

YUNU YANG,

Appellants

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 09-30

OPINION

INTRODUCTION

Appellant, Dr. Yu Nu Yang, has appealed the decision of the Prince George's County Board of Education (local board) to terminate her from her job as an Evaluation Specialist. The local board filed a Motion for Summary Decision. The Appellant filed a Reply Brief.

FACTUAL BACKGROUND

Dr. Yang began her employment in Prince George's County Public School System (PGCPS) in August, 2003. In 2004, she received an excellent rating on her SY 03-04 evaluation. In June 2005, Dr. Kola Sunmonu became the Director of the Department of Research and Evaluation. Dr. Yang was on staff as an Evaluation Specialist. She reported to Dr. Sunmonu. (T.27). Thus began the "less than ideal working relationship" (See Attachment L to Appeal) that ultimately lead to Dr. Yang's termination and her filing charges of discrimination against Dr. Sunmonu.

We have read the briefs and exhibits filed by each party. We have read the transcript of the two day termination hearing. We have read the hearing officer's decision in the termination matter. The Findings of Fact set forth in that decision comprehensively and meticulously describe Dr. Yang's work history from February 2005 to her termination in 2007. The facts are supported in the transcript.

We incorporate the Hearing Officer's Findings of Fact into this decision. They are attached hereto.

STANDARD OF REVIEW

This case is an appeal of a local board decision pursuant to Section 4-205 of the Education Article. The State Board reviews a decision involving a dispute about a local board's policy, rules, or regulations using the assumption that the local board's decision is *prima facie* correct. In such cases,

the State Board will not substitute its judgment for that of the local board unless it finds that the local board's decision is arbitrary, unreasonable, or illegal. *See* COMAR 13A.01.05.05A.

A decision may be arbitrary or unreasonable if it is one or more of the following:

- (1) It is contrary to sound educational policy; or
- (2) A reasoning mind could not have reasonably reached the conclusion the local board or superintendent reached.

A decision may be illegal if it is one or more of the following:

- (1) Unconstitutional;
- (2) Exceeds the statutory authority or jurisdiction of the local board;
- (3) Misconstrues the law;
- (4) Results from an unlawful procedure;
- (5) Is an abuse of discretionary powers; or
- (6) Is affected by any other error of law.

COMAR 13A.01.05.05(B)(C)

It is the Appellant's burden to prove that the decision is either arbitrary, unreasonable or illegal. COMAR 13A.01.05.05(D)

ANALYSIS

In order to address the legal issues presented in this case, it is important to understand the procedural history of the case. Specifically, Dr. Yang's case involves two different proceedings.

On August 5, 2007, Dr. Yang filed a complaint of discrimination against Dr. Sunmonu (the "4170 claim") with the PGCPS Equal Employment Office. (T.373) The superintendent's Equal Employment Opportunity (EEO) officer conducted an investigation of the claim. No hearing was held specific to the 4170 discrimination claim. The EEO officer issued a decision finding no discrimination. (*See* Motion, Attachment 6). The superintendent upheld the findings of his EEO officer. (*See* Motion, Attachment 5).

Thereafter, on October 17, 2007, Dr. Yang was terminated. After Dr. Yang was terminated, her Union filed a grievance challenging the discharge. In the meantime, Dr. Yang filed an appeal with the Prince George's County Board of Education challenging the superintendent's decision to uphold the findings of his EEO officer in the 4170 discrimination claim. (Appeal not in record).

On November 9, 2007, the superintendent requested a stay of Dr. Yang's 4170 appeal to allow the superintendent to process the termination grievance. Dr. Yang objected to the stay. (*See* Reply

Attachment A). The Prince George's County Board of Education stayed the 4170 discrimination appeal. (See Reply, Attachment B).

In April 2008, while Dr. Yang's 4170 discrimination appeal was stayed, a two day hearing took place in the termination case. After setting forth the facts concerning Dr. Yang's work history, the hearing officer concluded that the decision to terminate Dr. Yang for insubordination, incompetence, and misconduct was supported by the testimonial and documentary evidence. (See Hearing Officer's Decision at 36-42). The hearing officer issued her decision on September 10, 2008.

On November 13, 2008, the local board heard Dr. Yang's appeal of the superintendent's decision on the discrimination issue and, apparently, the local board consolidated that case with her appeal of the hearing officer's termination decision. (See Motion at 4). The local board issued two Orders on December 1, 2008. In one Order, the local board affirmed the decision of the superintendent to terminate Dr. Yang. (See Motion, Attachment 1). In the other Order, the local board affirmed the decision of the superintendent that Dr. Yang's claim of discrimination, harassment, and/or retaliation could not be substantiated. (See Appeal, first document attached).

It appears from the Appeal and the Reply Brief that Dr. Yang attacks both Orders as illegal. In her appeal, the Appellant identifies what she believes is the issue in this case: "Whether the Prince George's County Board erred in denying Dr. Yu Nu Yang's claim of discrimination, harassment, and retaliation on the basis of sex, gender, and national origin." (Appeal at 1). Dr. Yang asserts that "[t]he facts in this matter show that Dr. Sunmonu discriminated, harassed, and retaliated against Dr. Yang by assigning her unattainable deadlines, and punishing her for not meeting deadlines and punishing her for complaining to management about his actions." (*Id.* at 9). We have reviewed the record to determine whether it supports the allegation that Dr. Sunmonu discriminated against Ms. Yang on the basis of sex or gender or retaliated against her for filing a discrimination complaint.

As the local board points out, "claims of employment discrimination are evaluated under a burden-shifting analysis." (Motion at 19). The Supreme Court established the burden-shifting paradigm in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Under that paradigm, the plaintiff is initially required to prove a *prima facie* case by showing that she belongs to a protected class and presenting sufficient evidence giving rise to an inference of unlawful discrimination. *Id.* at 802. If the plaintiff presents a *prima facie* case of discrimination, the burden then shifts to the employer to present evidence of a non-discriminatory reason for the termination. *Id.*; see also *Williams v. Maryland Department of Human Resources*, 136 Md. App. 153, 164 (2000). If the employer meets that burden, the employee "must show that the employer's stated reason for the decision was a pretext for discrimination." *Williams*, 136 Md. App. at 165.

The local board asserts that Dr. Yang "has been unsuccessful in meeting her initial burden of demonstrating that Dr. Sunmonu's actions were [discriminatory] . . . [d]espite having the opportunity to present such evidence at a full evidentiary hearing . . ." (Motion at 20). Dr. Yang counters that at the termination hearing she was precluded from offering evidence of discrimination. (Reply at 3).

We have reviewed the transcript to assess the evidence of discrimination that Dr. Yang offered and the evidence that was excluded.

On direct examination, Dr. Yang offered no testimony tending to show that she was discriminated against on the basis of her race or sex. She did testify on direct that she was terminated after she filed her discrimination claim. (T. 258).

On cross, she testified that Dr. Summonu, "he just discriminate because my national, my race, my gender and because I complain him to Jim Robinson, so that's why he treat me different. He on purpose to want to terminate me because I complain him." (T. 285). On cross, counsel for the local board asked Dr. Yang for the basis of her claim of discrimination. Dr. Yang's counsel objected. This colloquy ensued:

MR. KING: Objection.

Discrimination is not the subject of this proceeding.

MS. SHILLING: She introduced it as an exhibit.

MR. KING: To the extent, we introduced it for the sole purpose of demonstrating work assignments and responses from her supervisor, with respect to those assignments.

MS. SHILLING: She just opened the door and we may be potentially arguing legitimate versus discriminatory reason for termination.

MR. KING: The legitimate reasons certainly are before this body, but the discrimination allegations are not. There's another forum for that.

MS. SHILLING: She just used the word.

THE HEARING EXAMINER: The objection is overruled and we will determine the appropriate weight.

(T. 405-406).

Thereafter, Dr. Yang was asked several times about the factual basis for her discrimination claim and retaliation claim. In our view, she did not provide a factual basis but merely reiterated the conclusory statement that she was discriminated against because of race, gender, sex, national origin and because she filed a complaint. (T. 411, T. 407-414). During the course of her testimony, Dr. Yang's counsel continued to object to questions about discrimination on the basis of relevance. (*Id.*)

The state of the record is perplexing. If Dr. Yang's central defense to her termination was that it was discriminatory, it is odd that her attorney objected to questions about the facts underlying her allegations of discrimination. Apparently, her counsel believed that, because there was "another forum" for that, he did not need to present evidence of discrimination in the termination hearing.

Dr. Yang's Union counsel in this appeal attempts to explain the absence of evidence in the record.

The undersigned counsel for Dr. Yang did not participate in that [termination] hearing, as it was not related to the 4170 complaint process. Evidence that was material to the discrimination case was excluded by the Hearing Examiner upon objection by the superintendent and/or was not introduced by the Union. Indeed, among the evidence excluded and/or not presented to the Hearing Examiner was testimony, documents, and/or other evidence relied upon by the EEOC in finding reasonable cause to believe that the PGCPs violated Title VII of the Civil Rights Act.¹ Specifically, evidence relating to other contemporaneous acts of harassment by Dr. Sunmonu against similarly situated employees of the department. The superintendent fought hard to exclude that evidence from the termination hearing.

(Reply at 3).

Dr. Yang cites to the transcript at 516-533 to show that evidence was excluded. (Reply at 3). Those pages contain the testimony of Ms. Doris Reed, the Executive Director of the Association of Supervising and Administrative School Personnel. (T. 515). She was one of Dr. Yang's witnesses and she testified after Dr. Yang had testified and after Dr. Yang's counsel had objected to questions about the discrimination allegations.

When Ms. Reed began to testify, she stated, in response to union counsel's question about complaints about Dr. Sunmonu, that there were "complaints from members, since 2006, about Dr. Sunmonu." Counsel for the local board objected saying, "It's not relevant what happened with other employees. What's at issue today is the termination of Dr. Yang, the professional relationship between Dr. Yang and Dr. Kola² and any other employee that had direct interaction with Dr. Yang." (T. 516). The hearing officer upheld the objection. (T. 517). Thereafter, a long colloquy occurred about the scope of questioning Dr. Yang's counsel would be allowed. The hearing officer directed, "you need to narrow your questions to the relationship with Dr. Yang and Dr. Kola." (T. 520).

¹ We have searched the record and found no attempt by Dr. Yang's counsel to offer EEOC documents into evidence. Moreover, the EEOC did not enter any findings until January, 2009, nine months after the hearing ended.

² In the testimony, Dr. Kola Sunmonu is often referred to as Dr. Kola.

Later in the testimony, Ms. Reed began to discuss "Kimberly Adedoyin, who was the first female that Kola terminated this year." (T.525). Again, counsel for the local board objected that the testimony was not relevant. The objection was sustained and the testimony struck. (T.525-526). Similar objections were thereafter made and sustained. (T. 530-531).

In an employment discrimination case, evidence that an employer terminated other females on his staff would likely be relevant, circumstantial evidence of discrimination based on gender. *See, e.g. Williams v. Maryland Department of Human Resources*, 136 Md. App. at 164, citing *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133 (2000). Sustaining the objections, we believe, was error.

The question is whether excluding such evidence was an error so harmful that it would require a reversal of the local board's decision to terminate Dr. Yang. We think not. Under Maryland law, the party claiming error must show that she was prejudiced by the exclusion of the evidence. *Halloran v. Montgomery County Department of Public Works*, 185 Md. App. 171, 198 (2009). Indeed, "[c]ourts are reluctant to set aside verdicts for errors in the admission or exclusion of evidence unless they cause substantial injustice." *State Roads Commission v. Kuenne*, 240 Md. 232, 235 (1985). Considering that it is the Appellant's burden to prove that a substantial injustice occurred here, we note again that Dr. Yang's own counsel objected to questions to his client on cross examination which were directed at eliciting evidence of discrimination. And it was Dr. Yang's own counsel who stated questions about discrimination were not relevant and that discrimination was not the subject of the hearing.

In addition, we have reviewed the argument that Dr. Yang presented here on the issue of this excluded evidence. The argument is set forth in the Reply Brief on pages 3 and 4. It asserts that the exclusion of evidence was "reversible error" but there is no argument developed as to why the error is a reversible one. In short, the Appellant has not met her burden of showing that a substantial injustice occurred. *See Klauenberg v. State*, 355 Md. 528, 552 (1999) ("arguments not presented in a brief or not presented with particularity will not be considered on appeal"); *Honeycutt v. Honeycutt*, 150 Md. App. 604, 618 (stating where the appellant "failed to adequately brief this argument . . . we decline to address it on appeal."), *cert. denied*, 376 Md. 544 (2003); *Van Meter v. State*, 30 Md. App. 406, 408 (an appellant court "cannot be expected to delve through the record to unearth factual support favorable to appellant and then seek out law to sustain his position."), *cert. denied*, 278 Md. 737 (1976).

Moreover, when we review the record as a whole, it convinces us that even if the evidence of discrimination had been admitted and if it rose to the level of establishing a *prima facie* case of discrimination or retaliation, the local board presented overwhelming evidence of non-discriminatory reasons for the termination. We summarize those reasons below.

