to the questions and stated that the basis for the EEOC charges were separate and distinct from the issues before the hearing examiner. (T. 407).

The State Board has consistently declined to address issues that have not first been presented to the local board for review. *See Hart v. Bd. of Educ. of St. Mary's County*, 7 Op. MSBE 740 (1997) (issue of age based discrimination was waived on appeal due to the appellant's failure to raise it before the local board. Thus, the Appellant has waived her right to raise the issue of discrimination before the State Board.

CONCLUSION

We agree with the ALJ's conclusions in this case:

> [T]he Local Board has presented substantial evidence of the Appellant's insubordination, misconduct, and neglect of duties. The evidence before me is overwhelming that the school system went well beyond what was required (or even prudent) in not terminating the Appellant at the end of her year at MLK. Her actions there were obviously insubordinate and her attitude was hostile, uncooperative, disinterested and indifferent and the school system would have been justified in terminating her at that stage.
>
> The Appellant's actions continued and worsened while working at Paint Branch. Again the Local Board has presented overwhelming evidence that the Appellant was habitually late, failed to call in as required, refused to sign in and had an uncooperative, arrogant, even demeaning attitude.

(ALJ's Proposed Decision, p. 49). Accordingly, we adopt the proposed decision of the ALJ with the modifications set forth herein, and affirm the termination of the Appellant from her position with MCPS.

James H. DeGraffenreidt, Jr.
President

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Vice President

Mary Kay Finan

S. James Gates, Jr.

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Sayed M. Naved

Madhu Sidhu

Guffrie M. Smith, Jr.

Donna Hill Staton

Ivan C.A. Walks

ABSENT
Kate Walsh

May 25, 2010

KATHERINE CURETON	*	BEFORE D. HARRISON PRATT,
Appellant	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE
MONTGOMERY COUNTY BOARD	*	OF ADMINISTRATIVE HEARINGS
OF EDUCATION	*	OAH NO.: MSDE-BE-01-09-26767
	*	

* * * * * * * * * * * * *

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 August 15, 2008, the Superintendent of Montgomery County Public Schools (MCPS) notified Katherine Cureton (Appellant) that he was recommending to the Montgomery County Board of Education (Local Board) that she be terminated. At the time of this notification, the Appellant's most recent position was as a school counselor at Montgomery Blair High School (Montgomery Blair). The Appellant requested a hearing and a hearing was held on December 2 and December 3, 2008 before a Hearing Examiner assigned by the Local Board. On February 16, 2009, the Hearing Examiner issued a written decision upholding the Superintendent's recommendation that the Appellant be terminated. On April 20, 2009, the Local Board heard oral arguments from the parties. On May 12, 2009, the Local Board issued a written decision upholding the

Superintendent's recommendation and terminating the Appellant. On June 3, 2009, the Appellant filed an appeal with the Maryland State Board of Education (State Board) which forwarded the case to the Office of Administrative Hearings (OAH) on July 21, 2009. Md. Code Ann., Educ. § 6-202(a)(4) and § 6-203 (2008). I conducted a hearing on October 5, 2009, at the offices of the Local Board, 850 Hungerford Drive in Rockville, Maryland. The Appellant was present at the hearing and represented herself. Eric Brousaides, Esquire, represented the MCPS.

Procedure in this case is governed by the provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009); COMAR 13A.01.05; COMAR 28.02.01.

In transferring this case to the OAH for a hearing the State Board directed that I submit proposed findings of fact, conclusions of law and a recommendation concerning the Appellant's termination, all in accordance with Code of Maryland Regulations 13A.01.05.07E.

ISSUE

The issue is whether the Appellant's termination was proper.

SUMMARY OF THE EVIDENCE

Exhibits

Upon the filing of an appeal to the State Board, the entire record from the hearing before the Hearing Examiner and the Local Board was forwarded to the State Board. The State Board then forwarded this case, along with the entire hearing record to the OAH. The entire hearing record was admitted into evidence without objection.

The following exhibits were admitted on behalf of the Local Board:

BOE Ex. A Letter from the MCPS Superintendent to the Appellant, August 15, 2008

(recommendation for termination).

BOE Ex. B Decision of the Hearing Examiner Gregory A. Szoka, February 16, 2009.

BOE Ex. C Superintendent's Closing Memorandum, January 16, 2009.

BOE Ex. D Administrative record with the following documents attached:

Letter from Attorney Brousaides to the Hearing Examiner concerning the Appellant's Family and Medical Leave Act (FMLA) claim, February 13, 2009. (This document was submitted to the Hearing Examiner after the end of the hearing and after the Local Board's Closing Memorandum. It does not have an exhibit number)

Letter from the Appellant's representative to the Hearing Examiner, February 16, 2009, in response to the letter from Attorney Brousaides (above). (Also submitted after the end of the hearing and it does not have an exhibit number)..

BOE Ex. #1 Letter from Susan Sloan, Senior Specialist, Leave Administration and Workers' Compensation, to the Appellant, June 20, 2006.

BOE Ex. #2 MCPS Return to Work Evaluation, September 19, 2006.

BOE Ex. #3 Letter from Linda Johnson, Staffing Specialist, to the Appellant, October 26, 2006, with report by Dr. Robert Smith, September 19, 2006, attached.

BOE Ex. #4 Memorandum from Heather Dublinske, October 26, 2006.

BOE Ex. #5 Email from the Appellant to A. Kamenstein, declining 5th grade teaching position, October 30, 2006.

BOE Ex. #6 Letter from Linda Johnson, Staffing Specialist, to the Appellant, January 19, 2007.

BOE Ex. #7 Letter from the Appellant to Linda Johnson, declining a position at Harmony Hills.

BOE Ex. #8 Letter from the Appellant to Linda Johnson, February 28, 2007.

BOE Ex. #9 Facsimile transmittal from the Spine Center to the Appellant with sick slip attached, March 7, 2009.

BOE Ex. #10 Letter from Samuel Daniel, Office of Human Resources, to the Appellant, assigning her to an 8th grade teaching position, March 12, 2007.

BOE Ex. #11 Memo from Mike Karel to Mr. Gruber concerning the Appellant's conduct, March 21, 2007.

BOE Ex. #12 Memo from Marc Cohen to the Appellant concerning leaving early and arriving late, April 11, 2007.

BOE Ex. #13 Memo from Randy Gruber to the Appellant, April 11, 2007, concerning an informal observation on March 22, 2007.

BOE Ex. #14 Memo from Sally MacGregor to Marc Cohen concerning the Appellant missing class, April 11, 2007.

BOE Ex. #14A Memo (letter of concern) from Marc Cohen to the Appellant, April 12, 2007.

BOE Ex. #15 Memo from Cynthia Kerr to Sally MacGregor, concerning the Appellant's late arrival, April 12, 2007.

BOE Ex. #16 Memo from Mike Karel to Marc Cohen concerning the Appellant's conduct while teaching, April 12, 2007.

BOE Ex. #17 Email messages between the Appellant, Elaine Burks, and Marc Cohen, April 16 – April 17, 2007.

BOE Ex. #18 Messages between Gabriella Grayson, the Appellant, and Marc Cohen, April 17, 2007.

BOE Ex. #19 Letter from student Samantha to Marc Cohen, April 17, 2007.

BOE Ex. #20 Letter from student Shaba to Mr. Cohen, undated.

BOE Ex. #21 Letter from student Teresa to Marc Cohen, undated.

BOE Ex. #22 Petition from various students, undated.

BOE Ex. #23 Post observation conference report by Gabriella Grayson, April 19, 2007.

BOE Es. #24 Memo from Mike Karel to Marc Cohen concerning the

Appellant's history class, April 17, 2007.

BOE Ex. #25 Note from Sally MacGregor to Marc Cohen concerning Appellant's lateness, April 17, 2007.

BOE Ex. #26 Messages from Sara Harper to Sally MacGregor, April 17, 2007.

BOE Ex. #27 Messages between Sally MacGregor, Marc Cohen, and Gabriella Grayson, April 16, 2007.

BOE Ex. #28 Messages between Elaine Burks, the Appellant, and Marc Cohen, April 16 – April 17, 2007.

BOE Ex. #29 Memo from Gabriella Grayson to the Appellant, April 16, 2007.

BOE Ex. #30 Memo from Mike Karel to Marc Cohen, April 18, 2007.

BOE Ex. #31 Memo for the record to the Appellant from Marc Cohen, April 23, 2007.

BOE Ex. #32 Letter from the appellant to Marc Cohen requesting flexible arrival time, April 30, 2007.

BOE Ex. #33 Note from Dr. Elizabeth Kilgore, National Rehabilitation Hospital, April 30, 2007.

BOE Ex. #34 Letter from the Appellant to Larry Bowers, Chief Operations Officer, requesting advance leave without pay, with summary of leave taken attached, May 3, 2007.

BOE Ex. #35 Message from Marc Cohen to the Appellant concerning long term leave, May 8, 2007.

BOE Ex. #36 Messages between Marc Cohen, the Appellant, and Elaine Burks, May 5 – May 8, 2007.

BOE Ex. #37 Messages between Marc Cohen, the Appellant, Sally MacGregor, and Susan Sloan, April 17, - May 10, 2007.

BOE Ex. #38 Appellant's leave request, with doctor's excuse slip attached, May 10, 2007.

BOE Ex. #39 Appellant's leave request, with doctor's certificate attached,

May 15, 2007.

BOE Ex. #40 Memo from Marc Cohen to Raymond Frappolli and Jane Woodburn concerning the Appellant not opening emails, May 10, 2007.

BOE Ex. #41 Memo from Marc Cohen to the Appellant, concerning absences and with directive to provide documentation, May 10, 2007.

BOE Ex. #42 Letter of reprimand from Marc Cohen to the Appellant, May 14, 2007.

BOE Ex. #43 Letter of reprimand from Marc Cohen to the Appellant, May 14, 2007 (corrected copy).

BOE Ex. #44 Letter of reprimand from Marc Cohen to the Appellant, May 14, 2007 (corrected copy), May 14, 2007.

BOE Ex. #45 Letter from Jeanette Dixon to the Appellant concerning taking medication earlier, June 4, 2007.

BOE Ex. #46 List of times when the Appellant arrived at or left work, August 13, 2007 – June 27, 2008.

BOE Ex. #47 Messages between Jeanette Dixon and Darlene Hairston concerning request by parent for change of Counselor, with parent's letter attached, May 21, 2007.

BOE Ex. #48 Messages between Darlene Hairston, the Appellant, and Laura Fary, October 26, 2007.

BOE Ex. #49 Messages between the Appellant, teaching team members, and Teresa Shatzer, concerning a new student, November 2, 2007.

BOE Ex. #50 Message from Cheri Lavorgna to Jeanette Dixon concerning requirements for doctor's notes, November 14, 2007.

BOE Ex. #51 Messages between the Appellant and Susanne DeGraba, November 14, 2007.

BOE Ex. #52 Letter from Susanne DeGraba to the Appellant requiring medical statements, November 17, 2007.

BOE Ex. #53 Messages between the Appellant and Darlene Hairston concerning letters of recommendation, November 28 – 29, 2007.

BOE Ex. #54 Messages between the Appellant and Darlene Hairston concerning a message given to a student aide, December 5, 2007.

BOE Ex. #55 Messages between the Appellant and Jeanette Dixon directing the Appellant to be at work every day at 7:20 a.m., January 8 - January 28, 2008.

BOE Ex. #56 Memo from Jeanette Dixon to the Appellant concerning arrival at work and student's request for change in Counselor, January 28, 2008.

BOE Ex. #57 Messages between the Appellant and Jeanette Dixon, January 29, 2008.

BOE Ex. #58 Messages between the Appellant, Amber Perkins, Darlene Hairston, and John Haas, February 13 – February 14, 2008.

BOE Ex. #59 Messages between the Appellant, Walter Hardy, and team teachers concerning a new student, February 29 – March 3, 2008.

BOE Ex. #60 Letter of reprimand, March 11, 2008.

BOE Ex. #61 Messages between Susan Draper, the Appellant, Cheryl Lasota, and Jeanette Dixon, March 12, 2008.

BOE Ex. #62 Messages between Christine Blakely, Darlene Hairston, and the Appellant, March 31, 2008.

BOE Ex. #63 Messages between Jamal Miller, the Appellant, and Jeanette Dixon, March 31 – April 1, 2008.

BOE Ex. #64 Letter of reprimand for insubordination from Jeanette Dixon, April 30, 2008.

BOE Ex. #65 Letter of reprimand from Jeanette Dixon, April 7, 2008.

BOE Ex. #66 Messages between the Appellant and Jeanette Dixon, April 8, 2008.

BOE Ex. #67 Letter of reprimand from Jeanette Dixon, April 8, 2008.

BOE Ex. #68 Letter of reprimand from Jeanette Dixon, April 9, 2008.

BOE Ex. #69 Letter of reprimand from Jeanette Dixon, April 10, 2008.

BOE Ex. #70 Message from Jeanette Dixon to the Appellant, April 10, 2008.

BOE Ex. #71 Messages between the Appellant and Jeanette Dixon, April 10, 2008.

BOE Ex. #72 Messages between the Appellant and Jeanette Dixon, April 10, 2008.

BOE Ex. #73 Messages between Laura Fary, the Appellant, and Jeanette Dixon, April 10 -11, 2008.

BOE Ex. #74 Messages between the Appellant and Jeanette Dixon, April 10 – 11, 2008.

BOE Ex. #75 Letter of reprimand from Jeanette Dixon, April 14, 2008.

BOE Ex. #76 Letter of reprimand from Jeanette Dixon, April 15, 2008.

BOE Ex. #77 Letter of reprimand from Jeanette Dixon, April 18, 2008.

BOE Ex. #78 The Appellant's response to reprimand of April 14, 2008.

BOE Ex. #79 Letter of reprimand from Jeanette Dixon, April 18, 2008.

BOE Ex. #80 Letter of reprimand from Jeanette Dixon, April 21, 2008.

BOE Ex. #81 The Appellant's response to the reprimand of April 21, 2008.

BOE Ex. #82 Memo from Jeanette Dixon to the Appellant concerning signing in, April 21, 2008.

BOE Ex. #83 The Appellant's response to reprimand of April 21, 2008.

BOE Ex. #84 Appellant's memo to Jeanette Dixon concerning signing in, April 21, 2008.

BOE Ex. #85 Memo from Jeanette Dixon to Susan Marcs, Associate Superintendent, recommending disciplinary action, April 24,

2008.

BOE Ex. #86 Messages between Darlene Hairston, Ryan McCamon, and the Appellant concerning student AJ, April 23 – 24, 2008.

BOE Ex. 87 Messages between Ryan McCamon and Jeanette Dixon concerning the Appellant's conduct at the Rosa Parks House, May 1, 2008.

BOE Ex. #88 Messages between the Appellant, a parent, and Cheri Lasota concerning a parent conference, April 18 – May 6, 2008.

BOE Ex. #89 Messages between Cheryl Lasota and the Appellant concerning administering the High School Assessment (HSA) test, May 29, 2008.

BOE Ex. #90 Messages between the Appellant and Jeanette Dixon concerning a change in house counselors, May 30, 2008.

BOE Ex. #91 Message from Jeanette Dixon to the Appellant concerning lunch and cell phone use, undated.

BOE Ex. #92 Memo from Darlene Hairston to Jeanette Dixon concerning lining up students, June 4, 2008.

BOE Ex. #93 Memo to the file by Jeanette Dixon, June 4, 2008.

BOE Ex. #94 Memo from Laura Fary to the Appellant requesting leave slip, June 5, 2008.

BOE Ex. #95 Messages between the Appellant and Jeanette Dixon, June 4 – 5, 2008.

BOE Ex. #96 Leave request with doctor's certificate, July 2, 2008.

BOE Ex. #97 Letter from Dr. Frieda Lacey, deputy Superintendent, to the Appellant concerning recommendation for dismissal, July 3, 2008.

BOE Ex. #98 Letter from Ann Kamenstein to the Appellant, July 10, 2008.

BOE Ex. #99 Letter from the Appellant to Dr. Lacey, August 11, 2008.

BOE Ex. #100 Letter from Ann Kamenstein to the Appellant, August 11, 2008.

BOE Ex. #101 Leave request, August 12, 2008.

BOE Ex. #102 Letter from the appellant to Ann Kamenstein, August 13, 2008.

BOE Ex. #103 Letter from Jerry Weast, Superintendent, to the Appellant concerning recommendation for termination, August 15, 2008.

BOE Ex. #104 Letter from State Farm Insurance to Montgomery County Self Insurance Fund, with third party insurance claim documents, affidavits and claim file documents attached, July 15, 2008.

BOE Ex. #105 Portion of the contract between MCPS and the Montgomery County Education Association for the 2005-2007 school years.

BOE Ex. #106 Letter from the Appellant to Ann Kamenstein, requesting schedule modification, undated (there is a fax date stamp at the top indicating May 30, 2008).

BOE Ex. #107 Letter from Ann Kamenstein to the Appellant denying the request for schedule modification, July 23, 2008.

BOE Ex. #108 Decision of Hearing Officer Stan Schaub concerning the Appellant's administrative complaint, September 16, 2008, with letter from Elizabeth Strubel, director of School Performance and the complaint attached.

BOE Ex. #109 Letter from State Farm Insurance to the Montgomery County Self Insurance Fund, May 9, 2007.

The following documents were admitted at the hearing before the Local Board Hearing Examiner on behalf of the Appellant (part of BOE Ex. D):[1]

App. Ex. #1A Appellant's evaluation, June 7, 2005.

[1] The marking of these exhibits is not consistent. However, most are identified as "Union" exhibits. At the time of the hearing before the Local Board's Hearing Examiner, the Appellant was represented by persons from the

App. Ex. #1B Same as 1A, above.

App. Ex. #1B Two documents are marked as 1B. Appellant's evaluation, June 14, 2006.

App. Ex. #2 Letter from the Appellant to Ann Kamenstein, requesting accommodation for the remainder of the 2007-2008 school year, undated.

App. Ex. #3 Sick slip from Dr. Elizabeth Kilgore of the National Rehabilitation Hospital, April 3, 2007.

App. Ex. #4 Letter from the Appellant to Larry Bowers, requesting an advance of personal leave, April 18, 2007.

App. Ex. #5 Letter from the Appellant to Marc Cohen requesting flexible arrival time, April 30, 2007, with email from the Appellant to Marc Cohen, April 30, 2007, attached.

App. Ex. #6 Letter from Larry Bowers to the Appellant denying her request for advance leave, May 3, 2007.

App. Ex. #7 Sick slip from Dr. Galen Hallick, May 9, 2007.

App. Ex. #8 Letter from Larry Bowers to the Appellant, August 27, 2007.

App. Ex. #9 Letter from Superintendent Jerry Weast to the Appellant, September 10, 2007.

App. Ex. #10 Email message from Jeanette Dixon to the Appellant, with Appellant's response, March 31, 2008.

App. Ex. #11 Email messages between the Appellant and Jeanette Dixon, concerning signing in, April 10, 2008.

App. Ex. #12 Email messages between the Appellant and Susan Marks, August 1 – August 4, 2008.