As the hearing officer chronicled in her decision: "Dr. Yang has shown a pattern of (a) wanting to work in her own way; (b) arguing with supervisors over matters that were irrelevant to her assignment or matters that were beyond her authority or responsibility to question or control; (c)

refusing to do assigned work, by asserting her position on legal matters that were within the responsibility of her supervisors to decide; and (d) overreacting to correction and criticism. This pattern has led to Dr. Yang's inability to effectively and efficiently complete the assignments given to her by her supervisors. (Motion, Attachment 4 at 38)

That pattern is reflected, in part, by the following events:

- January 2006, Dr. Yang was involved in an argument with Dr. Kola as to who the "first author" listed on a report should be.
- February 2006, in responding to a mid-year review, Dr. Yang authored a lengthy e-mail in which she commented on other colleagues, rather than identifying her own work.
- March 12, 2006, Dr. Yang sent Dr. Kola an e-mail in response to what appeared to be fairly benign e-mails from him, in which Dr. Yang, in three different places, states that she would rather "die" than take his "humiliated treatments." In an e-mail on March 10, 2006, Dr. Yang complains about "what a humiliation I have suffered" as a result of seeing a document that she prepared in Dr. Kola's trash can.
- March 29, 2006, Dr. Yang participated in a work presentation meeting where, in response to suggestion from Dr. Kola, she stormed out of the meeting. (See Hearing Officer Decision at 38-39).

A similar pattern arose in 2007. (*Id.*) Based on the facts in the record, we affirm the Order of the local board upholding the superintendent's decision to terminate Dr. Yang.

As to the Order of the local board upholding the superintendent's decision that Dr. Yang's allegations of discrimination could not be substantiated, Dr. Yang argues that that decision was illegal because she was denied due process. (Reply at 3). She asserts that she was entitled to a separate hearing on her 4170 discrimination claim and thus, she was denied due process, "because she was not afforded an opportunity to present witnesses, cross-examine the administration's witnesses and provide evidence that was material and relevant to the discrimination claim." (Reply at 3). Such a claim presumes that the process due in 4170 cases includes the right to an evidentiary hearing. Dr. Yang provides no legal support for that presumption.

Indeed, the local board explained in its Motion that:

The procedure in 4170 cases is that the filed complaint is received by the Equity Officer, who investigates the case by reviewing documentation and interviewing witnesses. In this case, the investigation took place from August 2007 through October 2007. The Equity Officer then makes a

determination as to whether the allegations of discrimination and/or harassment were substantiated, and forwards her findings to the superintendent of Schools, who makes the final determination in the matter. The Superintendent's determination is appealable to the County Board pursuant to Section 4-205 of the Education Article.

(Motion at 3, Fn. 5).

The process the school system provides in 4170 cases is typical. It includes a hearing before the local board in which the employee may present argument challenging the superintendent's decision. Indeed, on November 13, 2008 the local board received documents from the parties and heard oral argument on the issue. (*See* Appeal, first document attached, first ¶). That is the process that was due Dr. Yang, and the record shows that she received that process.

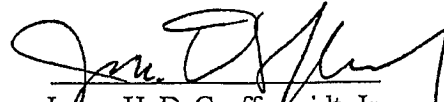
Because there is no due process right to an evidentiary hearing in 4170 cases, we conclude that the local board did not violate Dr. Yang's due process rights when it issued its Order upholding the superintendent's decision that Dr. Yang's claims of discrimination, harassment, and retaliation could not be substantiated. It is a reasonable Order especially given the lack of evidence of discrimination present in the record. We therefore, affirm that Order of the local board.

We note here that Dr. Yang has an additional opportunity to prove her discrimination claim. On January 22, 2008, Dr. Yang filed a complaint with the Equal Employment Opportunity Commission (EEOC). On January 26, 2009, the EEOC issued a finding of reasonable cause to believe that Prince Georges County Public School System violated her civil rights. (Reply, Attachment 3). The school system has challenged that determination. (Motion, Attachment 8). Dr. Yang argues that this Board should consider the EEOC finding in deciding this matter. (Reply at 4-5).

We have not considered the EEOC finding because an EEOC finding "[s]tanding alone, is lifeless and can fix no obligation nor impose any liability It is merely preparatory to further proceedings. If and when the EEOC or the charging party files suit in district court, the issue of discrimination will come to life and the [employer] will have the opportunity to refute the charges the Commission's finding of reasonable cause carries no determinative consequences." *See, Georator Corp. v. EEOC*, 592 F.2d 765, 768 (4th Cir. 1979); *see also, Price v. Federal Express Corp.*, 283 F.2d 715, 725 (5th Cir. 2000)(EEOC's findings of discrimination are not dispositive in discrimination suits.)

CONCLUSION

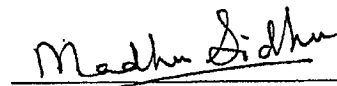
For all these reasons, we affirm the two Orders of the local board issued in this case.



James H. DeGraffenreidt, Jr.
President

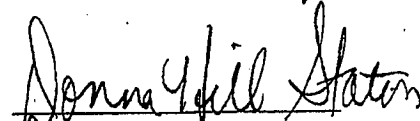
Abstained
Charlene M. Dukes
Vice President


Mary Kay Finan

ABSENT
S. James Gates, Jr.


Madhu Sidhu


Guffie M. Smith, Jr.


Donna Hill Staton

ABSENT
Ivan C.A. Walks

Kate Walsh

Kate Walsh

August 25, 2009

BEFORE THE SUPERINTENDENT OF SCHOOLS OF PRINCE GEORGE'S COUNTY

IN THE MATTER OF :

YU NU YANG, PH. D. :

FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION

This matter came before the Hearing Officer, Dorothy B. Stubbs, on April 17 and April 29, 2008. The Appellant, Yu Nu Yang, Ph.D., requested from the Superintendent of Schools, a Hearing, as a result of her being terminated from her duties by virtue of a letter dated October 17, 2007, from Romaine V. Reid, Chief Human Resources Officer, for the reasons of insubordination, incompetence and misconduct.

At the Hearing, all witnesses were sworn.

The following persons testified at the Hearing:

1. Dr. Kola Sunmonu
2. Dr. Donna Muncey
3. Romaine Reid
4. Doris Reed
5. Terry Nelson
6. The Appellant, Yu Nu Yang, Ph.D.

FINDINGS OF FACT

The first witness called on behalf of the Administration was Dr. Kolawole Kamoro Sunmonu. Dr. Sunmonu was referred to as Dr. Kola throughout the Hearing and he will be so designated here. Dr. Kola is the Director of the Department of Research and Evaluation and first came to the employment of the Prince George's County Public School System (PGCPS) on February 4, 2005 (TR 26-27). Dr. Yu Nu Yang, the Appellant, was an Evaluation Specialist who reported to Dr. Kola. (TR 27). The responsibilities of an Evaluation Specialist include conducting formative and summative assessments. (TR 27-28). A typical project for the Evaluation Specialist would include preparing a proposal and selecting the methodology. (TR 28). When Dr. Kola began working with Dr. Yang, she was working specifically on two projects: the READ 180 Evaluation and the Music and Technology Program Evaluation. (TR29).

When Dr. Kola came to the school system, his assistant prepared a list of projects that each Evaluation Specialist was working on, and he had conferences or meetings with each individual to "chat with them about the status of the project." (TR 29). In that meeting, Dr. Yang advised him that the two projects she was working on were in the starting phase; she had just completed the evaluation of the READ 180 Program, and the Music and Technology Program was in the qualitative data collection stage. (TR 29). In his staff meeting and with individual Evaluation Specialists, Dr. Kola requested that each individual issue to him a proposal that will "lay out the scope of the work that has to be done, including methodology, the data analysis to be used and the timeline for each project." (TR 30). Dr. Yang did not express any concerns when she was asked to submit that report, but when the proposal was submitted, it only covered the summative components of the evaluation, and it indicated that the formative evaluation would be conducted by another employee, Kimberly Adedoyin. (TR 30). In March or April, 2005, Dr. Kola advised Dr. Yang that they should have one proposal for the project and not two separate proposals. Additionally, Dr. Yang was to be the lead evaluator for the project, and Ms. Adedoyin, who was a part-time employee at that time, could not take direct responsibility for any project. (TR 30-31). When that information was communicated to Dr. Yang, her reaction was that Ms. Adedoyin was responsible for the summative components and that Dr. Yang could not be held accountable to prepare that part of the proposal (TR 31). Dr. Kola advised Dr. Yang that she was the lead Evaluation Specialist who was responsible for the entire project, not only because she was the lead Evaluation Specialist, but also because Ms. Adedoyin was a part-time employee at that time (TR 32). Dr. Kola told Dr. Yang that while Ms. Adedoyin may be implementing the formative component of the assessment, she would be working on that directive under the direction of Dr. Yang, who would be responsible for all activities under that section of the report. (TR 32-33). By May of 2005, Dr. Kola started to warn Dr. Yang about her being difficult and about her not wanting to accept responsibility for the project (TR 33).

As to the summative assessment, Dr. Kola felt that Dr. Yang was comfortable with it, although when asked to explain some of the methodology charts, Dr. Yang would defer to other employees, specifically, her husband, Dr. Jeff Li. (TR 33-34). Dr. Kola did not think it was appropriate for Dr. Yang to defer to Dr. Li, because she wrote the report and was responsible for accepting all of the technological input. Although Dr. Li was working in the Department with Dr. Kola, he was in the process of transitioning out of the Department. (TR 34). Dr. Kola felt that Dr. Yang's deference to Dr. Li was another example of her not accepting responsibility and he felt that she had to be held accountable for all of the components of the

work she submitted. (TR 35). Dr. Yang kept "insisting that she has to do it the way she believes it should be done." (TR 35).

There was a meeting scheduled at a time when Dr. Kola was out of the country, so Dr. Cooke sat in for him at the meeting. When Dr. Kola returned from being away, he was called into the office of his Supervisor, Dr. Leroy Tompkins who said that there was a problem that needed to be addressed immediately. Dr. Kola was shown email correspondence between Dr. Yang and Cynthia Moore. (TR 37). Ms. Moore sent an email to Dr. Yang on May 26, 2005, in which she indicated that she had asked Dr. Yang to come to her office for a minute and Dr. Yang "yelled" at Ms. Moore and said "for what." Ms. Moore said that she had asked Dr. Yang to step into her office, and Dr. Yang then "yelled again and stated: No, you come to me." In response, Dr. Yang wrote that "everybody knew that you was [sic] so rude, impolite, bossy, uncultured and 'yelled to me first.'" (Administration Exhibit 1). Dr. Tompkins directed that Dr. Kola investigate and resolve the matter, and he called Ms. Moore into his office to hear what she had to say. Thereafter, Dr. Kola met with Dr. Yang. (TR 40). As a result of his investigation, Dr. Kola determined not to discipline either employee. (TR 41). Dr. Yang was dissatisfied with this result and accused Dr. Kola of taking sides with Ms. Moore. At that point, she began to cry and said she needed to spend some time outside to relax; then she started walking around the building. (TR 41). She returned to her desk sometime in the early afternoon. (TR 41).

In late May or early June 2005, evaluations were to be done by Dr. Kola of his staff. Dr. Kola felt that he did not have enough information to make a full and informed determination, due to the fact that he just came on board in February; he and his Supervisor agreed that all Evaluation Specialists and all persons directly reporting to Dr. Kola should be rated as "meets expectations." As part of the performance evaluation, goals for the next year would be set, and those goals would serve as a part of the evaluation for the following year's annual evaluation process. (TR 42). Administration Exhibit 2 is the Annual Evaluation Form that was completed by Dr. Kola for Dr. Yang for the period ending in June 2005. As agreed to between Dr. Kola and Dr. Tompkins, his supervisor, Dr. Yang was rated as "meets standards" on the Evaluation. Attached to the Evaluation was a form entitled Standard Performance Expectations for Evaluation Specialists, which contained a list of goals and expectations for the following year. Both Dr. Kola and Dr. Yang initialed that document.

Dr. Kola met with each Evaluation Specialist to review each individual's Evaluation and he met with Dr. Yang. (TR 44). When he met with Dr. Yang, she was "a little bit unsatisfied" with her evaluation, and she indicated that she had always been rated as exceptional or

outstanding and was not happy about being rated as "meets standards". (TR 44-45). Dr. Kola told her that the Evaluation should come as no surprise, because it was discussed at a previous staff meeting and everyone accepted at the time the fact that the focus would be on the following year. (TR 45).

Although Dr. Yang received an Evaluation of "meets standards," Dr. Kola did have two primary concerns about Dr. Yang in June 2005. The first was her unwillingness to conduct or participate in collective research, the formative part of the evaluation, and second was her unwillingness neither to accept constructive criticism nor to accept any recommendation to change whatever she wants to do. (TR 46). When he met with Dr. Yang and the other Evaluation Specialists, Dr. Kola indicated that he would meet with them in four to six months and would provide additional feedback. (TR 46).

The next issue or conflict that Dr. Kola had with Dr. Yang occurred in October 2005. Dr. Kola and Dr. Yang had been having a "back and forth" during a project meeting, and although he found Dr. Yang's attitude to be demeaning, disrespectful and disrupting, they continued to move along. In October, Dr. Yang submitted a draft report, and Dr. Kola provided input both as to content and grammar and gave it back to her. At a staff meeting in October, Dr. Yang told Dr. Kola something along the lines that Dr. Kola keeps telling Dr. Yang that she cannot write, but when she takes the report to people "outside," they think it is exceptional. Dr. Kola questioned whether Dr. Yang was taking reports that had not been released to outsiders, and she acknowledged that she had. (TR 46-47). Another Evaluation Specialist in the Department interjected before Dr. Kola could say anything and said that work product done within the Department was not supposed to be given to outsiders. Dr. Yang replied that she did not take it to outsiders but that she gave it to her son, who was then in middle school, to read. Dr. Kola indicated that this was not acceptable and that work product, especially ones that have not been released, should not be shared with people outside of the Department. He continued with the meeting after that comment. (TR 47). After the meeting, he issued a letter of reprimand as a result of the acknowledgement by Dr. Yang that she had shared work product outside the Department. The letter was dated October 12, 2005 and admitted as Administration Exhibit 3. The letter noted that over the past couple of months, official communications between staff and the Department of Research and Evaluation and work in progress had been shared with individuals outside of the Department and in at least one instance, with individuals not affiliated with the school system. The letter further indicated that this behavior was detrimental for everyone in the Department, and Dr. Yang was directed to cease this behavior. The letter stated that the directive includes the forwarding and/or copying

of emails on the internal working of the Department to individuals that are not members of the Department.

Dr. Kola provided Dr. Yang with feedback regarding the READ 180 project as well. He indicated that the issue was "more of a methodology decision" about how the data was analyzed and that it should be presented to non-statisticians in a way that could be understandable and useful in making policy decisions. (TR 52). When presented with criticism by Dr. Kola, Dr. Yang "did not accept that." He scheduled a meeting with Dr. Yang to discuss the methodology issues and during that meeting, Dr. Yang's husband, Dr. Jeff Li, came into his office and sat down. (TR 52). Dr. Kola did not invite him, and Dr. Kola advised him that it was a project meeting that he was not allowed to participate in. Dr. Li refused to leave the meeting, stating that he was an employee of the Division and had a right to attend the meeting. (TR 53). Dr. Kola left the meeting to consult with the Labor Relations Office. (TR 53). Dr. Li was ultimately removed from Dr. Kola's office by individuals from Labor Relations. (TR 53). When Dr. Li left the office, Dr. Yang also left the office; so the meeting could not take place. Dr. Kola considered that act to be insubordination. (TR 54).

Dr. Kola also testified that he had to get Dr. Tompkins involved to direct Dr. Yang to do her work "a number of times." (TR 54).

Administration Exhibit No. 4 is a document containing Dr. Yang's job goals for school year 2006. Dr. Kola received that document from Dr. Yang in preparation for the media evaluation. (TR 55). Dr. Kola had asked Evaluation Specialists to present their accomplishments for the period July 2005 through January 2006. (TR 56). Dr. Kola received the document from Dr. Yang but determined that it was not responsive to his request, which was to tell him how the employee would rate himself or herself on the job that individual had been doing and what challenges the person was facing for that period. Therefore, Dr. Kola concluded that the document was nonresponsive.

Dr. Kola met with Dr. Yang in January or February 2006 and told her what he thought about her work product, advised her that she had issues with following directions, about writing and communication, and about accepting constructive criticism. Dr. Yang indicated that she rejected his assessment and then said that she was tired and stressed and needed to leave. Dr. Kola said that the goal for the meeting was not to rate Dr. Yang up or down but rather to identify areas that needed improvement so that they could move forward. Dr. Yang said she needed to leave and she then left the meeting. (TR 57). Dr. Kola attempted to reschedule the meeting three or four times, but each time he rescheduled it, Dr. Yang would call in sick. On one occasion he did not schedule the meeting in advance but scheduled it at 8:30 in the

morning for 1:00 that afternoon, and at 12:00 he received a leave request form from Dr. Yang indicating that she was taking the afternoon off because she was sick. After three occasions of attempting to reschedule the meeting, Dr. Kola "gave up" rescheduling the meeting. (TR 58).

Administration Exhibit No. 5 is a document containing emails between Dr. Kola and Dr. Yang. During the time period of October through December 2005, the Department of Research and Evaluation did a quick project consisting of a literature review and analysis to determine which of two options would be better for students. The situation involved a decision of how to configure media scores. (TR59). The project was first assigned to Dr. Dina Cooke and then Dr. Yang was brought in. Dr. Cooke, Dr. Yang, Dr. Kola began working on the project together around November 2005. Dr. Cooke was supposed to do the literature review, Dr. Yang was to gather the data that was needed to run the analysis, and Dr. Kola provided general oversight. (TR 59). In December 2005, the report was written. Dr. Kola wrote the report, which included a data analysis conducted by Dr. Yang and a literature review conducted by Dr. Cooke. When the report was written, Dr. Kola listed Dr. Cooke's name first and Dr. Yang's second. Dr. Yang wrote to Dr. Kola, indicating that she did not accept being listed as the second author. She felt that she should be listed as the primary author, and Dr. Kola said that if she wanted to be the primary author, that would be fine. She could be the primary author; however, if the question concerned intellectual property of the material, he should be the primary author because the concepts were his and that Dr. Cooke and Dr. Yang were following his instructions. The January 11, 2006 email contained in Administration Exhibit No. 6 was Dr. Kola's response to Dr. Yang's objection as to the order of names listed on the report. In a response dated the same date, as found on Page 25 of Administration Exhibit No. 5, Dr. Yang argued with Dr. Kola indicating her disappointment that Dr. Kola claimed that he owned the intellectual property for the project, suggesting that he did not own all of the project, because she also contributed to the project.

Administration Exhibit No. 5 also contains an exchange of emails regarding the READ 180 project. Dr. Kola indicated that his goals for the report had always been that the material should be understandable by lay individuals, people who are not familiar with statistical analysis. (TR 62). Dr. Yang wanted to do what is called "adjusted means," which must be interpretable in English. Therefore, Dr. Kola recommended that Dr. Yang should use a measure called percentage proficient, in addition to adjusted means, so that everyone could understand the report. Dr. Yang was "resistant to his advice and says she would not do it." Dr. Tompkins had to intervene, and after that, it was done. (TR 62-63).

Page 18 of Administration Exhibit No. 5 is an email exchange between Dr. Kola and Dr. Yang regarding the meeting which she walked out of in late January or early February 2006. In preparation for the mid-year performance review meeting, Dr. Yang listed her accomplishments and performances. On February 17, 2006, Dr. Yang sent an email to Dr. Kola in which she "expressed her viewpoints" on a number of categories regarding her Evaluation. A copy of that email was sent to Dr. Tompkins, who responded by email on February 21, 2006 indicating that it was "highly inappropriate to be discussing what other staff are doing in your mid-year review" with Dr. Kola. He stated that Dr. Yang should not be referencing these individuals and what they were doing or not doing and that the purpose of the mid-year review is only to "identify areas on which staff should seek to make improvements." (Page 15 of Administration Exhibit 5). Administration Exhibit No. 5 also contains an exchange of emails in late March and early April 2006. On March 10, 2006, Dr. Kola wrote to Dr. Yang indicating that he asked his secretary to be present in all meetings with her because of her behavior during previous meetings and because of her misrepresenting what occurred during those meetings. He stated that as long as she continued to behave in the manner in which she had been behaving, he would always have someone else in the room when he meets with her. He further indicated that he currently did not have similar problems with any other staff members. (Page 8).

Dr. Kola testified that before that time, Dr. Yang would get "aggressive and angry" at meetings and she threatened that "I will die and I will not be the only one that will die." (TR 65). He also testified to an instance when he was out of the building and was called by Dr. Tompkins who told Dr. Kola that he had released all of the staff because Dr. Yang said that Dr. Kola would die and Dr. Tompkins released everyone from the office. When Dr. Kola returned to the office, Dr. Tompkins was meeting with Dr. Yang's husband, Dr. Li, and at the end of the meeting, Dr. Tompkins asked Dr. Li to take Dr. Yang away from the office. As a result of these behaviors, Dr. Kola began a practice of having a secretary present whenever he met with Dr. Yang.

Administration Exhibit No. 5 contains other series of emails between Dr. Kola and Dr. Yang. Dr. Yang expressed an objection to Dr. Kola's practice of having someone else in the room when he meets with her in emails dated March 10, 2006 and April 5, 2006 (Page 2 and 3). On March 12, 2006, there was an exchange of emails regarding documents prepared by Dr. Yang and sent to Dr. Kola. Dr. Yang saw the document in the trash can, and she was very upset by it and felt "humiliated." (Page 13). Dr. Kola explained in an email that what he threw

away were documents that he did not need. The pages of the document he needed were sitting on his desk. (Page 13).

In an email dated March 12, 2006, Dr. Yang stated that she would continue to work hard to finish the works that Dr. Kola had assigned but that she would rather "die" than take his "humiliated treatments." (Page 3). She repeated in the email that she would rather "die" than take his "humiliated treatments." Dr. Yang also indicated in that March 12, 2006 email that although Dr. Kola wrongly accused her of not following his advice, she nevertheless stated that she could not "take any correction made by you that are wrong or inappropriate ...". (Pages 3-4). At the very end of the email she repeated for a third time that she would rather "die" than take his "humiliated treatments".

On March 28, 2006, there was a series of emails regarding Dr. Kola's directive (as supported by Dr. Tompkins) to remove Ms. Adedoyin's name from the Music and Technology Evaluation. Dr. Yang wrote that the issue "related to the copyright law" and that Ms. Adedoyin's "Intelligence [sic] property has been included in the report", and she accused Dr. Kola of asking her to "do something illegally [sic] by not putting her name on the list of authors." (Page 6). Dr. Kola advised Dr. Yang that Dr. Tompkins specifically told her to delete the name of Ms. Adedoyin from the Music and Technology Report and that both Evaluation Specialists were in agreement that her name should not be included. Dr. Kola advised that Dr. Yang's refusal to delete her name as directed would constitute an act of insubordination. (Page 5). In response to that email, Dr. Yang stated that she is "so tired and feels severe headache." (Page 5).

A project meeting was scheduled for the afternoon of April 5, 2006 between Dr. Kola and Dr. Yang to discuss the Read 180 project. Late that morning, Dr. Kola confirmed the meeting in an email to Dr. Yang (Page 7) and she responded by an email stating that she was "so exhausted and tired" and that she felt "dizzy and headache" and needed to take a half-day of sick leave. (Page 6).

Administration Exhibit No. 6 is a letter from Dr. Kola to Traketa Wray, Labor Relations Specialist, dated March 16, 2006. Dr. Kola attached the email dated March 12, 2006 and indicated concerns regarding the tone of the email, in which Dr. Yang, on three occasions, indicated that she would rather die than take his "humiliated treatments." Dr. Kola noted that occurrences in other parts of the country have shown that "people that threaten to harm themselves, tend to harm others when they carry out their threats."

As to the Music and Technology Evaluation, Dr. Kola testified that after the Executive Summary was written, but before it was taken to the Board, the tradition in the office was to discuss the findings with program staff and the lead evaluator was supposed to make a presentation. Therefore, he called a mock presentation on March 29, 2006, for Dr. Yang to present her findings to the professional staff with the understanding that the staff would be role playing as program staff, so that when the formal meeting was called, Dr. Yang would be prepared. (TR 70). Dr. Yang began her presentation and in response to two questions, Dr. Yang referred the questioners to a book that is used in the area of methodology. Dr. Kola interjected to say that the questioners were role playing and were unaware of the textbook referred to by Dr. Yang or any other textbook and that he advised Dr. Yang that when program staff asks questions, she needs to respond in a different manner. Dr. Yang responded to Dr. Kola's comments by saying that she was tired and stressed and that she needed to leave. At that point, she left the room. (TR 71). Dr. Kola and the other people in the meeting stayed for about 15 to 20 minutes and at that point, when it was obvious that Dr. Yang was not returning, the meeting was adjourned. (TR72-73). Dr. Kola decided that he would be "writing up" Dr. Yang on misconduct, but he did not do so immediately because there was still a deadline to present the report to program staff, and he did not want to aggravate the situation, so that letter or reprimand was not written immediately. (TR 73). Dr. Kola did call Dr. Yang into his office and told her that her behavior during the mock presentation was not acceptable and as a result, he would be giving her a letter. She accepted the letter, said that she would write back to him, and left the meeting.