App. Ex. #13 Letter from Dr. Lester Zuckerman, August 11, 2008, with excuse slip attached.

App. Ex. #14 Excuse slip from Dr. Zuckerman, August 18, 2008.

App. Ex. #15A Copy of the Appellant's paystub for January 18, 2008.

App. Ex. #15B Copy of the Appellant's paystub for February 1, 2008.

App. Ex. #16A Copy of the appellant's paystub for March 28, 2008.

App. Ex. #16B Copy of the appellant's paystub for April 11, 2008.

App. Ex. #16C Copy of the appellant's paystub for April 25, 2008.

App. Ex. #16D Copy of the Appellant's paystub for May 9, 2008.

App. Ex. #17 Letter of concern from Marc Cohen to the Appellant, April 23, 2007.

App. Ex. #18 Memo from the Appellant to Marc Cohen, April 24, 2007.

App. Ex. #19 Memo from the Appellant to Marc Cohen, May 1, 2007.

App. Ex. #20 Letter of reprimand from Marc Cohen to the Appellant, May 14, 2007.

App. Ex. #20B Letter of reprimand from Marc Cohen to the Appellant, corrected copy, May 14, 2007.

App. Ex. #21 Letter from the Appellant to Marc Cohen, May 15, 2007.

App. Ex. #22 Memo from the Appellant to Jeanette Dixon, March 30, 2008.

App. Ex. #23 Memo (reprimand) from Jeanette Dixon to the Appellant, April 3, 2008.

App. Ex. #24 Memo from the Appellant to Jeanette Dixon, April 7, 2008.

App. Ex. #25 Memo (reprimand) from Jeanette Dixon to the Appellant, April 7, 2008.

App. Ex. #26 Memo (reprimand) from Jeanette Dixon to the Appellant, April 8, 2008.

App. Ex. #27 Memo from the Appellant to Jeanette Dixon, April 8, 2008.

App. Ex. #28 Memo (reprimand) from Jeanette Dixon to the Appellant, April 9, 2008.

App. Ex. #29 Memo from the Appellant to Jeanette Dixon, April 10, 2008.

App. Ex. #30 Memo (reprimand) from Jeanette Dixon to the Appellant, April 14, 2008.

App. Ex. #31 Memo from the Appellant to Jeanette Dixon, April 14, 2008.

App. Ex. #32 Memo (reprimand) from Jeanette Dixon to the Appellant, April 18, 2008.

App. Ex. #33 Memo from the Appellant to Jeanette Dixon, undated, referring to memo of April 18, 2008 (App. Ex. #32 above).

App. Ex. #34 Memo (reprimand concerning involving a student in a personnel matter) from Jeanette Dixon to the Appellant, April 18, 2008.

App. Ex. #35 Memo from the Appellant to Jeanette Dixon, undated, responding to memo from Jeanette Dixon of April 18, 2008 (involving student, App. Ex. #34 above).

App. Ex. #36 Memo (reprimand) from Jeanette Dixon to the Appellant, April 21, 2008.

App. Ex. #37 Memo from the Appellant to Jeanette Dixon, April 21, 2008.

App. Ex. #38 Memo from Jeannette Dixon to the Appellant, April 21, 2008.

App. Ex. #39 Memo from the Appellant to Jeanette Dixon, April 21, 2008.

App. Ex. #40 Memo from Jeanette Dixon to Susan Marcs, Associate Superintendent, requesting disciplinary action, April 24, 2008.

App. Ex. #41 Letter from Jerry Weast, Superintendent, to the Appellant concerning recommendation for termination, August 15, 2008.

App. Ex. #42 Stub of third party insurance settlement check for $2100.00.

App. Ex. #43 Copy of settlement check from State Farm made out to the Appellant and MCPS for $2100.00.

BOE Ex. E Transcript of the hearing before the Local Board's Hearing Examiner

on December 2 and 3, 2008.

The following additional documents were admitted into evidence on behalf of the Appellant at the hearing before me:

App. Ex. A	Letter of recommendation from James Short, Assistant Principal of Montgomery Blair, January 24, 2007.
App. Ex. B	Email from the Appellant to Linda Kimmel Johnson with reply from Ms. Johnson, February 28, 2007.
App. Ex. C	Memo from the Appellant to Randy Gruber concerning an observation of the Appellant, March 28, 2007.
App. Ex. D	Letter from the Appellant to Marc Cohen dated May 12, 2007 concerning written reprimand of May 10, 2007.
App. Ex. E	Letter from the Appellant to Jane Woodburn, Director of Recruitment and Staffing, May 12, 2007.
App. Ex. F	Email messages between the Appellant, Ann Kamenstein, and Marc Cohen, October 11, 2007, concerning review of the Appellant's personnel file.
App. Ex. G	Observation Conference Report by Jeanette Dixon for an observation of the Appellant on January 30, 2008.
App. Ex. H	Yearly Evaluation Report for MSDE Certificate Renewal, by Jeanette Dixon, June 6, 2008.
App. Ex. H	Letter of recommendation from Phillip Gainous, Principal of Montgomery Blair High School, March 8, 2007.

Testimony

The Appellant testified on her own behalf. The Local Board did not call any witnesses or present any new exhibits. The parties argued their respective positions.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Appellant graduated from Johnson C. Smith University in 1993 and she earned a Masters of Education degree from Wentworth University in May 1997. She began her teaching career in North Carolina where she also served as a counselor and central office administrator. She began working for MCPS in January 2004 as a long term substitute counselor at Forest Park Middle School. She is certified in Maryland to teach grades 1 – 8 in all subjects and as a counselor in grades K – 12. During the 2004-2005 school year, she served as a counselor at Montgomery Blair and she was a first year probationary employee. During evaluations for the 2004-2005 and 2005-2006 school years, she received a "meets standards" rating.

2. On April 6, 2006, while working and on duty for the MCPS, the Appellant was involved in an automobile accident. She sustained neck and back injuries as a result of the accident. Because of the injuries, she was on sick leave until the fall of 2007. She filed a claim for workers compensation which covered her time off.

3. Montgomery County is self insured for workers compensation purposes. The office that handles workers compensation cases is the Montgomery County Self Insurance Fund (Self Insurance Fund) and teachers in the county are covered by this fund for workers compensation purposes.

4. On September 19, 2006, at the request of the Self Insurance Fund, the Appellant was examined by Dr. Robert Smith. Dr. Smith cleared the Appellant to return to work. On October 26, 2006, by a telephone call and by letter, the MCPS notified the Appellant that she was cleared to return to work and she was assigned to a teaching position at Stedwick Elementary School effective November 15, 2006.

5. On October 30, 2006, in response to the notice that she was cleared to return to work, the Appellant informed the school system that her doctor had not yet cleared her to return to work and she declined the assignment at Stedwick Elementary. She did not return to work at this time.

6. On January 24, 2007, James Short, Assistant Principal of Montgomery Blair, recommended the Appellant for a middle school counseling or resource counseling position with the MCPS.

7. On January 19, 2007, the school system assigned the Appellant a position as a fourth grade teacher at Harmony Hills Elementary School, effective January 25, 2007. The Appellant declined this position, indicating that her medical leave had been extended, effective January 13, 2007.

8. On February 28, 2007, the Appellant wrote to the school system requesting a position as a Resource Counselor or School Counselor.

9. On March 7, 2007, the Appellant's physician released her to return to work on March 12, 2007. The doctor noted that the Appellant was to continue on "pain management treatment."

10. The Appellant was then assigned to be an eighth grade social studies teacher at Martin Luther King, Jr. Middle School (MLK), effective March 13, 2007. Marc Cohen, Principal at MLK, met with the Appellant to explain the schools communication system and school procedures. The school procedures discussed included requirements for arriving at school on time, preparation of lesson plans, and the like. During this initial meeting, the Appellant expressed that she did not want to be teaching the eighth grade.

11. On March 21, 2007, Mike Karel, a co-teacher in the appellant's class, sent a memo to Randy Gruber, Assistant Principal, complaining of the Appellant's teaching methods, lack of cooperation with co-teachers, what he characterized as "negative interactions" with students, and "rude and condescending" actions toward other teachers. Gruber conducted an observation of the Appellant in class on March 22, 2007. He noted that the Appellant took approximately 22 minutes to take the roll. On April 11, 2007, Gruber provided the Appellant with a written memo as to his observation of her in class. The memo included a list of actions to be taken by the Appellant within the following two weeks.

12. On or about March 20, 2007, the Appellant settled her claim against the driver who had caused her accident on April 6, 2006. State Farm Insurance Company issued a check for $2100.00 made payable to the Appellant and the Self Insurance Fund. On or about May 18, 2008, the Appellant cashed the settlement check. The bank did not require an endorsement by the Self Insurance Fund. In July 2008, the Self Insurance Fund requested the Appellant to send it the settlement funds to repay benefits she received as part of her workers compensation claim. The Appellant believed that she was not obligated to repay the Self Insurance Fund and she has not made any reimbursement. The contract between the Montgomery County Education Association (union) and the MCPS Board of Education provides as follows:

> All monies payable to the unit member through the Worker's Compensation Law of the State of Maryland, or resulting from a legal liability of a person other than the unit member must, under the right of subrogation, be transmitted to the Board by the unit member.

13. On April 11, 2007, another teacher observed the Appellant arriving late for the beginning of class. On the same day, Cohen sent the Appellant an email message indicating that he

wanted to meet with her to discuss her late arrival and her leaving early the day before. The Appellant and Cohen met on April 11, 2007.