Administration Exhibit No. 7 is a copy of the letter of reprimand dated April 21, 2006, with regard to the mock presentation held on March 29, 2006. The letter indicated that Dr. Kola informed Dr. Yang that she cannot refer program staff to consult a book in response to a question in that she should respond directly to the question. He advised that Dr. Yang's behavior during the mock presentation was "highly unbecoming of a professional in your position. You are angry and snappy throughout the time you were in the presentation room. Your anger and the manner in which you treated your colleagues are neither justified nor acceptable. Most importantly, the behavior is detrimental to the Department's efforts and staff member's morale". Dr. Yang was also advised that any future similar incidents may result in more severe disciplinary actions.

Administration Exhibit 8 is the Annual Evaluation Form for Administrative and Supervisory Supporting Personnel which was the job performance Evaluation for Dr. Yang for the period of July 2005 through June 2006 (TR 75). Attached to the Evaluation Form are three

pages captioned "Comments" which were prepared by Dr. Kola. On that Evaluation, Dr. Yang was marked as being below standards in several areas: communicates effectively in oral and written form, work habits and attitude, complies with rules and regulations, keeps supervisors informed, adapts easily to new situations and emergencies, relationships with others, works well with others, and shows evidence of significant and demonstrable progress toward achieving goals set for evaluation. In addition, Dr. Yang received unsatisfactory ratings in these categories: follows instructions and directions, receives constructive criticism well, and cooperates with supervisor. In the written comments, Dr. Kola elaborated that during the 2005-2006 school year, Dr. Yang exhibited "behaviors that were detrimental to effective functioning of the department ... " including "sending out mass emails on department matters to individuals outside the department and using threatening language." In addition, he felt that Dr. Yang was not receptive to ideas and opinions that differ from hers. Dr. Kola also noted in the comments pages that Dr. Yang was not open to other ideas or opinions, once she decides on a methodology and that her communicative skills are below standard. Her reports and submittals were filled with errors of grammar and syntax. Dr. Kola also had concerns that Dr. Yang was unwilling to follow instructions and directions and did not receive constructive criticism. He referenced her leaving the mock presentation as an example of her disposition regarding receiving constructive criticism. He also noted that Dr. Yang had stormed out of other meetings. As to following instructions and directions, Dr. Kola commented that every instruction or advice given to Dr. Yang had to be repeated at least three times before she complied. He described that situation as being "very time consuming and disruptive to the effective functioning of the department." As to relationships with others, Dr. Kola noted that Dr. Yang behaved "unprofessionally, either by shouting, expressing unwarranted anger, or using threatening language, to members of the department that worked directly with her during the 2005-2006" school year. On at least one occasion, staff had to be released early because of Dr. Yang's threatening remarks that if she were "going to die, I will not be the only one to die."

Dr. Kola met personally with Dr. Yang and shared the concerns expressed in the Evaluation; she said she would not accept the evaluation, and she did not sign it. (TR 76). Dr. Yang called in sick on each occasion for the two months following the Evaluation that Dr. Kola attempted to have Dr. Yang sign it. He testified that from the time these documents were prepared until Dr. Yang was transferred out of the office, she called in sick anytime Dr. Kola was in the office. (TR 77). Administration Exhibit 9 is a lengthy email from Dr. Yang to Dr. Kola in response to his initial informal discussion with her regarding the evaluation. In that

email, dated June 16, 2006, Dr. Yang suggests that she has been a victim because of a hostile relationship between Dr. Kola and Dr. Li, her husband. She responded to the assertion that she failed to follow instructions by providing a listing of the projects that were assigned to her.

Dr. Terry Nelson, the Director of Title I Programs testified on behalf of the administration. (TR 89). Dr. Nelson came to the school system on January 8, 2007 and at the time he came to the school system, Dr. Yang was one of his direct reports. (TR 90). Initially, he found Dr. Yang "to be an individual with a diverse background, certainly had what appeared to be good credentials, and I thought she was well prepared to do the kind of work she was employed to do." (TR 91-92). Throughout the spring of 2007, however, Dr. Nelson "saw a number of things, or observed the number of things, in terms of the work in and of itself." (TR 92). Administration Exhibit 10 is an email from Dr. Yang to Dr. Nelson dated January 25, 2007. (TR 94). There had been a number of discussions relating to Dr. Yang's role and where she fit in the department, expressly with the recognition that there was a previous history in Dr. Yang's working in Research and Evaluation. The gist of that email was a request by Dr. Yang that she not be asked to work on "Program Evaluations that are legitimately to be conducted by the staff of the Department of Research and Evaluation rather than the staff of our Department since they are beyond my specialty and job responsibility."

Administration Exhibit 11 is a record of a meeting that took place on February 16, 2007 in the Department of Federal Programs regarding providing "clarity to Dr. Yang about job expectations." At the beginning of the meeting, Dr. Nelson cautioned Dr. Yang about "good morning" emails that may be deemed inappropriate, and he requested that the messages cease. The "good morning" emails were deemed by Dr. Nelson to be "overly friendly" and could be construed as being "somewhat suggestive". (TR 97). Dr. Nelson was also uncomfortable by the fact that Dr. Yang had in her office a "full-blown picture" of him. (TR 97). Dr. Nelson asked that the picture be removed. Dr. Nelson advised Dr. Yang that all of her tasks would fall within the scope of her job responsibilities, and he noted that on several occasions Dr. Yang was unwilling to accept tasks. Dr. Yang replied that she is willing to do any duties requested by the Director. There was then a discussion about upcoming projects involving program evaluations, and Dr. Nelson requested that Dr. Yang meet with two individuals to develop a written plan of action to evaluate program effectiveness. Dr. Nelson reiterated that the plan of action must include both summative and formative components. Dr. Yang expressed concern with the formative aspects of the program evaluation including time

parameters. Dr. Yang also requested that Dr. Nelson review her work load for the possible elimination or reconsideration of certain evaluation projects.

With regard to the components of research projects, Dr. Nelson's concern was that such projects for his department include both formative as well as summative components. (TR 98). Dr. Yang "consistently stated that she was very uncomfortable" with speaking before classes and teachers and working with administrators in the evaluation projects. (TR 99). Dr. Nelson continued to clarify his expectations regarding evaluations.

Administration Exhibit 12 is a February 22, 2007 email from Dr. Yang to Daryl Williams, who is one of the two supervisors in the Title I department at that time. In the email, Dr. Yang referenced a meeting held on February 22, 2007 regarding data analysis for the school year 2006-2007, Target Assistance Program Evaluation. She raised the issue of a "intelligence [sic] property right". She stated that when the Federal program staff involves someone's project using his or her professional ability, that individual should be a coauthor of the report. She also criticized explanations given by Kim Adedoyin regarding her explanations on how to analyze the data. Dr. Nelson was concerned about the content of this email because it "furthers some of the notions or some of the things that I have stated earlier in terms of the nature of the work at hand." (TR 101). Dr. Nelson testified that he had observed conflicts between Dr. Yang and Dr. Kola as well as conflicts between Dr. Yang and Ms. Adedoyin. (TR 102-103).

Dr. Nelson had been having discussions with his supervisors during the spring of 2007 regarding the reorganization of his department and those discussions concluded in a reorganization that would have eliminated Dr. Yang's position within the department. (TR 103). Dr. Nelson had a meeting with Dr. Yang to convey that information and he testified that it was "not a pleasant meeting, to say the least." He testified that the meeting was "extremely difficult by virtue of the fact that it was a lot of emotion." (TR 104). He further testified that there were some comments that caused him "great concern." (TR 104). Dr. Yang made comments to the effect that "God is punishing me, I don't know what I have done to deserve this, no no no, it was Dr. Muncey, she's out to get me" (TR 104-105). The meeting lasted for a number of hours, and there was a lot of emotion and a lot of tension. (TR 105).

Dr. Yang left Dr. Nelson's department on June 30, 2007, and given the fact that he had arrived on January 28, Dr. Nelson gave her a satisfactory Evaluation:

In cross-examination, Dr. Nelson described some of the inappropriate emails that were sent if not daily, at least every other day, as referring to Dr. Nelson as "my bright and morning

star," "good morning my sunshine," "you are the light of the department", and he testified that he was not comfortable with the content of those emails. (TR 108).

Appellant Exhibit 3 is the Annual Evaluation Form for Administrative and Supervisory Supporting Personnel for the period of July 19, 2006 through June 10, 2007, which Dr. Nelson signed. (TR 109). This document was the formal Evaluation of Dr. Yang and it shows no criteria marked as unsatisfactory or below standards. The following criteria was marked as exceeds standards: completes work in timely manner, work habits and attitude, dependability, punctuality, attendance, performs tasks in orderly manner, follows instructions and directions, complies with rules and regulations, works with minimal supervision, keeps supervisors informed, relationships with others, works well with others, and cooperates with supervisor.

Dr. Yang returned to her position as an Evaluation Specialist in the Department of Research and Evaluation in the summer of 2007 and was once again supervised by Dr. Kola. (TR 113-114). Dr. Kola again testified and he stated that on the day that Dr. Yang returned to work, she requested that a Union Representative be present and so she reported back to work with a Union Representative. They both came to Dr. Kola's office and he held a discussion as to general expectations. He told her about the projects she would be working on and discussed work hours, which had been an issue in the past. (TR 114). When she returned to work under Dr. Kola, she was assigned the Biology component of the High School Core Curriculum Implementation and the Homeless Education Program Evaluation for school year 2006-2007. (TR 115). The Biology Project was in the data analysis stage, as all of the data had already been collected. All of the data, except certification data, had been inputted into the computer, so her responsibility at that point was to conduct the analysis. Dr. Yang was to conduct the analysis and then write a report. (TR 115). The Homeless Program Evaluation was in the initial stage of proposal development which meant that Dr. Yang was supposed to gather information to be able to prepare a proposal as to how she intended to evaluate the program. The Homeless Project contained both summative and formative components. The formative part would involve conducting interviews for groups of the stakeholders who would be primarily parents of homeless students. (TR 116). Evaluation Specialists assigned to the Homeless Evaluation would be expected to interview parents either face to face or by telephone. It would be a survey in which the Specialist would have to gather information from the parents, using one of a number of methodologies. (TR 117).

Dr. Kola testified that Dr. Yang never submitted a proposal but informed him that she could not do a survey or interview that was different than what had been done in the past, because she felt that it was what had been agreed to by law and doing anything that had not

been done in the past would be unlawful and criminal. Dr. Yang informed some of the program staff that she was directed to communicate by gathering information and that she would not conduct parent interviews, and did not see the necessity to do such an activity. (TR 117-118). She told Dr. Kola that she would not do anything except what was done in the past. (TR 118). Dr. Yang's position, apparently, was that anything that was not in the Settlement Agreement between the school system and the homeless advocates would be "illegal". (TR 118). Dr. Kola testified that there was no truth to this position. (TR 118). Dr. Yang claimed that the Settlement Agreement required that the Homeless Education Program Evaluation was to be submitted in "maybe June end of July," which Dr. Kola said was incorrect. (TR 119). Dr. Yang "kept insisting" that Dr. Kola was forcing her to do something illegal because he wanted her to do a survey. (TR 119). Dr. Kola testified that essentially Dr. Yang did not want to do the Homeless Project. (TR 119). Dr. Kola requested that the report should be submitted to him by October 31, but Dr. Yang replied that she was unable to do that and she had not been given enough time. Dr. Kola suggested that Dr. Yang provide him with two proposals: one proposal that would have contained everything that she wanted to do and the other proposal showing what could be accomplished by October 24. She declined to do that and instead simply indicated that she needed at least "two years, up to three years to do the project". When asked why she required that much time, Dr. Yang said because the Evaluation Specialist spent two years working on the prior year's project. (TR 120). Dr. Kola reiterated his directives that the project was to be done, and Dr. Yang kept responding that she could not do it. (TR 121). It was only after Dr. Kola recommended that Dr. Yang be terminated that he received any indication that Dr. Yang was making progress on the project. (TR 121).

Dr. Yang was to work on the Homeless Project with Gail Viens, Deputy General Counsel and Denise Ross, the Homeless Education Coordinator. Ms. Ross told Dr. Kola that "we were going to have a problem" with the evaluation because she had the sense that Dr. Yang did not want to do the project. Ms. Viens called Dr. Kola and said that Dr. Yang told her that she would not do the parent interviews and that she did not see why those interviews were necessary. (TR 122). Dr. Kola wanted to convene a meeting with Ms. Viens, Dr. Muncy and Dr. Yang, but the meeting never occurred. (TR 123).

Administrative Exhibit 13 shows two emails, one dated July 31, 2007 and the other dated August 3, 2007. On July 31, 2007, Dr. Yang sent an email to Fred Hutchinson regarding the Homeless Education Program Evaluation. In that email, she contended that Dr. Kola advised her that he was not allowing her to use the interview and survey instruments that had been used for the previous four years, because they were his copyrighted materials. On

August 1, 2007, Dr. Kola sent an email back to Dr. Yang advising her that at no time during the meeting he held with her did he inform her that he edited the interview and survey instruments used in the previous evaluation nor did he tell her that he owned the copyright to the instruments. What he did communicate was that he would not approve the use of the instruments, as presently written for the 2006-2007 evaluation, because they contained items that were not relevant to the evaluation questions. He also stated that some of the data being gathered by the instruments could be obtained from secondary sources, and he offered to show her which items were relevant, but Dr. Yang said that was not necessary. Dr. Kola advised that there was a need to explore other means of obtaining the data required for the evaluation besides interviews or surveys, due to the time constraints in which the school system was operating. He concluded by indicating that if interviews or surveys were the only sources for data to answer the evaluation question, those instruments would be reviewed and approved before they were used. Dr. Kola described Dr. Yang's reaction to the project as "being difficult, being intransigent." (TR 124). On the one hand, she was saying that she would conduct the evaluation as it had been done in the past; but on the other hand, she indicated that she was not going to use the instruments used in the past, because they were inadequate and should be revised. She further told Dr. Kola that the instruments belonged to Mr. Hutchinson and another former Evaluation Specialist. (TR124). Dr. Kola advised her that no individuals owned the copyright to the instruments, because they were developed while those individuals were working as employees for the school system and that the instrument belonged to the school system. (TR 125). Although in the email Dr. Yang claimed that Dr. Kola asserted ownership in the instrument, Dr. Kola denied that he ever made such an allegation. (TR 125).

In the June-July 2007 time frame, issues arose with respect to the Biology High School Curriculum Project as well. The project deadline was originally July 31, and when Dr. Yang came into the Department, the project was in the analysis stage. Others were working on the projects, and at meetings, staff members indicated that they would be unable to make the July 31 deadline so it was moved to August 7 or 14. (TR 125). When asked whether that date was acceptable to Dr. Yang, she said it was not, and stated that because others had been working on the project for a year, she should have at least one year to work on the project. Dr. Kola told her that the others started work on the project in February, and much of the work had already been done by the time she came on board. He also asked her if the August 7 or 14 date was not possible, when could it be finished; Dr. Yang replied that she did not know and

that she needed one year. She kept insisting that she needed one year for the project and if anyone is responsible for the delay, it was Dr. Kola. (TR 126).

Soon after this situation, Dr. Kola went to Dr. Muncey, to request a meeting to resolve the Homeless Education Project and the Biology Project, because he was unable to obtain a commitment from Dr. Yang as to any date to move the projects forward. Dr. Muncey was trying to schedule that meeting when Dr. Yang went on vacation. (TR 127). Before Dr. Yang went on vacation, she had not submitted a proposal that was requested by Dr. Kola. They had a meeting on July 31 on the Homeless Education Project, and Dr. Yang was supposed to submit her proposal by August 7. Also, the Biology Project was due by that same date, and Dr. Yang went on vacation without submitting any of the project submittals. It was at that point when Dr. Kola made the decision to recommend termination to Dr. Muncey. (TR 127-128).

Dr. Yang had filed a Section 4170 discrimination complaint against Dr. Kola, but Dr. Kola did not know about that filing at the time that he requested termination. (TR 128). Dr. Kola testified that he made his recommendation to Dr. Muncey that Dr. Yang be terminated and they spoke to Human Resources. The Human Resources Department indicated that it should be put in writing and he wrote it up, but Dr. Yang was out of the office and he waited until she returned and gave it to her on August 20. (TR 128). The following week, August 24, 2007, Dr. Kola's division had a leadership retreat and while at that retreat, he received a telephone call from Pamela Harris who said she wanted to talk to him about the 4170 complaint. (TR 128). The 4170 complaint filed by Dr. Yang was fully investigated and Dr. Kola testified that he had been "absolved of any discriminatory or harassment charges and that was it." (TR 129).

On cross-examination, Dr. Kola indicated that during the meeting on June 11, 2007 with Dr. Yang and the Union Representative (Doris Reed) he discussed the general assignments she would be working on, and he said that he wanted to meet with her one on one to discuss the specifics. (TR 131). Those projects were the Homeless Education Project for the 2006-2007 school year and the Biology component of the High School Core Curriculum Implementation project.

As to the Homeless Education evaluation report, Dr. Kola indicated that the 2005-2006 report was supposed to have been submitted in January 2007, based on arrangements with the advocacy group representing the homeless parents in the class action litigation. (TR 131). As to the methodology of those evaluation reports, there were changes from time to time after the first report was submitted for the 2002-2003 school year. In the first or second year, there was an attempt to do a parent survey, which was not successful, so the methodology was

changed to target parents living in shelters for the survey. (TR 134-135). Dr. Kola also testified, on cross examination, that no one was disciplined for any unacceptable performance with respect to the delay in the evaluation for the 2005-2006 school year (TR 136). Dr. Kola acknowledged that Dr. Yang had submitted an incomplete proposal with respect to the Homeless Project on July 31, but he testified that an incomplete proposal is "not progress to me". (TR 138).

Before Dr. Yang came to Dr. Kola's department on June 11, the Homeless Project was assigned to Gwendolyn Smith in February or March of 2007. (TR 141). Her 2006-2007 report was originally assigned to Fred Hutchinson (TR 141). The report was transferred from Ms. Smith to Dr. Yang because Ms. Smith was transitioning out of the department. (TR 145).

On redirect examination, Dr. Kola testified that he made it clear to Dr. Yang that deadlines for the work that she was doing would be set by him. (TR 145). He reiterated what those deadlines were for the Homeless Project. (TR 146). He further testified that no one else in his Department "flat out" refused to work on the Homeless Project. (TR 146). Dr. Kola characterized Dr. Yang's response as an intention not to complete the Homeless Project. (TR 146).

Dr. Donna Muncey testified on behalf of the administration. She is the Chief Accountability Officer, who came to the school system on July 1, 2006 and who oversees 12 departments, including testing, professional development, research and development and Title I. She replaced Dr. Leroy Tompkins, and Drs. Tompkins and Muncey spent about a half a day or a couple of hours on his next to last day when they discussed transitioning. (TR 149-150). Dr. Tompkins told Dr. Muncey that he had made an administrative transfer of Dr. Yang from Research and Evaluation to Title I and that there had been issues in the Research and Evaluation Department, so he was hoping this would be a clean break and a fresh start for Dr. Yang. (TR 150). In September or October 2006, the Coordinating Supervisor for Title I called Dr. Muncey one day a little upset and needing some advice because there had been a disagreement in the Title I office. Dr. Yang was upset and the staff was upset by her reaction. (TR 151). Dr. Yang was requested to assist with some activities, and she refused to assist. Dr. Muncey was told that Dr. Yang had "gotten onto the floor and sort of curled up and was making some noises and was clearly very upset and distraught." (TR 151). Dr. Yang was transported to her husband, who took her home. (TR 151-152). At the time of this incident, Dr. Kola was not her supervisor and Mary Walker, the Coordinating Supervisor, was filling in until Dr. Terry Nelson came on board. (TR 152).

During that same time period, Ms. Walker advised Dr. Muncey that there had been a difference of opinion between Dr. Yang and Dr. Monica Handyside in the Title I office and Dr. Handyside had requested that there be a solution worked out between them. (TR 153). Dr. Handyside was concerned about her safety. (TR 153).

After Dr. Nelson became the Supervisor of that Department, he advised Dr. Muncey that he was "disconcerted by a big poster sized picture of him that was" in Dr. Yang's office. (TR 156). He believed that Dr. Yang's interactions with him were inappropriate. (TR 156). In the spring 2007, Dr. Yang's position was eliminated due to a reorganization. Dr. Muncey then discussed Dr. Yang's reassignment with Dr. Kola and he expressed concerns about that reassignment. (TR 157). Although Dr. Kola expressed concerns, he did not express a refusal to supervise Dr. Yang again. (TR 158).

Dr. Muncey testified that concerns about Dr. Yang began again shortly after her transfer back to Research and Evaluation. (TR 159). The first concern was that the Biology Project, which had been ahead of schedule under Dr. Smith, was now falling behind after Dr. Yang was assigned to it. The second concern dealt with the Homeless Project, to which Dr. Yang had also been assigned. In both cases, according to Dr. Muncey, Dr. Yang wanted to go back and renegotiate what the work should be for the projects. (TR 160). Although Dr. Kola had the ultimate authority to determine methodology for the projects, Dr. Yang wanted to change that methodology. (TR 161).

Sometime in June or July 2007, Dr. Muncey began receiving copies of the communications between Dr. Kola and Dr. Yang where there were differences of opinion about how much conversation Dr. Yang would have with Dr. Smith about the Biology Project, and she received copies of communications from Dr. Yang regarding who owned the rights to the materials used in the Homeless Project. (TR 161-162). Dr. Muncey was concerned "particularly about the interchange with Fred [Hutchinson] because work product belongs to the school system, not to an individual, so there was a whole series of exchanges going back and forth" regarding who owned the survey questions. (TR 162). It seemed "kind of frivolous" to Dr. Muncey because the materials were developed during school district time and the survey "belonged" to the school system. (TR 162). That dispute initiated by Dr. Yang had the potential to "undermine" Dr. Kola's authority. Dr. Yang was suggesting that Dr. Kola was asking her to do something that she thought was immoral or unethical or improper, and she was trying to ask Fred Hutchinson for information to try to substantiate that point. (TR 163). Dr. Muncey was also concerned that in addition to undermining Dr. Kola, it was distracting

from getting the actual work done. (TR 163). Dr. Muncey saw no evidence that the allegations made by Dr. Yang against Dr. Kola for improprieties were true. (TR 163-164).

Administration Exhibit 14 is a series of emails which had been copied to Dr. Muncey. (TR 164). Dr. Muncey testified that an example of her concerns could be found in that exhibit where Dr. Yang has listed methodology for data collection, and it "seemed to be pretty clear the intention was for someone else to do the work or for it not to get done." (TR 164).

Dr. Muncey was asked why she supported Dr. Yang's termination, and she testified that she supported the request for termination for "a lot of different reasons." First, the "pressure was really on" for the Department of Research and Evaluation to do the evaluations that the Superintendent's Executive Cabinet said needed to be done in a "responsible and effective and timely way" and to get the information back to the Cabinet so that decisions could be made about the next level of improvement needed. (TR 165). She testified that when she arrived and saw how late the original Homeless Evaluation study had been submitted, she made a determination that it was "last evaluation that is going to be submitted to this department a year late because it doesn't help anyone" (TR 166). Dr. Muncey testified that to her, there was a sense of urgency about all of the research and evaluation that was going on and that "the longer you go without data, the harder it is to make effective database decisions." (TR 167). With respect to Dr. Yang's performance, Dr. Muncey testified that there was "no positive impact and that adding these layers of questioning and apparent resistance to getting the work done was taking an environment that was already struggling with competence in getting the work done and making it a more contentious place" (TR 167).

Dr. Muncey also testified about the 4170 Complaint filed by Dr. Yang against Dr. Kola. (TR 169). She was a witness and was interviewed for that investigation, which resulted in a finding of no discrimination. (TR 169). She testified that at no time did she ever observe Dr. Kola treating Dr. Yang differently based on any protected classification and that Dr. Kola was a fair evaluator. (TR 169). She testified that she perceived Dr. Kola to be a manager who set clear expectations and that those expectations were set for Dr. Yang. (TR 170). She did not perceive Dr. Kola to have any unreasonable expectations for Dr. Yang. (TR 170).

In cross examination, Dr. Muncey testified regarding the decision to eliminate Dr. Yang's position in the Title I Program. (TR 171-172). She testified that every position in Title I was grant funded so everyone's positions are annual positions. (TR 172). She testified that she did not review Dr. Yang's personnel file during her management of areas that she was working in and had not reviewed her performance evaluations until there was a discussion as to whether she was performing regarding her move into Research and Evaluation in 2007.

(TR 173). In reviewing Dr. Yang's evaluations, Dr. Muncey was concerned about the paragraph under "comments" that Dr. Yang exhibited behavior that was detrimental to the effective functioning of the Department. (TR 174). Dr. Muncey also testified as to the inadequacies of the Homeless Evaluation projects in the past and other evaluation projects coming from the Department of Research and Evaluation, and she testified that she was unaware of any terminations of employees from the Department although she was unsure about any reprimands. (TR 177). She further testified that when she first came into the school system, there were a number of departments that were not engaged in the regular evaluation of their employees, and "one of the things that was very impressive about Kola was that he was trying to use a full base evaluation system." (TR 179). Dr. Kola would meet with his employees and set goals and targets, and part of his evaluation would be whether they met those goals or targets or not. (TR 179). Dr. Muncey was asked about progressive discipline regarding Dr. Yang, and she testified that "very little" progressive discipline was utilized with her. (TR 187-188).