14. On April 12, 2007, Cohen sent the Appellant a Memorandum for the Record (also characterized as a letter of concern). The letter summarized the meeting of April 11, 2007 and addressed the following:

a. The requirement that the Appellant chaperone one school activity.

b. The requirement that the Appellant check the private email (MLK Private) system for messages daily.

c. The Appellant's late arrivals on April 11 and April 12, 2007, the scope of documentation from the Appellant's physician as to her need to arrive late, and the requirements for arriving on time and notifying staff when late.

d. The requirement for the Appellant to provide medical documentation as to her need to be late.

e. Leaving early on April 10, 2007 without authorization, and the requirement for obtaining approval in advance for leaves without pay.

f. A warning that non-compliance would result in discipline.

15. On April 12, 2007, Gabriella Grayson, a Student Support Specialist, conducted an unannounced observation of the Appellant's class. The Appellant and Grayson met on April 19, 2007 to discuss Grayson's observations. A report of the conference was signed by Grayson and the Appellant on the same day. According to Grayson, the Appellant failed to provide a "welcoming environment that encourages learning and/or active class participation," the Appellant "failed to maintain any control, interest and motivations of her classroom/students," and there was "no evidence of substantive planning."

16. On April 12, 2007, Karel sent another memo to Cohen describing the Appellant's actions in class.

17. On April 16, 2007, the Appellant left school early, indicating to another teacher that because of the shooting incident at Virginia Tech and the fact that the Appellant had a niece there, she needed to leave in case she was needed by the family to go to Virginia. She did not request permission to leave and she did not leave any lesson plans for her classes.

18. On April 17, 2007, several email messages were exchanged between the Appellant, Grayson, Cohen, and Elaine Burks (MCEA representative). These messages are a discussion of arranging a time for a post observation conference, union contract requirements, the Appellant's late arrival on April 17, 2007, and the signing of a post observation conference report.

19. On April 19, 2007, the Appellant and Grayson met for a post observation conference. After discussion, the Appellant and Grayson signed the Post-Observation Conference Report prepared by Grayson.

20. On April 17, 2007, Karel prepared another memo critical of the Appellant's teaching performance. On the same day, Sarah Harper, a teacher in the classroom next to the Appellant's, sent Cohen a memo also critical of the Appellant's teaching practices.

21. On or about April 18, 2007, the Appellant requested the advancement of personal leave and/or an advancement of personal illness leave (sick leave). She also expressed a concern that MCPS had improperly recorded the hours the Appellant worked during the summer.

22. During the month of April 2007, several students made verbal and written complaints about the Appellant. On April 21, 2007, the school administration received two petitions from students complaining of the Appellant's teaching methods, demeanor in class, and inappropriate dress. The students also requested a different teacher for their class. The petitions

were signed by approximately 50 students. During this same period, several parents complained of the Appellant's teaching skills and demeanor toward students in class.

23. On April 23, 2007, Cohen sent the Appellant another letter of concern. The letter listed the following issues:

a. Failure to notify administration when arriving late.

b. Failure to provide medical documentation to support the need to be late or leave early and a directive to provide such medical documentation by April 27, 2007.

c. Failure to sign up for chaperone duty.

d. Failure to notify administration of leave of absence in sufficient time to arrange coverage for class.

e. Deficiencies in teaching as noted during classroom observations with a directive to provide lesson plans one week in advance.

f. Complaints noted by other staff concerning control of the classroom, student complaints, lack of teaching skills, excessive use of the computer, with an instruction to contact Tami Conley, a staff development teacher, to development professional development opportunities.

g. Complaints from parents and a directive to meet with Grayson to develop a plan for dealing with, and correcting "negative perceptions students, staff, and parents are expressing."

24. Between April 27 and April 30, 2007, the Appellant was out of school on bereavement leave.

25. On April 30, 2007, the Appellant requested a "flexible arrival time." The request

indicated that the Appellant would submit medical documentation on May 1, 2007. A note from Dr. Kilgore, the Appellant's physician, dated April 30, 2007 was submitted to the school system.[2] The physician indicates that the Appellant is taking medication at night that may cause morning drowsiness and requests that the she be allowed "some flexibility in her arrival time at work – may require 15 min of additional time" for her arrival.

26. On May 3, 2007, Larry Bowers, Chief Operating Officer for MCPS, responded to the Appellant's April 18, 2007 request for advance leave. The request for advanced personal leave was denied because the union contract did not provide for such an advance. The request for advanced sick leave was denied because the Appellant already had a negative balance of 48 hours of sick leave. Bowers also indicated that corrections were made to the Appellant's hours worked in April and October 2006. A summary of the Appellant's leave hours during the summer of 2006 was enclosed with Bowers' letter. The Appellant then filed an appeal of Bowers' decision. On September 10, 2007, Superintendent Weast upheld Bowers' decision. The Appellant interpreted the letter from Weast as allowing her to take leave without pay at any time without the need the need to submit medical documentation or without getting preapproval.

27. On May 4, 2007, Cohen directed the Appellant to meet with Tami Conley, Staff Development Teacher, and Gabriella Grayson, Student Support Specialist. The Appellant failed to do this.

28. On May 7, 2007, the Appellant was not in school, but she failed to notify the substitute system that she would be out. She also failed to leave any lesson plans for this day.

29. On May 8, 2007, Cohen sent the Appellant an email message stating that he had

[2] It is unclear from the document (BOE Ex. D, 33) or other evidence when this note was presented to the school system. Additionally, in his decision, the Hearing Examiner incorrectly refers to this note as being dated April 30, 2008.

heard that the she was planning on taking leave for the remainder of the year. He asked the Appellant to submit a leave request promptly so he could arrange for coverage.

30. On May 10, 2007, Cohen issued a letter of reprimand to the Appellant for failing to request coverage of her class when calling in sick.

31. On May 10, 2007, the Appellant submitted a leave request for leave from May 8, through May 15, 2007. Attached to the leave request was a note (sick slip) from Dr. Hallick requesting that the appellant be excused from work due to illness. On the same day, the Appellant requested a change in her assignment from teacher to counselor for the remainder of the school year.

32. At some time during this period, the Appellant informed the school system that she would not respond to email messages and that she would respond only to contacts made by the school system in a formal manner, *i.e.* by formal letter.

33. On May 14, 2007, Cohen issued a letter of reprimand to the Appellant for refusing to read and respond to email correspondence. A "corrected copy" letter of reprimand was issued on the same day, reprimanding the Appellant for failing to provide lesson plans as directed.

34. On or about May 14, 2007, the Appellant submitted another leave request, this time for leave from May 14 through June 15, 2007. A certification from Dr. Zuckerman was attached to the leave request and indicated that the Appellant's diagnosis was "disc degenerative disease" and that the doctor's specialty is "pain management." The certification also indicated that the condition began on April 6, 2006.

35. On May 10, 2007, Cohen sent the Appellant an email message concerning recent absences, late arrivals, and early departures. Cohen instructed the Appellant to do the following by the end of the work day on May 11, 2007:

a. Provide physician documentation for her absences.

b. Provide physician documentation of the need for long term leave.

c. Submit leave requests for all time missed in the past week.

d. Submit a leave request for her intended long term leave.

36. Also on May 10, 2007, Cohen issued a letter for reprimand to the Appellant. The basis of the reprimand, according to Cohen, was a failure to notify staff of leave or absences far enough in advance to allow arranging for coverage for the Appellant's classes, failing to provide lesson plans when absent, misrepresenting efforts to contact the school, and being absent without leave. Cohen also advised the Appellant that similar actions in the future would be grounds for more severe discipline, including termination.

37. The Appellant did not work from May 10, 2007 through the end of the school year.

38. For the 2007-2008 school year, the Appellant was assigned as a Counselor at Paint Branch High School (Paint Branch). On July 1, 2007, prior to the beginning of school, the Appellant informed Jeanette Dixon, the Principal, that she, the Appellant, needed flexibility in arriving at the school in the mornings due to drowsiness from her medication. She presented a copy of Dr. Kilgore's note of April 30, 2007 that she had previously presented at MLK. By a letter dated June 4, 2007, Dixon acknowledged the Appellant's request for a flexible arrival time and suggested to the Appellant that she take her medication 15 minutes earlier in the evening to compensate for the drowsiness in the morning. Dixon also informed the Appellant that Paint Branch's work hours were from 7:10 a.m. to 2:40 p.m. Dixon granted the Appellant a ten minute grace period for arriving at Paint Branch in the mornings.

39. Being somewhat aware of the difficulties encountered at MLK, Dixon instructed her staff to retain copies of all correspondence with the Appellant and to keep a log of the times when the Appellant arrived at school or was absent. For the period between August 13, 2007 and June 27,

2008, the log shows more than 45 times when the Appellant was late in reporting for work, *i.e.* failing to report by 7:20 a.m. (7:10 a.m. start time plus 10 minutes grace period). Many of the Appellant's late arrivals were beyond 7:25 a.m., the time when classes started. The log also indicates numerous absences for illness, doctor's appointments for herself and her daughter, and for a death in the family.

40. During the fall of 2007, Dixon received numerous complaints from parents of students with whom the Appellant was working. Several requested that a new Counselor be assigned to their child. During this same period, the Appellant made several requests for sick leave and had numerous times when she was late arriving for work. On November 14, 2007, Susanne DeGraba, Chief Financial Officer, informed the Appellant that she was required to provide "a medical statement for each day of absence reported as personal illness or illness in the immediate family." DeGraba also informed the Appellant that she had to submit the statements "to Ms. Dixon immediately upon your return to work." After being informed of this requirement, there were several messages between the Appellant and DeGraba discussing the specifics of the reporting requirements.

41. The dispute over the Appellant's arrival time in the mornings continued through the fall without resolution. On January 8, 2008, Dixon again instructed the Appellant to arrive at work everyday no later than 7:20 a.m. On January 28, 2008, Dixon and the Appellant discussed her arrival times and complaints that had been made by several parents. Dixon again instructed the Appellant to be at work no later than 7:20 a.m. every morning. Dixon sent the Appellant a follow up memo with the same instructions.

42. On January 30, 2008, Dixon conducted a formal observation of the Appellant teaching in her class. On February 1, 2008, the Appellant and Dixon held a post observation conference to discuss the observation.

43. On March 11, 2008, John Hass, Assistant Principal at Paint Branch, issued a letter of reprimand to the Appellant for lack of professionalism, insubordination and rudeness towards Hass.

44. On April 3, 2008, Dixon issued a letter of reprimand to the Appellant for insubordination in continuing to report late for work, specifically for arriving after 7:20 a.m. or being absent on 28 occasions since Dixon's letter of January 28, 2008. Dixon again instructed the Appellant to be at work no later than 7:20 a.m. every day. She also informed the Appellant that she would receive a letter of reprimand each time she was late for work.

45. Between April 7, 2008 and April 21, 2008, Dixon issued 9 letters of reprimand to the Appellant; 8 of the reprimands were for being late for work and the other reprimand was for "involving a student in a personnel issue."

46. In a letter of reprimand on April 18, 2008, Dixon informed the Appellant that she was now required to sign in with Dixon's secretary upon arrival at school. A letter of reprimand issued on April 21, 2008 was for being late for work and for failing to sign in with Dixon's secretary. The Appellant informed Dixon that according to her MCEA representative she was not required to sign in with the secretary but rather to indicate her arrival "by checking a staff sign-in roster." The dispute over the requirement to sign in continued without resolution.

47. On April 18, 2008, Dixon issued the Appellant a reprimand for "involving a student in a personnel matter" by asking the student to come to the Appellant's office to sign a paper related to a confrontation between the Appellant and Dixon.

48. Suring this period, the Appellant requested leave under the FMLA. She was not eligible for this leave because she had not worked 1250 hours during the 12 preceding her request and because she was not a person who was unable to work as the result of a serious medical condition. The eligibility requirements for leave under the FMLA are contained on the reverse side of leave request forms used by MCPS employees requesting leave.

49. On April 24, 2008, Jeanette Dixon recommended to the Superintendent that the Appellant be dismissed.

50. On May 1, 2008, the Appellant filed an "administrative complaint" against Dixon alleging that Dixon berated the Appellant in front of a student. The complaint was investigated by MCPS and on July 28, 2008 the complaint was dismissed with a finding that no rules had been violated. The Appellant filed an appeal and a hearing was held on September 16, 2008 and again the complaint was dismissed with a finding that there was no rule violation by Dixon.

51. On May 1, 2008, Ryan McCamon, an employee of the MCPS working at the Rosa Parks House, filed a complaint about the Appellant's actions at the house. The complaint was that the Appellant's attendance at the house meetings was infrequent and she did not pay attention when present. He also reported that the Appellant acted very inappropriately in parent conferences by raising her voice and being condescending. The staff at Rosa Parks House requested that the Appellant not return to work at the facility.

52. On June 13, 2008, Dixon issued a Yearly Evaluation Report for MSDE Certificate Renewal. Dixon indicated that the Appellant's overall rating was "satisfactory/meets standards."

53. On July 2, 2008, the Appellant again requested advancement of sick leave, this time for the period June 26, 2008 through July 11, 2008. Larry Bowers denied the request and informed the Appellant that she would have to take leave without pay or personal leave.

54. On July 16, 2008, the Appellant requested a modification of her schedule as a School Counselor for medical reasons. She indicated that although Dr. Smith had cleared her to return to work, she was still in treatment for controlling pain and continuing treatment with an orthopedist. According to the Appellant, the back injury sustained in the work related accident of 2006 had gotten worse. On July 23, 2008, Ann Kamenstein denied the request for an accommodation indicating that the Appellant's physician had not stated that the Appellant was disabled.

55. On August 15, 2008, a Loudermill hearing was held for a review of the Appellant's status and the recommendation for termination.[3] The Appellant was not present at this meeting and on the day before the meeting had requested a postponement. The postponement was denied and the meeting was held. The meeting was conducted by Stephen Bedford, a designee of the Superintendent. Two of the Appellant's union representatives were present at the meeting on her behalf. Bedford recommended that to the Superintendent that he recommend to the Local Board that the Appellant be terminated. On August 18, 2008, Superintendant Weast recommended to the Local Board that the Appellant be terminated. The Appellant was then placed on administrative leave without pay.

56. On August 19, 2008, the Appellant requested a hearing before the Local Board. The Local Board assigned the matter to a Hearing Examiner and an evidentiary hearing was held on December 2 and 3, 2008. Both parties presented closing argument in the form of post-hearing memoranda. After submitting post-hearing memoranda, the Hearing Examiner requested the MCPS

[3] In *Cleveland Bd. Of Education v. Loudermill*, 470 U.S. 532 (1985), the Supreme Court ruled that because teachers are public employees they have a property interest in their jobs and therefore they may not be terminated absent a hearing. Such hearings are often referred to as "Loudermill" hearings. In the present case, the parties have referred to the meeting with the Superintendent's representative on August 15, 2008 as the Loudermill hearing.

to submit an additional memorandum addressing the Appellant's argument concerning the Family and Medical Leave Act (FMLA). Both parties submitted additional memoranda on this issue. On February 16, 2009, the Hearing Examiner recommended to the Local Board that the Appellant be terminated. The Appellant requested an opportunity to present oral argument before the Local Board and oral argument was presented on April 20, 2009. On May 12, 2009, the Local Board ordered that the Appellant be terminated. On June 20, 2009, the Appellant filed an appeal to the State Board. The State Board forwarded the case to the OAH.

DISCUSSION

The Allegations

In this case, the Local Board terminated the Appellant from her position as a teacher/counselor for insubordination, willful neglect of duty and misconduct pursuant Education Article § 6-202(a)(1)(ii),(iii), and (v). The specific allegations are:[4]

1. Neglecting of duties to students.
2. Coming to work late on a daily basis, in spite of being given reasonable accommodations for arrival due to an injury she suffered in 2006.
3. Engaging in abusive upbraiding of staff including her supervisor.
4. Being rude and taking umbrage at being asked to do what counselors normally do for parents and students, resulting in numerous requests for a change in counselor.
5. Telling the Resource Counselor that she is not her supervisor.
6. Continuing to take leave that she does not have and in disregard of the needs of students, scheduling doctors' appointments during the instructional day.

[4] These are the allegations made by Principal Dixon in her recommendation for termination on April 24, 2008.

7. Refusing to follow the directives of the principal, telling the principal she only needs to follow the advice of the MCEA union representative.

In the letter by Principal Dixon recommending termination, Dixon also stated that no actions have caused the Appellant to change her behavior, that she is inflexible, takes no responsibility for anything that happens, and conducts herself as if she is to be unsupervised.

Additionally, the Local Board alleges that the Appellant's refusal to reimburse the Self Insurance Fund constitutes misconduct.

The Applicable Law

Section 6-202 of the Education Article provides the framework under which a teacher may be suspended or dismissed. Section 6-202(a) states:

> (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:
>
> (i) Immorality;
> (ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of § 5-704 of the Family Law Article;
> (iii) Insubordination;
> (iv) Incompetency; or
> (v) Willful neglect of duty.
>
> (2) Before removing an individual, the county board shall send the individual a copy of the charges against him and give him an opportunity within 10 days to request a hearing.
>
> (3) If the individual requests a hearing within the 10-day period:
>
> (i) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; and
> (ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing.
>
> (4) The individual may appeal from the decision of the county board to the State Board.

In an appeal of a suspension or dismissal of a certificated employee pursuant to Education Article Section 6-202, COMAR 13A.01.05.05F provide the following:

(1) The standard of review for certificated employee suspension or dismissal actions shall be de novo as defined in F(2) of this regulation.

(2) The State Board shall exercise its independent judgment on the record before it in determining whether to sustain the suspension or dismissal of a certificated employee.

(3) The local board has the burden of proof by a preponderance of the evidence.

(4) The State Board, in its discretion, may modify a penalty.

Accordingly, on behalf of the State Board and on the record before me, I am exercising my independent judgment and discretion to determine whether the Local Board has established by a preponderance of the evidence that the Appellant was insubordinate, committed misconduct in office, and was negligent in the performance of her duties, and if so whether termination of her employment is an appropriate sanction.

Concerning the allegation of misconduct, the essential issue is how Education Article Section 6-202 defines "misconduct in office." In *Resetar v. State Board of Education*, 284 Md. 537 (1979), the Maryland Court of Appeals for the first time addressed this legal issue. Before defining "misconduct" as contemplated by Education Article Section 6-202, the *Resetar* Court engaged in a comprehensive review of how "misconduct" has been defined or applied from a broad variety of sources, including cases from other jurisdictions, Black's Law Dictionary, and a Maryland case defining the term in the context of the unemployment insurance statute. The type of conduct reviewed in *Resetar* covered several broad areas including but not limited to sexual misconduct, insubordination, unauthorized absences, incompetency, unprofessional conduct, intemperance, gambling, and use of profane language. *Resetar, 284 Md.* at 556-561. After its review of the law

and the broad range of conduct which may be considered "misconduct", the Court in *Resetar* never clearly defined which type of "misconduct" is contemplated by Education Article § 6-202. However, it is clear from *Resetar* that whatever the alleged transgression by a teacher, that conduct must bear upon a teacher's fitness to teach. *Id.* at 561.