Dr. Muncey further testified that when Dr. Yang was transferred back to Dr. Kola's supervision he set clear expectations for her and told her exactly what was expected of her with regard to the two projects she was assigned. (TR 189). Administration Exhibit 15 is an appraisal record for Dr. Kola. Dr. Muncey had a "very strong" opinion as to Dr. Kola's ability to set expectations and manage people. On January 21, 2008, Dr. Muncey wrote that Dr. Kola has been "particularly attentive to the use of evaluation as a tool for the growth of all of his staff members and the improvement of the quality of work produced in the Department of Research and Evaluation." She also noted that Dr. Kola sets "reasonable work objectives with each member of his staff and holds them accountable for completing their work in a timely and professional manner." She further wrote that she was "impressed by Kola's thoroughness and by the efforts he makes to help staff understand their responsibilities and the importance of their work." He monitors his staff's work, is a very effective communicator of both the reasons for his requests and the feedback needed for improvement, and he maintains well-organized records. He works "collaboratively with staff and others to develop measures of program effectiveness and clarity about program goals." Each staff member in his Department has annual measures for their personnel performance, and Kola is "diligent about collecting information to support employee's performance on these measures." He is more than willing to sit with individuals on his staff and those involved with research and evaluation projects and assist with planning goals and designing more effective measures for reaching goals initially and once the data have been analyzed and it is apparent that change is needed for the

program to be more effective." Dr. Kola was receptive to the idea of professional coaching to provide him with feedback intended to further support his professional growth and his coach confirmed that he runs "effective and professional meetings, has high standards and will not accept underperformance from staff and invests significant time in supporting staff through work that should be routine given their title and job description that accompanies it." Both Dr. Kola's coach and Dr. Muncey were "impressed with his high degree of professionalism and his dedication to helping his staff grow and improve."

Dr. Muncey testified that "some" progressive discipline was applied to Dr. Yang and that Dr. Yang was given several opportunities to improve. (TR 191-192). She further testified that by the time she supported the request for termination, Dr. Muncey did not think anything short of termination would improve Dr. Yang's performance. (TR 192).

Romaine Reid, the Chief Human Resources Officer since June 2006, testified on behalf of the Administration. Matters involving Dr. Yang began to be brought to her attention in 2007. (TR 195). Administration Exhibit 16 was a letter from Ms. Reid to Dr. Yang dated April 20, 2007. Ms. Reid had a meeting with Dr. Yang and Dr. Terry Nelson on April 19, 2007 to discuss Dr. Yang being a staff reduction to the Title I Department. Dr. Yang became visibly upset and very emotional about what was being said, there was crying, and there was a point when she was talking to herself. (TR 196-197). Although Ms. Reid has participated in other meetings to discuss staff reductions of school system personnel, she believed that Dr. Yang's response was "extremely emotional" and "very unprofessional." She was very concerned as a result. (TR 197). In her letter of April 20, 2007, Ms. Reid noted that Dr. Yang had made "multiple comments about wanting to end your life and not going on with life." She also indicated that it was her understanding that "this is not the first time that you have implied at work that you wanted to end your life." Ms. Reid further indicated that Dr. Yang's comments, coupled with her behavior and conduct during the meeting were a serious concern to her and she had "reasonable suspicion that you may be unable to continue performing essential functions of your job duties." As a result, Ms. Reid requested that Dr. Yang contact the Employee Assistance Program and/or a medical provider for a release to return to work. Ms. Reid concluded the letter by advising that before Dr. Yang could return to full duty, she would need to provide medical documentation that she was clear to return to work.

Administration Exhibit 17 is a note from Mark K. Li, M.D., indicating that Dr. Yang was seen by him on April 23, 2007 and that she may return to work but that she was advised to seek psychiatric help through her insurance carrier. At that point, Dr. Yang was cleared to return to work. (TR 199).

Dr. Nelson advised Ms. Reid that he felt very uncomfortable with Dr. Yang and that on more than one occasion he asked her to stop "the morning email greetings of good morning, sunshine, and comments he felt were inappropriate, and he said they made him uncomfortable." (TR 200). Dr. Nelson also was concerned about a gift that Dr. Yang left for him at Dr. Hite's office and Dr. Nelson was feeling that Dr. Yang was not paying attention, because she was "continually almost pursuing him." Dr. Nelson indicated that he did not want the gift and asked Ms. Reid to return it to Dr. Yang. (TR 201). Ms. Reid had a meeting with Dr. Yang during which they discussed the gift and the inappropriate nature of it and Ms. Reid told Dr. Yang that she was to stop this type of interaction. (TR 201). Dr. Yang did not want the gift back and told Ms. Reid to do whatever she wanted with it. (TR 202). Administration Exhibit 18 is a Memorandum dated July 6, 2007 from Ms. Reid to Dr. Yang regarding the meeting that was held on June 29, 2007. In the Memorandum, Ms. Reid states that Dr. Nelson was surprised and somewhat embarrassed when he went to the Deputy Superintendent's office and discovered that she had left an engraved mug for him with a note attached indicating Dr. Terry Nelson's mug. Dr. Nelson brought Ms. Reid the mug and indicated how uncomfortable it made him feel. Ms. Reid indicated that Dr. Yang's contact with and about Dr. Nelson should be "limited to professional sharing of necessary and appropriate information only."

Part of Dr. Nelson's concerns was that at the time, Dr. Yang was no longer working under his supervision and she commented that she knew about a 3:00 p.m. meeting that he had on that particular day. He was concerned how it was that Dr. Yang knew about that meeting at that time. (TR 203).

Administrative Exhibit 19 is a letter and an Independent Psychiatric Evaluation from Daniel J. Freedenburg, M.D., dated June 4, 2007. Dr. Freedenburg evaluated Dr. Yang and concluded that from a psychiatric perspective "one would anticipate a complete resolution of her emotional discontent once her job situation has been clarified. She could return to work from a psychiatric perspective at any time." Dr. Freedenburg indicated that Dr. Yang was not suicidal nor was she falling apart; but, she was anxious and may have overreacted to her job situation. He concluded that she was not a danger to herself or others and could return to work.

Shortly after Dr. Yang returned to work under Dr. Kola's supervision, Ms. Reid began to see communication and resistance to Dr. Kola's direction. (TR 205). When Dr. Kola would advise Dr. Yang what she needed to do, Ms. Reid would see "a flurry of emails back and forth of why it shouldn't be that way and why she shouldn't be asked to do this, and you don't expect this of this person, and this person already did this work. It was almost resistance. No

matter [what] he asked her to do, there was always a reason she shouldn't have to do it." (TR 205). There came a point when Dr. Muncey became involved, and she began to send Ms. Reid emails that she had received.

There was a time when Ms. Reid had discussions with Dr. Kola and Dr. Muncey that the work was not being done and that Dr. Yang was not cooperating and not producing the results that were needed for him to be able to move forward with the work in the Department. She further testified that she was advised that "everything" was getting challenged by Dr. Yang. (TR 206).

The question of termination was not finalized by Ms. Reid until after the results of the so-called 4170 discrimination complaint were concluded, so that she could take that result into consideration when making the decision. (TR 207). When the decision was made in October 2007 to terminate Dr. Yang, Ms. Reid was satisfied that Dr. Yang's treatment was not the result of discrimination or harassment. Administration Exhibit 20 is a letter dated October 17, 2007 from Ms. Reid advising Dr. Yang that her employment with the Prince George's County Public School System is terminated. The grounds were insubordination, incompetence and misconduct. Specifically, the letter references that Dr. Kola based his recommendation on the fact that Dr. Yang had not submitted an acceptable proposal for the Homeless Evaluation and that she failed to inform Dr. Kola of the reason for the lateness, the status of the proposal or an expectation of when the revised proposal would be available. With regard to the Biology Evaluation, Dr. Kola submitted that she was far behind in her work and as a result, the project was delayed longer than it should have been. She failed to inform Dr. Kola of the reasons for the lateness or an expectation of when the project would be available. Dr. Kola cited other actions and communications by Dr. Yang indicating similar unwillingness and or inability to perform tasks assigned to her. She also referenced the 4170 Complaint and the fact that the determination was issued that the claim of discrimination, harassment and/or retaliation could not be substantiated.

Ms. Reid was asked for her rationale for the determination to terminate Dr. Yang, and she provided several bases. She testified that there was no level or cooperation between Dr. Yang and her boss; there was an inability for Dr. Kola to get work done because of Dr. Yang's resistance to his direction; and Ms. Reid was still concerned about Dr. Yang's unprofessional behavior in the workplace. She felt there were real performance issues and that Dr. Yang had been insubordinate to the point that she was not able to get work done using her skills. (TR 209-210). She testified that there was nothing short of termination at that point that would be appropriate. (TR 210).

On cross examination, Ms. Reid was asked about performance objectives and job targets and testified that she thinks the establishment and communication of performance objectives and job targets should be established when a person moves into a new position. (TR 216). She also testified that she does not believe there are any documented progressive discipline steps required in the ASASP contract. (TR 217).

Dr. Yang testified in her own behalf. She received her Ph.D. degree in the field of curriculum and instruction from the University of Maryland in 1998 and began working for the Prince George's County Public Schools in August 2003 as a part-time Evaluation Specialist. (TR 229). In March 2004, she began full time employment as an Evaluation Specialist. (TR 230). In August 2003 she was assigned to the Department of Testing, Research and Evaluation as an Evaluation Specialist. In July 2006 she was transferred to the Title I Department as an Evaluation Specialist and in June 2007 she was transferred back to the Department of Research and Evaluation. (TR 231). Appellant Exhibit 1 is Dr. Yang's Evaluation for the period ending September 22, 2004 from her former Supervisor, Dr. Shahpar Modarresi. She was rated excellent in all categories. Dr. Modarresi also recommended Dr. Yang for permanent status as a Program Evaluation Specialist, indicating that she is an "innovative self-starter." She also listed Dr. Yang's personal qualities and professional skills as including (1) strong knowledge of research designs and statistics; (2) outstanding work ethics; (3) ability to handle pressure; (4) ability to meet deadlines; and (5) passion for conducting research. The evaluation also indicates that Dr. Yang is "always pleasant in her demeanor and possesses high level of interpersonal skills and patience.

Dr. Yang testified that in April 2006 she made a complaint about constant harassment by Dr. Kola and asked to report to a different Supervisor, and in approximately July 2006 Dr. Leroy Tompkins, the former Chief Accountability Officer, transferred her to the Title I Department. (TR 232-233).

Appellant Exhibit 2 is a letter dated July 10, 2006 from Dr. Tompkins to John Robinson, Director of Labor Relations and Personnel Operation regarding a proposal from the Accountability Office to redefine one of the Title I Evaluation Specialist positions to that of Title I Student Achievement Monitoring Specialist. The person in that position would report to the Director of the Department of Federal Programs and would focus on analyzing achievement data at the student, classroom, and school levels and communicate to classroom teachers, school principals and the department's management staff. This Memorandum defines the position into which Dr. Yang had been placed. (TR 235).

On June 11, 2007, Dr. Yang was transferred back to the Department of Research and Evaluation. (TR 236). Dr. Yang testified that she did not apply for the position but that her situation was "kind of an involuntary transfer." (TR 237). In June 2007, she received a performance evaluation from the Title I office. (TR 238). After being transferred to the Department of Research and Evaluation in June 2007, she was given two assignments. The first was the Homeless Education Evaluation project and the other was what has been referred to as the Biology Project. (TR 239). As to the Homeless Project, Dr. Yang testified that the deadline was July 2007, but that Dr. Kola verbally told her to submit the report by October 31, 2007. (TR 240). Dr. Yang met with Dr. Kola on June 11 along with Doris Reed, a Union official. At that meeting, Dr. Kola did not give her any assignments. (TR 240). Appellant's Exhibit 3 is the evaluation for 2006-2007, provided by Dr. Terry Nelson.

Appellant Exhibit 4 consists of a number of emails that Dr. Yang testified would show that she was working diligently in order to complete the Homeless Project. A summary of the emails is found on the first six pages of the Exhibit. Dr. Yang testified that in order to complete the Homeless Project, she needed to conduct 12 to 13 program interviews, 200 to 212 principal surveys and about 100 to 180 parents of homeless students. In addition, she needed to do five to seven shelter site visits and archive data collection; enter more than 1,000 homeless student service forms; collect transportation; archive data from the Homeless Education Office, Pupil Accountability Office, Student Appeal Office and Transportation Office. (TR 242). Dr. Yang testified that because the Homeless Evaluation is very complicated, she would need to review five different interview questionnaires and six survey instruments. (TR 243). She testified that none of the program implementation data had been collected at the time the project was transferred to her. (TR 243).

Appellant's Exhibit 5 consists of three emails between Dr. Yang and Gwendolyn Smith. Dr. Yang asked Dr. Smith in an email whether Dr. Kola assigned the 2006-2007 Homeless Evaluation Project to her before she left the Department of Research and Evaluation. Dr. Smith responded that in February 2007, Dr. Kola placed the Evaluation on a list and assigned it to her. She had two other projects and wondered out loud how this was going to be done. Dr. Kola indicated that it was not yet due and he would get Dr. Smith assistance to complete the project. Dr. Kola told her that the due date for the Homeless Project was in October. Dr. Kola pointed out the previous evaluations and suggested that Dr. Smith start to read them to become familiar with the project. Dr. Smith and Dr. Kola did not have a formal discussion about the beginning of the project, but it seemed as though it was urgent. They never had a conversation about anything becoming due before October 2007.