Concerning the allegation of insubordination, the *Resetar* case provides further guidance. It defines insubordination as a "conscious, willful and recalcitrant rejection of authority of a supervisory office." *Id.* at 562.

The Merits

The Appellant's Claims of a Lack of Due Process

Denial of an Opportunity to Participate in the Loudermill Hearing

On April 24, 2008, Dixon recommended that the Appellant be terminated. The Appellant then requested a hearing (Loudermill hearing). The Appellant agreed to meet on August 12, 2008 but on August 11, 2008 she requested a postponement due to a need for medical treatment. The postponement was granted and the meeting was rescheduled for August 15, 2008. On August 13, 2008, the Appellant again asked for a postponement. This request was denied and the meeting was held without the Appellant being present. However, two representatives from the MCEA union were present on behalf of the Appellant. The representatives also requested a postponement that was again denied.

At the Loudermill hearing on August 15, 2008, the Appellant's representatives presented documentation to support the Appellant's positions and they argued her case. The meeting was conducted by Stephen Bedford, the Superintendent's designee. Mr. Bedford concluded that termination was appropriate and the Superintendent then recommended that the Local Board

terminate the Appellant. The Appellant claims that she was denied due process and that her civil rights were violated because she was not permitted an opportunity to be present at this meeting.[5] I disagree.

To begin, the Appellant agreed to the initial hearing date of August 12, 2008. Just the day before the scheduled meeting the Appellant asked that it be postponed due to the need for an "urgent medical procedure." Although she provided no documentation concerning the medical procedure, the meeting was postponed and then rescheduled for August 15, 2008. On August 13, 2008, the Appellant requested a postponement of the August 15, 2008 meeting, indicating that she was on "personal illness leave." This postponement was denied and the meeting was convened on August 15, 2008.

Although the Appellant was not present at the meeting, two union representatives were present on her behalf. The representatives' request for a postponement was denied. During the hearing, the representatives not only argued the Appellant's position but offered documentation on her behalf.

At the hearing before me, the Appellant presented no credible evidence to support her position that she was denied due process because she was not present at the August 15, 2008 Loudermill meeting. She presented no evidence, and did not argue that she or her representatives were precluded from presenting any evidence or argument at the meeting on her behalf. The record shows quite the contrary. She presented no additional evidence at the hearing before me that persuades me that the results of the Loudermill hearing would have been any different had she been

[5] The Appellant makes only a vague claim of a violation of civil rights and this in connection with her claim of a lack of due process in not being present at the Loudermill hearing on April 15, 2008. I conclude therefore that the civil rights claim is encompassed in the due process claim, with one exception. The Appellant also claims that her termination was the result of racial discrimination. I address this issue later in this decision.

present. Even the additional documents presented at the hearing before me, I find, would have made no difference in the outcome of the Loudermill hearing. I find therefore that the Appellant was afforded the due process right to a Loudermill hearing in that her two representatives were present at the meeting, presented evidence on her behalf, and argued her case.

Finally, the fact that the Appellant was afforded a full evidentiary hearing lasting two days in December 2008, as well as the hearing before me, obviates any claim that she has been denied due process.

The Local Board's Late Memorandum to the Hearing Examiner Concerning the Family and Medical Leave Act

The hearing before the Local Board appointed Hearing Examiner concluded on December 3, 2008. There were no closing arguments made at the end of the hearing. Rather, the parties agreed to submit written memoranda (with no reply memoranda) in lieu of closing arguments. The Hearing Examiner required that the memoranda be submitted by January 16, 2009. In her memorandum, the Appellant concentrated on whether she was entitled to take leave under the FMLA. The Hearing Examiner then gave the Local Board an opportunity to reply to the Appellant's FMLA arguments and it did so, after the January 16, 2009 deadline. The Appellant claims that permitting the Local Board to submit a memorandum beyond the established date of January 19, 2009, violated her due process rights. I disagree.

The transcript of the hearting before the Hearing Examiner shows that the FMLA issue was discussed very briefly at the very end of the hearing. In essence, the Appellant testified that the MCPS never notified her of the possibility of taking leave under the FMLA and no one offered her such leave. She was aware of leave under the FMLA only as it applied to pregnancies or caring for loved ones.

The record before me shows that no new evidence was submitted by the Local Board when it was permitted an additional memorandum. Rather, it was allowed to make additional argument on the FMLA issue. In fairness to the Appellant, the Hearing Examiner received an additional memorandum from the Appellant's representative after the Local Board's additional memorandum. While not in keeping with the parties' agreement not to have reply memoranda, this additional argument, by both parties, which did not include the submission of any new evidence, I find, did not prejudice the Appellant and certainly was not a violation of her due process rights.

Allegation that the Local Board Denied the Appellant Access to Documents

The Appellant claims that certain documents essential to her case were not provided by the Local Board. She filed requests for documents under the Maryland Public Information Act and claims that the Local Board's denial of her requests is a violation of her due process. I disagree.

During the prehearing telephone conference I held on September 16, 2009, the Appellant again raised the issue that she had been denied access to certain documents. She indicated that she had received some of the documents after the hearing before the Hearing Examiner and attempted to present them to the Local Board but was precluded because it was determined that her representative had these documents prior to the hearing before the Hearing Examiner and chose not to submit them.

During the prehearing conference before me, she described the documents that she wanted to present and after hearing argument from the parties, I directed the Local Board to provide the documents to the Appellant. At the hearing on the merits before me, all of these documents were admitted into evidence and I have considered them in my decision. Regardless of the fact that the representative made a strategic decision not to introduce the documents, a tactical decision generally

not objectionable, because I have considered these documents the Appellant has not been denied due process.

Allegations of Misconduct

The Workers Compensation Subrogation Claim

The Local Board claims that the Appellant's refusal to reimburse the Self Insurance Fund from the settlement check from State Farm is misconduct. It further alleges that this refusal reflects negatively on the Appellant's fitness as a teacher/counselor.[6] I disagree.

The parties agree that the Appellant received certain workers compensation benefits as a result of her work related accident and injuries in 2006. They also agree that the Appellant received a settlement from State Farm Insurance Company, the insurance company for the driver who caused the Appellant's accident. The Appellant claims that the settlement was for personal injury and that she is not obligated to reimburse the Self Insurance Fund.

Based on the Appellant's testimony before the Hearing Examiner and me, I am convinced that the Appellant does not understand the issues of subrogation and that she genuinely believes she is not obligated to make reimbursement. I note that she was not represented by counsel in either the compensation claim or in the personal injury case.

Although I presume that the payments made to the Appellant from the Self Insurance Fund were for medical bills and lost wages, the evidence is not at all clear on this issue. It does appear to me that reimbursement in some amount is appropriate, but frankly this issue is not before me. What is before me is whether the Appellant's refusal to reimburse is misconduct, *i.e.* bears on her fitness as a teacher/counselor. I find that the refusal is not misconduct.

[6] I note that this allegation was not included in Dixon's request for termination. Rather, it was added by MCPS in its presentation to the Hearing Examiner.

It may be that there are costs or expenses that can be legitimately deducted from the settlement from State Farm.[7] It is improper, arbitrary and capricious to characterize the Appellant's genuine belief that she is not obligated to reimburse the Self Insurance Fund as misconduct based on the credible evidence before me. To cast what I believe is a genuine legal dispute as misconduct that bears on the Appellant's fitness as a teacher/counselor is a stretch, to say the least. This does not mean that the Appellant is without subrogation obligations.

The Appellant's refusal to reimburse the Self Insurance Fund is not misconduct, insubordination or neglect of duty.

Involving a Student in a Personnel Matter

On April 18, 2008, Dixon issued the Appellant a reprimand for "involving a student in a personnel matter" by asking the student to come to the Appellant's office to sign a paper related to a confrontation between the Appellant and Dixon. The incident began when Dixon approached the Appellant while she was speaking to a student. Dixon asked the student to allow them to speak privately. The Appellant took offense at the manner in which Dixon spoke to her and later requested that the student document the conversation with Dixon and to describe Dixon's demeanor. Dixon and the Appellant disagree as to the manner in which Dixon addressed the Appellant.

The Local Board has characterized this incident as insubordination rather than misconduct. The characterization is improper, however, if proven, the action would be an instance of misconduct.

I do not find that the Appellant's attempt to have the student document the confrontation as insubordination. Insubordination requires a "conscious, willful and recalcitrant rejection of

[7] Concerning the deductions of such costs and expenses see *Podgurski v. OreBeacon Insurance Co.*, 374 Md. 133, 821 A.2d 400 (2003).

authority of a supervisory office." There is no evidence whatsoever that the Appellant was ever directed not to involve students in such matters or that she disobeyed a direct instruction not to involve students in this particular matter.

Although asking a student to corroborate the alleged haughty demeanor of Dixon may not have been prudent, I do not find that it constitutes misconduct. The action, however is additional evidence of the Appellant's combative nature and continued lack of respect for authority. I would note that the Appellant also filed an administrative complaint against Dixon alleging that she had berated the Appellant during this confrontation. That complaint was investigated by the MCPS and dismissed with a finding that Dixon had violated no rules.

Arriving Late, Leaving Early, Taking Leave Without Authorization

The record is replete with proof that the Appellant arrived late for class and left early from school on numerous occasions. With but a very few exceptions, the Appellant does not deny arriving late or leaving early, rather, she claims that these actions were necessitated by her medical condition and were authorized. The Local Board has convinced me that the Appellant was, on many occasions, late for work and left early from work without justification and without authorization.

During the period in question (school years 2006-2007 and 2007-2008), the Appellant was taking medication for controlling pain. The evidence shows that the medication could cause drowsiness. The evidence is also clear that the Appellant's physician requested that the Appellant be granted a "flexible" time for arriving at work because of the affects of the medication.

While working under Principal Cohen, the Appellant was granted a grace period for arriving late. In spite of this, she frequently arrived beyond the grace period. Cohen counseled the

Appellant on several occasions concerning her tardiness as well as her early departures without authorizations, all to no avail as the late arrivals continued.

While working under Principal Dixon, the Appellant requested that she be allowed to arrive 15 minutes later then the otherwise required time for starting work. She presented the physician's statement in support of her request. At Paint Branch, classes begin at 7:25 a.m. and Ms. Dixon granted the Appellant a 10-minute grace period for arriving at work, and not the 15 minutes requested, *i.e.* allowing the Appellant to arrive at 7:20 a.m. rather than the normal start time of 7:10 a.m. Dixon declined the request for a 15 minute grace period because she wanted the Appellant available to counsel students prior to the beginning of class at 7:25 a.m. However, the fact that the principal did not grant the Appellant a 15 minute grace period, frankly, is irrelevant because many of the Appellant's late arrivals were well beyond a 15 minute grace period.

Furthermore, I simply am not convinced that the Appellant needed any accommodation for arriving late or leaving early. The medical documentation provided by the Appellant to the MCPS and that is included in the record before me is scant at best. This medical documentation includes the following:

1. Return to Work Evaluation, September 19, 2006, indicating that no additional medical treatment is anticipated and that the Appellant has no restrictions as to lifting items up to 50 lbs. The signature on this document is not legible and I presume this was prepared by a physician of the Self Insured Fund's choosing because the MCPS refers to it as such.

2. Report from Dr. Robert Smith, September 16, 2006, indicating that the Appellant was treating with Dr. Zuckerman for pain management and that an MRI showed no posttraumatic disc abnormality. Dr. Smith's diagnosis was resolved soft tissue injuries.

3. Report from Dr. Zuckerman, March 7, 2007 indicating that the Appellant could return to work on March 12, 2007 and that she continues pain management treatment.

4. A hand written note from Dr. Kilgore, April 3, 2007 indicating that the Appellant is under his care and is taking medication that "may cause morning drowsiness" and requesting that the Appellant be allowed some flexibility in her arrival time and that she "may require 15 min. of additional time" in the morning for her arrival.

5. Excuse slip from Dr. Hallick, May 9, 2007, excusing the Appellant from work from May 8, 2007 through May 15, 2007.

6. Request for leave signed by Dr. Zuckerman, May 15, 2007, for leave to begin May 14, 2007.

7. Leave request form by Dr. Hallick, July 2, 2008, indicating that the Appellant is unable to perform any work of any kind due to abdominal pain.

8. Letter from Dr. Zuckerman, August 11, 2008 recommending the following:

   a. Flexible work schedule, particularly in the morning due to excessive drowsiness caused by the medication Ultram ER, which provides benefit.

   b. Ergonomically designed office chair for lumber support.

   c. Continued pain management treatment until final decision is made to proceed with lumber fusion surgery.

9. Excuse slip from Dr. Zuckerman, August 11, 2008, releasing the Appellant to return to work after receiving spinal injections.

10. Excuse slip from Dr. Zuckerman, August 18, 2009, releasing the Appellant to return to work on August 21, 2008.

The most detailed medical documentation from any of the Appellant's treating physicians is Dr. Zuckerman's letter of August 11, 2008 wherein he recommends a flexible work schedule in the morning. The Appellant's medication, a time released prescription, was taken by the Appellant in the evening before bed. Although possible, it seems unlikely to me that medication taken in the evening would continue to cause drowsiness in the morning, even for time released medication.

Nevertheless, the school system granted the Appellant some accommodation in allowing her to arrive 10 minutes beyond the normal arrival time. More importantly, the Appellant concedes that there were several times when she arrived beyond the 15 minute grace period she had requested.

While working at Paint Branch under Principal Dixon, the Appellant called in late more than 30 times. There were over 70 instances when the Appellant arrived after 7:25 a.m., *i.e.* beyond the 15 minute grace period she requested. There were numerous times when she was late but did not call in. She was late 6 times because of car problems or traffic. There were at least 14 times when the appellant arrived at the school at 8:00 a.m. or later and several times when she arrived after 10:00 a.m. I believe that the Appellant abused the 10 minute grace period she was granted, and as I mentioned, the fact that the Appellant was not granted a 15 minute grace period as she requested is insignificant. The medical documentation presented by the Appellant does not demonstrate a medical condition that would cause the numerous late arrivals and early departures she had after returning to work.

The Appellant claims that she was granted blanket permission to take leave whenever she needed as long as it was leave without pay. According to the Appellant, this permission was granted in the letter of August 27, 2007 from Larry Bowers, the Chief Operating Officer, and in a letter of September 10, 2007 from Superintendent Weast. In his letter to the Appellant, Mr. Bowers denies her request for advancement of sick leave. He states:

> If you need to be absent for medical reasons and you have exhausted your sick leave balance, you will need to take leave without pay or muse the 32 hours of personal leave that has been advanced to you.

No reasonable reading of this letter, or that of Superintendent Weast's letter of September 10, 2007 upholding Mr. Bowers' decision, would result in an understanding that the Appellant was authorized to take leave without pay whenever she wanted. Even leave without pay must be approved.

The evidence before me does not justify the Appellant's numerous absences, late arrivals or early departures and her actions in this regard are clearly misconduct.

There then ensues a long running battle between Dixon and the Appellant which at times became petty and certainly wasteful of everyone's time. In an attempt to better control the Appellant's arrival and departure times, Dixon required the Appellant to report to the secretary upon arrival. She then required the Appellant to sign in. The Appellant simply refused to do either, indicating that her union representative said the union contract did not require such actions. There is no documentation concerning the requirements of the union contract and frankly I find it highly unlikely that such a restriction would be contained in an employment agreement. This refusal to sign in as directed by the principal is clearly misconduct in that it interfered with the principal's obligation to insure that teachers were at their assigned locations when students arrived. Additionally, the refusal constitutes insubordination in that it was a willful and deliberate act of defiance of the authority of the principal, the Appellant's supervisor. These refusals were a "conscious, willful and recalcitrant rejection of authority of a supervisory office."

Additionally, the Appellant was told by Dixon that she was required to notify the school system when she was going to be late. In spite of her claims that she did so, the evidence before me shows that she did this sporadically and that there were numerous times when she arrived late without any notice. She suggests, without any evidence whatsoever, that the secretary could have (and probably did) erased telephone messages left on the schools answering machine.

Allegations of Insubordination

In addition to the Appellant's refusal to sign in, actions that I have found to be insubordinate (see above discussion), the Local Board alleges other acts of insubordination.

Refusal to Check and Respond to Email Messages

The evidence is clear that the Appellant, as with all of the teachers at MLK, was instructed at the beginning of her tenure that she was to check the school's internal email messaging system

daily. The purpose of this forum was to keep teachers and staff apprised of daily activities and the need for certain actions. After several occasions when the Appellant had failed to respond to emails from Principal Cohen, Cohen directed the Appellant that she was required to respond to emails inquiries within 48 hours. The Appellant then informed Cohen that she would only respond to concerns that were brought to her attention "in a formal manner" *i.e.* by formal letter. According to the Appellant, her union representative advised her that this was the proper procedure. She continued her refusal to check and respond to email messages from Cohen.

As with the issue of signing in upon arrival at school, the Appellant has provided no evidence that the union contract precludes the use of email messages as a way of communicating with staff. Frankly, it is simply absurd for the Appellant to assert that she need not respond to email messages from the principal and that she would respond only to formal letters. I find this attitude to be the epitome of disrespect for authority, pettiness, and rudeness. Open and easy communication between the principal and teachers is essential for the efficient operation of any school and for the Appellant to dictate to the principal the manner of communication and to refuse to communicate with him demonstrates to me a significant misunderstanding of her role as a teacher or counselor. Such actions are clearly insubordinate.

Failure to Meet With Administrators

In Cohen's letter of concern to the appellant on April 23, 2007, he directed the Appellant to meet with Tami Conley, Staff Development Teacher. Cohen was concerned about the Appellant's classroom management skills, complaints from students and other teachers as to the Appellant's teaching skills, and other allegations of classroom deficiencies. The purpose of meeting with Conley was to assist the Appellant in finding ways of enhancing her classroom abilities. The Appellant was directed to meet with Conley by May 4, 2007. Cohen also directed the appellant to

meet with Gabriella Grayson, Student Support Specialist, by May 4, 2007, to develop a plan for correcting negative interactions with students. The appellant does not deny that she never met with Conley or Grayson; and she has presented no evidence to justify this failure to comply with Cohen's directives.

The Appellant's failure to follow up on these directives is particularly disconcerting given the fact that Cohen's actions were the result of numerous complaints from students, parents and other teachers about the Appellant's lack of teaching skills and poor attitude in the classroom. Such a failure, I find, was simply a refusal to comply with a legitimate instruction from her supervisor and as such constitutes another example of insubordination.

Failure to Sign Up for Chaperone Duty

On April 11, 2007, the Appellant was reminded of her obligation to serve as a student chaperone for one evening student activity. She was directed to sign up for such duty by April 11, 2007 but as of April 23, 2007 she had failed to do so. On April 12, 2007, Cohen advised the Appellant to let him know by April 18, 2007 which of the student activities she would be chaperoning. The Appellant has presented no credible evidence that she ever signed up for chaperone duty in a timely manner and her failure is insubordination.