Dr. Yang had a meeting with Dr. Kola on July 31, 2007, and before that meeting, she submitted a Homeless Education Evaluation Proposal. During that meeting, they discussed her proposal. (TR 246). Dr. Yang further testified that during the meeting, Dr. Kola's instructions were contradictory. On the one hand, he suggested that she not conduct the interview and survey due to the time constraints. On the other hand, he said he would not allow her to use the existing instrument. She also testified that during the meeting Dr. Kola said he was waiting for Dr. Muncey's final say regarding changing the methodology because there was no authority, by law, to change the methodology and he was waiting for Dr. Muncey. (TR 247). The July 31 meeting was the first and only meeting Dr. Yang had with Dr. Kola concerning the project. (TR 247). Meetings were scheduled for July 10 and July 11, but Dr. Yang was sick on those days; then it was rescheduled for July 31. (TR 247).

Appellant's Exhibit 7 is a chart created by Dr. Yang which indicates the following with regard to the Homeless Evaluation Projects: For school year 2004-2005 the project took approximately 23 months, was completed in September 2006 and was about 11 months behind deadline. The 2005-2006 project took approximately 21 months, was completed in June 2007 and was approximately 8 months behind. The 2006-2007 project was assigned to Dr. Smith, who worked on it for approximately four months and did nothing in collecting program implementation data and in submitting the proposal. Dr. Yang worked on the project for approximately four months. The chart also indicates that no other employee assigned to the evaluation projects were disciplined previously.

Appellant's Exhibit 8 is the Final Approval and Consent Decree issued by the United States District Court for the District of Maryland in the homeless students' class action litigation. Page 24 of that document, in Paragraph 46 provides the requirements of the evaluation, to be conducted annually. The decree indicates that the evaluations shall be conducted annually and should be completed no later than July 15 each year. (TR 253).

Dr. Yang testified that she gave her best effort to completing the Homeless Project and submitted a proposal to Dr. Kola and Dr. Muncey on July 31, 2007. A meeting was to be held with Dr. Muncey and Dr. Kola on August 8, 2007; it was rescheduled to August 10, 2007 and then cancelled and never rescheduled. (TR 255).

Dr. Yang also testified about the Biology Project. On June 20, 2007, Dr. Kola transferred the Biology Project to Dr. Yang. (TR 255). By that time, the data had been collected by Dr. Smith. (TR 256). Appellant's Exhibit 9 contains emails that Dr. Yang testified showed how diligently she worked on the Biology Project during the period June to August 2007. The first four pages of the Exhibit are a summary of the emails contained in the rest of the Exhibit.

Page 25 of Appellant's Exhibit 9 is an email from Fred Hutchinson to Dr. Kola dated August 9, 2007 regarding the Biology Project. The email indicates that the delays associated with the Biology subchapter are a function of Dr. Yang's work schedule. Dr. Yang testified that at the staff meeting, all agreed that August 24 was the due date for her to submit the draft Biology Report. (TR 257). Page 28 of that Exhibit is Dr. Yang's draft evaluation finding, dated August 24, 2007. She testified that she submitted the report on August 24, 2007, which was the date that had been established for the submission of the report.

Dr. Yang testified that she was never warned or disciplined by Dr. Kola for being disruptive in the office and that the first time she was aware of such allegations was on August 20, 2007, when she received Dr. Kola's termination recommendation memorandum. (TR 258). Appellant Exhibit 6 is the Discrimination or Harassment Incident Report filed by Dr. Yang against Dr. Kola. Appellant Exhibit 6a is the same document but printed in color. The text printed in blue was provided by Dr. Yang; the text in brown are Dr. Kola's responses to the original complaint, and the text in green are Dr. Kola's responses to the investigator's questions.

On cross examination, Dr. Yang testified about Administration Exhibit 21 which was a letter she wrote to the Human Resources Department on April 23, 2006, complaining about what she viewed as a hostile working relationship and constant harassment by Dr. Kola. Administration Exhibit 22 is the response, dated May 1, 2006. That response references a meeting held on April 27, 2007 among Dr. Yang, Dr. Tompkins, Traketa Wray, and John Robinson, to address the many complaints reported against her Supervisor. Mr. Robinson indicated that Dr. Yang's "pre-meeting letter" was found to be "very alarming, considering your involvement with the suicide prevention personnel, who were sent to your home by another employee to whom you had given your number and called to your home that weekend." Dr. Yang suggested five "best resolutions" to her conflict with Dr. Kola including: her reporting to another supervisor; making email the major tool for communicating with her supervisors; tape recording any face-to-face discussions with her Supervisor; breaks when meeting with her Supervisor and having a third party represent her in talking with her Supervisor or Dr. Tompkins. Each of these "resolutions" was rejected.

As to Dr. Yang's position in Title I, she testified that she was not aware of whether her position was funded by Title I or that the reason it was eliminated was because it was funded by Title I. (TR 271). As to Dr. Yang's relationship with Dr. Nelson, she testified that she says good morning to everybody, that her relationships are good and that she treats everybody very well. She testified that she did not create the picture of Dr. Nelson that she had on her desk but that someone else created it and sent it out to every staff member and that Dr. Yang printed it out and

put it on her desk. (TR 273). As to the gift of the mug, Dr. Yang testified that she knew about Dr. Nelson's meeting with Dr. Hite and knew that Dr. Hite was a friend of Dr. Nelson's so she left the mug for Dr. Nelson with Dr. Hite. (TR 274). She testified that Dr. Nelson told her that her personal attention was unwanted and after that "I just don't do anything" (TR 274).

With regard to the Homeless Project, Dr. Yang testified on cross examination that she began work on the project on June 11, 2007 and that she was getting settled in between June 11 and June 20. (TR 274). Between June 11 and June 20, she continued to do the Title I project, Copies and System project. (TR 275). On or about June 20, 2007, Dr. Kola assigned Dr. Yang the two projects. (TR 275). Dr. Yang testified that she had no discussion about the projects with Dr. Kola. (TR 275). As to the Biology Project, the implementation data had been collected, but the report had not been completed. (TR 277). Although both projects were assigned at the same time, the Biology Project was further along. (TR 277). Dr. Yang denied being resistant about the Homeless Project and denied that she told Denise Ross that she would "not interview those people," as stated by Dr. Kola. (TR 282). Dr. Yang denied expressing resistance to the projects to which she was assigned and did not express resistance to doing the formative part of the assessments. She testified that she "always follows the direction." (TR 282). Dr. Yang testified that she has never behaved unprofessionally towards Dr. Kola and that she has never walked out on meetings with him unless she had a stomach ache, in which event she asked to be excused and then returned to the meeting. She further testified that she never refused to meet with Dr. Kola. (TR 285). Dr. Yang testified that Dr. Kola and her husband had a conflict but that it has nothing to do with her. (TR 285). Dr. Yang denied that she ever behaved unprofessionally and that she always followed the directives of her supervisors and was never resistant to directives. (TR 289). She also testified that she had never been insubordinate. (TR 289).

Dr. Yang testified about the Biology Project and indicated that she was given the project on June 20, 2007 (TR 315), that the data had all been collected (TR 318), and that her job was to write the report. (TR 318). She was working on the report in June, July, and August 2007 and had a meeting with the staff on June 6, 2007. (TR 319). Dr. Yang denied that she told the staff at the meeting that she needed another year to complete the project. (TR 321). At the staff meeting, they extended her deadline to August 24. (TR 322).

Dr. Yang further testified that most, but not all of the data for the Biology Project had been collected. (TR 334). She clarified that implementation data had been collected, but there was additional data that needed to be collected. (TR 335).

As to the Homeless Project, Dr. Yang testified that she needed to request Homeless Education Student Survey forms (about 1,000) from the Homeless Education Office and that she

requested the Homeless Study Group minutes, but the documents were never given to her. (TR 339). She also requested some homeless education student data base, of which she received some. (TR 339).

Dr. Yang testified that the site visits were one of the most important parts of the evaluation, but she denied that she refused to make those visits. (TR 341-342). She further denied telling Denise Ross that she would not interview parents. (TR 342). She testified that she felt that it was "too late to collect the data, because the homeless education parents data is supposed to be collected before the end of the school year." (TR 343).

Dr. Yang acknowledged that Dr. Kola was the person who sets deadlines for projects. (TR 345). Dr. Yang further stated that the "court mandated deadline" was July 15, 2007, but that Dr. Kola said she needed to complete it by October 31, 2007. (TR 347). She stated that the deadline issue was to be discussed at the meeting to be scheduled with Dr. Muncey, but that the meeting was cancelled and never rescheduled. (TR 348). She also testified that the methodology issue was also to be discussed at that meeting, to use or not use the interview and survey. (TR 348).

Dr. Yang had a meeting scheduled with Dr. Kola on July 31, 2007 and in preparation for that meeting, she sent him an email at 10:57 a.m. which appears as Page 33 of Appellant's Exhibit 4. She testified that she was not aware that school system personnel had been in negotiations with the attorney for the class action plaintiffs regarding the deadline. (TR 352). This testimony was contrary to Dr. Yang's previous testimony that Ms. Viens told her that they were negotiating the deadline. (TR 280). During cross examination, Dr. Yang insisted that the deadline was July 15, because it was in the settlement and because "the settlement is law." (TR 353). Dr. Yang testified that at the meeting of July 31, 2007, she became aware that the deadline was October 31. (TR 355). She denied being told that the deadline for the submission of the proposal was July 31. (355). She testified that Dr. Kola did not establish any deadline for her to submit the proposal but that she was "volunteering" to submit the proposal during the meeting of July 31. (TR 356). She testified that Dr. Kola was not expecting her to do any work on the Homeless Project, but that she chose to do so voluntarily. (TR 356-357).

Dr. Yang testified that she did not recall Dr. Kola asking her, at the July 31 meeting, to provide two different scenarios for what she could get done by October, one scenario doing the entire evaluation and one scenario doing the evaluation without the survey or interview. (TR 357). Dr. Yang was unclear as to whether she recalled Dr. Kola asking her to tell him what she was able to do by October 31, but she did testify that she explained that the October 31 timeline is unreasonable. (TR 358).

With regard to Appellant's Exhibit 7, which provided information about previously submitted Homeless Evaluation Reports, Dr. Yang indicated that she did not know the full extent of any possible discipline being imposed on other employees, but was aware that other employees were not terminated. (TR 364).

With regard to the methodology of the Homeless Report, Dr. Yang testified that if the methodology is "dramatically changed, neither she nor Dr. Kola have any authority to do so and by the settlement, an overhaul proposal must be approved by both parties." (TR 366). Dr. Yang testified that the proposal that she submitted on July 31, 2007 is not entirely her work product, but was based upon previous reports. (TR 367). She testified that during June and July 2007, she read the previous year's report and created the proposal. (TR 368). She also received some information from the Homeless Education Office. (TR 368).

As to the July 31 meeting, Dr. Yang denied that she argued with Dr. Kola, and stated, instead, she just explained her view. (TR 368). She testified that at that meeting there was a discussion regarding the use of the previous instrument and a conversation about whether or not Dr. Yang could use the previous instrument created by Dr. Modarresi. (TR 370). Dr. Yang testified that she was "explaining" the copyright issue to Dr. Kola; not arguing, just explaining. (TR 371).

After the meeting on July 31, Dr. Yang sent an email to Fred Hutchinson which is found at Page 51 of Appellant's Exhibit 4. In that email, she asked whether the 2005-2006 interview and survey instruments were revised by Mr. Hutchinson or by Dr. Kola. Dr. Kola responded to that email on August 1 and wrote that Dr. Yang "completely misrepresented what transpired" during the July 31 meeting. He stated that at no time during the meeting did he inform her that he edited the instrument or that he owned the copyright thereto. He noted that what he explained at the meeting was that he used some of the data gathered with the instruments when the 2005-2006 report was rewritten and that he would not approve the use of the instruments for the current evaluation, "because they contain items that are not relevant to the evaluation questions." He also stated that some of the data being gathered by those instruments can be obtained by secondary sources. He offered to show her which items were not relevant, but she said it was not necessary. Due to the time constraints in which they were operating, there was a need to explore other means of obtaining the data required besides using interviews or surveys. He also stated that if interviews or surveys were the only sources for data to answer the evaluation questions, the instruments will be reviewed and approved before they are used. (Page 52 of Appellant's Exhibit 4).

Dr. Yang filed her discrimination complaint on August 5, 2007. (TR 373). Dr. Yang testified about the discrimination or harassment incident report she filed regarding Dr. Kola. Administration Exhibit 23 is the "color coded" document showing Dr. Yang's comments in blue and Dr. Kola's comments in brown and green. (TR 379).

Dr. Yang testified that as to the Homeless Project, Dr. Kola had not given her any direction or expectation, but that she knew when it was assigned on June 20, that she had a project to do so she asked for information from Fred Hutchinson. (TR 384). Dr. Yang testified that the project was discussed for her the first time on July 31, 2007, but that she knew what to do because she consulted with Mr. Hutchinson. (TR 388).

In her Discrimination Complaint, after comment No. 17, Dr. Yang alleged that Dr. Kola "officially admitted that PGCPs violated Item 46 of the Settlement Agreement" Dr. Yang denied that she accused Dr. Kola of doing something illegal. (TR 392). Dr. Yang also testified that after Dr. Kola told her that the deadline was extended, she contacted Gail Viens because she was attempting to obtain verification of what Dr. Kola had told her. (TR 393). In her Discrimination Complaint, Dr. Yang stated that Dr. Kola "cannot do whatever he wants. He has to abide by the Court-mandated Agreement. He does not have the option ... of whether or not to abide by the policies and procedures that have been written in the Settlement Agreement. The existing evaluation methodology had been approved by the Two Parties' Attorneys before the first evaluation study was conducted. That methodology has been used for several years." (See also, TR 395-396). Dr. Yang acknowledged, in her testimony that minor changes to the methodology had been made previously but she believed that the "interview, survey, site visit, the implementation stuff cannot change [without consent of both parties]." (TR 398). Dr. Yang believed, and "explained" to Dr. Kola that if the methodology was to be changed, as a whole, it needed approval by both parties. (TR 399). Dr. Yang acknowledged that when Dr. Kola gave her direction, "I just followed his direction. I just explained the difficulty, the opinion, and the law, the settlement. And I need to clarify." She testified that she "needed" to have a decision maker, like Dr. Muncey, to clarify. (TR 401). Dr. Yang distinguished the Homeless Project from other projects because it is a court mandated project subject to a settlement agreement. (TR 401).

During cross examination, Dr. Yang was asked about her relationship with Dr. Kola, and she described her first problem with Dr. Kola as occurring when she "explained" a copyright issue to him. She told him that she felt that she should be the "first author" of a certain report and Dr. Kola was at first reluctant, but finally gave her the first author position. (TR 417). On another occasion, Dr. Kola "demanded" that Dr. Yang delete the name of another person from a report, and she explained the copyright issue to him and explained that the other person had been

working on the project for five or six months. (TR 418). She described these discussions as "explaining" rather than "arguing". (TR 418-419). She acknowledged that rather than following the directives given by Dr. Kola in these examples, she "explained" her position before following his directives. (TR 420).

Dr. Yang also described the relationship she had with Dr. Kola's secretary, Cynthia Moore. One day Ms. Moore yelled to Dr. Yang and in a "not good voice" and in an impolite manner. And as a result, Dr. Yang "explained" to her. (TR423). After a while, she got along very well with Ms. Moore. (TR 423).

Dr. Yang was asked about an email which appears on Administration Exhibit 10 in which she "explained" or "clarified" her position regarding her job duties and responsibilities in the Title 1 office. When asked whether this email was an attempt to direct her work, she testified that it was just to "clarify" her job position. (TR 431). Administration Exhibit 12 was another email regarding her job and the issue of authorship of reports, and she described that memo as explaining copyright issues. (TR 432).

Dr. Yang was specifically asked whether she requested, in 2006, that emails be the major tool for communication between her and her supervisor, and she testified that she did not think that she made such a request. Administration Exhibit 22 is a letter dated May 1, 2006 from John Robinson, then Director of Labor Relations and Personnel operations, in which he indicated that Dr. Yang had requested that email be the mode of communication. Dr. Yang testified that she never asked that to be the case. (TR 434-435). Dr. Yang did acknowledge that at that time, she requested that meetings with Dr. Kola be tape recorded. (TR 435-436). Dr. Yang also acknowledged that she requested that Human Resources be an intermediary in every discussion with Dr. Kola. (TR 437).

When asked about the June 2005 evaluation showing that Dr. Yang met standards, Dr. Yang denied that she was upset by that evaluation or disagreed with it. (TR 439).

Dr. Yang was asked about the mock presentation which was the subject of the letter she received on or about April 21, 2006, (Administration Exhibit 7). She did not recall receiving the letter and did not recall the mock presentation. (TR 441).

With regard to the evaluation for the period ending June 2007 (Administration Exhibit 8), Dr. Yang testified that the evaluation was never finished and that she knew how Dr. Kola was going to evaluate her. (TR 444). She further testified that there was a meeting on June 14, to discuss her evaluation but that no other meetings were set up to talk about her evaluation. (TR 445). Although Dr. Yang denied that other meetings were scheduled, she did acknowledge that she was sick, at times, and unable to come to work. (TR 445-446).

Administration Exhibit 27 is an email from Dr. Yang dated May 13, 2007, to Romaine Reed, Chief Human Resources Officer. In that email, Dr. Yang appears to express a desire to return to the Evaluation Specialist position in the Department of Research and Evaluation. Dr. Yang testified that she did not apply for the position but just "explained" her opinion. (TR 458).

On redirect examination Dr. Yang identified a letter she wrote to Dr. Kola on October 14, 2005, in response to the letter of reprimand sent on October 12, 2005 (Administration Exhibit 3). In that letter, she denied that she ever shared official communication between staff and the Department of Research and Evaluation with outsiders, except her husband, Dr. Li, who was identified as Dr. Tompkins' "Statistical Analysis Staff." (TR 461). Appellant's Exhibit 12 contains copies of numerous emails to and from Dr. Yang which she contends demonstrates "many positive communications with my colleagues." (TR 463-464). Appellant's Exhibit 13 is a series of emails to and from Dr. Yang related to the READ.180 project. (TR 467). Appellant's Exhibit 14 is a series of emails to and from Dr. Yang related to the Music and Technology Program Evaluation Project. (TR 470).

Dr. Yang testified that with respect to the Homeless Evaluation, none of "any implementation data" had been collected when the project was transferred back to her on June 20, 2007. (TR 488). Dr. Yang testified that starting June 20, 2007, she began collecting data necessary for the Homeless Evaluation. (TR 492). She would receive that data and use it to prepare the proposal. (TR 493). Page 34 of Appellant Exhibit 4 is a chronology of events that were proposed by Dr. Yang in working on the Homeless Evaluation. She testified that it was "an estimate" of the time frame. (TR 494). Although the dates are all in the August to September time frame, Dr. Yang testified that at the time this document was created, she was not aware of the October 31 deadline. (TR 494). She testified that the first time she heard about the October 31 deadline was at the meeting of July 31. (TR 495). She testified that prior to July 31, 2007, she did not know of any deadline for the Homeless Project. (TR 496).

Dr. Yang testified that the proposal she sent to Dr. Kola on July 31, 2007 (Pages 35 through 47 of Appellant's Exhibit 4) was a draft proposal that she created from scratch. (TR 502). She did acknowledge that the proposal is based on the previous evaluation report. (TR 503).

Page 33 of Appellant's Exhibit 4 is an email that was sent to Dr. Kola from Dr. Yang just prior to their meeting on July 31, 2007. In that email, Dr. Yang states: "... thus how can I complete it by October, 2007? The time period is too short for any professional staff to complete it." Dr. Yang was asked how she could have made a reference to October prior to the meeting if she only found out about the deadline at the July 31 meeting. She was unable to give a specific answer to that question but said that maybe she was told some time that day about the due date.

(TR 508). She testified that the deadline might have been provided to her prior to the actual meeting. (TR 508).

Doris Reed, the Executive Director of the Association of Supervisor and Administrative School Personnel (ASASP) testified on behalf of Dr. Yang. She testified that one of her roles is to "ensure that the members' rights are protected under the contract policies and procedures" and that she works with Association members "when they have problems with their supervisors." (TR 516). Ms. Reed testified that Dr. Yang was notified in April 2007 that her position in Title I had been eliminated. (TR 521). The only other available position at that time was an evaluation specialist position in the Department of Research and Evaluation. (TR 521-522). Dr. Yang was involuntarily transferred into that position. Ms. Reed accompanied Dr. Yang to a meeting on her first day back under Dr. Kola's supervision because she was concerned about the prior relationship that Dr. Yang had with Dr. Kola. Ms. Reed testified that her meeting with Dr. Kola and Dr. Yang was a very brief one and was more to talk about where she would be sitting, her office location, etc. (TR 523). Appellant's Exhibit 18 is an email from Ms. Reed to Dr. Kola dated July 11, 2007 in which she requested that Dr. Kola "immediately cease processing" evaluations for the previous year, because they had not been completed June 30. Appellant's Exhibit 20 is a letter dated August 22, 2007 from Ms. Reed to Romaine Reid, requesting a meeting to "discuss and dispute" the recommended termination of Dr. Yang by Dr. Kola. Ms. Reed requested a meeting with Dr. Hite, because she felt that Ms. Reid had "no control over Kola." (TR 528).

Ms. Reed also testified that Dr. Yang had given gifts to her and her staff, and none of them felt offended or threatened. (TR 532).

Dr. Kola was called to testify in rebuttal by the Administration. With regard to the READ 180 Project, Dr. Kola testified that until June or July 2005, the project was on track, but after the summer of 2005, Dr. Yang refused to follow directives and kept going back and forth. (TR 536). However, thereafter, it was necessary to push the date forward and one of the main reasons was Dr. Yang's position about not following directives and recommendations on how to improve the report. (TR 538). Throughout the fall of 2005, Dr. Kola testified that there was a continuous "battle" with Dr. Yang on methodology. He would ask Dr. Yang to defend the methodology and she would say it's not for her to defend. She would refer him to a book or a statistical analysis, and said that Dr. Jeff Li should explain it. (TR 538). The constant refusal by Dr. Yang to follow directives was one of the reasons that the project was not completed on time. (TR 538). Dr. Kola testified that getting Dr. Yang to get the job done was a major issue. (TR 539). On February 6, 2006, Dr. Kola sent Dr. Yang an email forwarding the Executive Summary of her report but indicating that three or four of the figures in the report needed to be revised. He previously had

suggested that she change the format of several figures to make them more easily readable when photocopied, and that had not been done. (Administration Exhibit 28). Administration Exhibit 29 shows a series of emails when begins with an email Dr. Yang wrote and sent to herself on January 31, 2006 regarding a status report. That document was not sent to Dr. Kola until almost a month later, on February 28, 2006. The original date for completing the report was September 14, and it was moved up to October 7, 2005. Ultimately, the final submission was made on February 6, 2006. Dr. Kola testified that there were other issues involved, but part of the problem was Dr. Yang's delays. (TR 543).

Dr. Kola also testified about the argument over authorship of the musical technology report and whether or not Ms. Adedoyin's name should appear on the report. (TR 544). The argument between Dr. Yang and Dr. Kola had to do with who should be responsible for the formative component of the report, and it was debated from late summer or early fall of 2005 through March 2006. (TR 545). Although Dr. Yang was instructed by Dr. Tompkins to make the changes, they were not made until March 2006. In fact, Dr. Tompkins had to call a meeting of the whole Department to discuss it. (TR 545). At the meeting, Ms. Adedoyin made a presentation, and all of the team members agreed that she was essentially collecting data on behalf of Dr. Yang. As a result, Dr. Tompkins instructed Dr. Yang to take Ms. Adedoyin's name off the report. (TR 545). Dr. Yang did not follow that directive, and it took Dr. Kola's Supervisor to direct her to do it. (TR 546).

Administration Exhibit 30 is the Negotiated Agreement between the Board of Education and ASASP (Unit III). Dr. Kola discussed his evaluation of Dr. Yang for the 2005-2006 school year. He called Dr. Yang into his office on or about June 7, 2006, to discuss his perception and for Dr. Yang to give feedback; however, after Dr. Kola gave his oral presentation, Dr. Yang walked out of the meeting and said that she was not willing to attend the meeting and would get back to him. (TR 551). Dr. Kola proceeded to prepare a formal evaluation for signing, and Dr. Yang called in sick on every opportunity that he had scheduled the meeting for at least two weeks or so. He then went on vacation; and when he returned, he rescheduled the meeting, and Dr. Yang again called in sick. (TR 548). Once Dr. Kola had returned from vacation, Dr. Yang, for all practical purposes, never reported back to work because after calling in sick continuously, she was transferred out of the Department. (TR 549). The draft evaluation was never placed in her personnel file because Dr. Yang did not avail herself to provide a response to that evaluation. (TR 550).

Administration Exhibit 31 is an email from Dr. Yang to Dr. Kola and others dated August 24, 2007, which was after Dr. Kola made his recommendation that Dr. Yang be terminated. That

email attached Administration Exhibit 24 which is the Biology Project report. Administration Exhibit 24 tracks the revisions made to the document, and those revisions were made by Dr. Yang during the period August 21, 2007 through August 24, 2007. Therefore, although Dr. Yang testified that she had been diligently working on the report during June and July 2007, the track changes indicate that the changes were made beginning August 21, 2007. As to the Homeless Project, Dr. Kola testified that a proposal for a project is a standard document done for all projects. Some proposals are more detailed than others, but all projects must have a proposal. (TR 558). Dr. Kola also testified that the Homeless proposal that she provided to him on July 31 was not voluntary and self initiated. (TR 558).