Failure to Provide Lesson Plans

The appellant does not dispute that as a teacher she was required to have lesson plans available when she was absent from her class. On April 16, 2007, the Appellant left school at about 12:55 p.m., indicating that because of the shooting incident at Virginia Tech she wanted to check on her niece who was a student at the University. Another teacher had to be found to cover the Appellant's classes for the rest of the day. When questioned about getting permission to leave, the Appellant said Grayson had granted her permission. Grayson denied this. The Appellant also

stated that she had left lesson plans on her desk. Another teacher indicated that there were no lesson plans and that he had to improvise lessons for the class.

I find this action by the Appellant to be insubordinate. Although the Appellant's concern for the well being of her niece, a student at Virginia Tech, is understandable, it would have taken very little time to actually hand the lesson plans to Grayson or the substitute. As to whether the Appellant had permission to leave, it seems unlikely that Grayson or any other administrator would have denied a request to leave in such a situation, although it is possible. However, based on the statements of Grayson, I am convinced that the Appellant did not ask her for permission to leave but rather simply told her she was leaving. The Appellant claims that when she informed Grayson that she was leaving Grayson said "OK." Grayson, on the other hand, stated that once the Appellant made it clear that she was leaving, Grayson said "OK, I guess we will have to find coverage." I believe Grayson is the credible witness as to what occurred. The Appellant's demonstrated failure to comply with other rules and her general attitude in interacting with supervisors certainly is congruent with her leaving without permission in this instance. She simply left the classroom with little or no discussion with others.

Furthermore, there is no credible evidence that the situation with regards to Virginia Tech and the Appellant's niece was so exigent that the Appellant could not have taken other actions prior to leaving her class. There was no indication that her niece was directly involved or that her family had requested the Appellant's presence or assistance. A telephone call or two may well have obviated the need to leave school altogether.

On or about April 17, 2007, the Appellant missed a day of school, apparently so she could travel to Virginia Tech. the Local Board alleges that the Appellant failed to call in to the substitute system or that she left any lesson plans during her absence. The Board also alleges that the

Appellant failed to call the substitute system or leave lesson plans for her absence on May 7, 2007. The Appellant's denial of these allegations is simply not credible. At one point she asserted that the curriculum guide should act as lesson plans and that the substitute should have known what the students were working on because of the guide. To equate the curriculum guide with lesson plans is frankly illogical and the Appellant I believe was aware of this and was simply making excuses. I find that there were several occasions when the Appellant failed to leave lesson plans when she was absent from the classroom. Furthermore, because she had been counseled previously about the requirement and need for lesson plans, this failure was a deliberate refusal to abide by a directive from her supervisor and constitutes insubordination. Additionally, the failure is misconduct in that it has a direct bearing on her fitness as a teacher in that it leaves substitutes without the necessary material to provide appropriate teaching.

Allegations of Neglect of Duty

The Appellant's frequent late arrivals, especially those where she failed to call in, constitute neglect of duty in that they resulted in a significant loss of instructional time. Also, the failure to provide lesson plans caused a loss of instructional time. These issues are discussed above.

Allegations of Classroom Neglect of Duty

The evidence before me demonstrates clearly that the Appellant neglected her duties while at MLK and Paint Branch. While at MLK, several teachers complained of the Appellant's lack of preparation and inadequate presentation. On March 21, 2007, Mr. Karel, a co-teacher with the Appellant, complained to Assistant Principal Gruber that the Appellant had alienated the students and was providing busy work. Additionally, she was rude and condescending to other teachers.

On April 11, 2007, Gruber conducted an informal observation of the appellant in class. In a written memorandum after the observation, Gruber directed the appellant to take certain action and

said that he would conduct a follow up observation within two weeks. On April, 12, 2007, Karel made another complaint against the Appellant, indicating that although he was her co-teacher, she had never coordinated teaching activities with him. According to Karel, the Appellant's lessons were incoherent, that she required excessive copying work, and the class had not had any effective history lesson in more than a month.

On April 12, 2007, Gabriella Grayson conducted an observation of the Appellant's class. According to Grayson, the appellant failed to provide a welcoming environment, she lacked control of the class and there was no evidence of substantive planning. In attempting to arrange a post-observation meeting, the Appellant got into a prolonged discussion about whether she had to initial the observation report.

On April 17, 2007, Karel wrote another complaint, stating that the Appellant's class had not learned any history since before the spring break. Beginning on April 17, 2007, several students wrote to Principal Cohen complaining of the Appellant's late arrivals and her failure to provide meaningful instruction. Over 50 students signed a petition requesting that they be assigned another teacher because, according to the petition, they were not learning.

Also on April 17, 2007, Sarah Harper, a teacher next to the Appellant's classroom, complained of the Appellant's lack of supervision and her late arrivals. She complained further that the Appellant was not participating in team teaching activities and that her students were complaining of her lack of involvement and interest. Also during the month of April 2007, several parents complained to the principal about the Appellant's negative attitude toward students and her incessant late arrivals.

I am convinced by the breath and depth of these complaints that the Appellant neglected her teaching duties at MLK. These complaints came not only from students and parents but from other

teachers as well. Although complaints from students and even parents are not uncommon, the great number of complaints against the Appellant is indicative of her lack of performance as well as her lack of interest. The fact that other professionals would complain with specific details of the Appellant's actions can not be ignored. The evidence before me shows that the Appellant was ill prepared, unconcerned, and disinterested in teaching. Frankly, the evidence shows that the Appellant was not concerned about her classes in the least, or in the alternative that she was intentionally abusing her position.

While working as a counselor at Paint Branch, several students and nearly a dozen parents complained that she was not interested or effective and they requested that they be assigned another counselor. Again, the number of complaints shows that the Appellant's deficiencies were not simply isolated issues but that she neglected her counseling duties as well.

The Family and Medical Leave Act

The Appellant claims that she was entitled to leave pursuant to the FMLA and further that she was never advised of her rights under this statute. I disagree.

First, I note that the forms used by the MCPS for teachers to request leave have on the reverse side an explanation of the FMLA. The Appellant certainly had access to these forms because she submitted several when requesting leave.

More importantly, the credible evidence before me does not show that the Appellant qualified for leave pursuant to the FMLA. The threshold question concerning an employee's eligibility for leave under the FMLA is whether the employee is unable to work because of a serious medical condition.[8] As I have stated, the medical documentation before me does not demonstrate

[8] Family and Medical Leave Act of 1993. See also 29 U.S.C §§ 2602 et seq., and 29 C.F.R. §§ 825.101 et seq., for regulations interpreting the FMLA.

that the Appellant was unable to work as the result of a serious medical condition. Her own physician, as well as the physician retained by the Self Insurance Fund, cleared her to return to work and aside from a request for flexible arrival time, there were no restrictions placed on her ability to work.

Furthermore, the Local Board has demonstrated that the Appellant was not an eligible employee under the FMLA. An eligible employee is one who has worked at least 1250 hours during the 12 months prior to a request for leave. The Appellant returned to work on or about March 13, 2007 and worked through May 1, 2007. During the period after she returned to work she did not work the required 1250 hours. Admittedly, she was off from work as the result of injuries sustained in the work related accident of 2006. However, the FMLA indicates specifically that work missed because of illness or injury is not to be counted in determining whether an employee has worked the 1250 hours. The Appellant was simply not entitled to leave pursuant to the FMLA.

Racial Discrimination, Violation of the Appellant's Civil Rights, Retaliation

The Appellant is an African American and claims that her termination was the product of racial discrimination. Such a claim is easily made but requires substantially more than the evidence presented by the Appellant in this case. There is no credible evidence before me to support her claim and she presented no evidence at the proceedings before the Hearing Examiner or the Local Board to support her allegation. The fact that the Appellant is an African American and that she was terminated, standing alone, is woefully insufficient to substantiate a claim of discrimination. She has not even made out a prima facie case of discrimination. There is no evidence of disparate treatment, racial comments, a racially biased work environment or the like.

Furthermore, the Local Board has presented substantial evidence of the Appellant's insubordination, misconduct, and neglect of duties. The evidence before me is overwhelming that

the school system went well beyond what was required (or even prudent) in not terminating the Appellant at the end of her year at MLK. Her actions there were obviously insubordinate and her attitude was hostile, uncooperative, disinterested and indifferent and the school system would have been justified in terminating her at that stage.

The Appellant's actions continued and worsened while working at Paint Branch. Again the Local Board has presented overwhelming evidence that the Appellant was habitually late, failed to call in as required, refused to sign in and had an uncooperative, arrogant and even demeaning attitude. With regards to her interactions with Principal Dixon, there is no evidence whatsoever that race was a basis for any of the disciplinary actions taken.

The same is true for the Appellants allegation that she was terminated as retaliation for filing a workers compensation claim and a claim with the EEOC. The school system has presented an overwhelming amount of evidence demonstrating the Appellant's unjustified late arrivals, her abject refusal to follow specific directives, and her ineptness in teaching and counseling. There is simply no evidence of retaliation, but rather only bald allegations.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Local Board has proven that the Appellant was insubordinate, engaged in misconduct in her positions as a teacher and counselor and neglected her duties in those positions. Md. Code Ann., Educ. § 6-202(a).

PROPOSED ORDER

I **PROPOSE** that the decision of the Board of Education of Montgomery County terminating the Appellant for insubordination, misconduct, and neglect of duty be **AFFIRMED**.

January 4, 2010
Date Decision mailed

D. Harrison Pratt
Administrative Law Judge

#109620

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.

Copies Mailed To:

Katherine Cureton
11710 Old Georgetown Road
Suite 1524
North Bethesda, MD 20852

Eric Brousaides, Esquire
Reese & Carney
10715 Charter Drive
Columbia, MD 21044

Towanda P. Santiago, Administrative Officer
Office of the Attorney General
Maryland State Department of Education
200 Saint Paul Place, 19th Floor
Baltimore, MD 21202