

MARCY CANAVAN,

Appellant

v.

PRINCE GEORGE'S COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-21

OPINION

This is an appeal from a retired records clerk of the Prince George's County Public School System (PGCPS), alleging six adverse personnel actions taken by the school system over several years prior to her retirement. The local board upheld the decision of the former local superintendent/CEO, effectively denying Appellant's claims. At the State level, following a hearing, the State administrative law judge issued a proposed decision recommending affirmance of the local board's decision. A copy of the proposed decision is attached as Exhibit 1. Appellant filed objections to the proposed decision; the local board filed a response to the objections; and oral argument was presented by the parties to the State Board on March 30, 2004.

Based upon our review of the record and with the following clarification, we adopt the findings of fact and conclusions of law of the administrative law judge. To the extent the issues raised by the Appellant were decided by the local superintendent/CEO, then the local board, our jurisdiction to review this appeal arises under § 4-205(c) of the Education Article, Annotated Code of Maryland. To the extent the issues have not been reviewed by the local superintendent/CEO, our jurisdiction to review the controversy arises under the visitatorial power of the State Board as provided in § 2-205(e) of the Education Article.

For the reasons stated by the administrative law judge, we affirm the decisions of the Prince George's County Board of Education on the issues of Appellant's rights in regard to the closing of the records office, the subsequent reduction in force, and the relative pay differentials questioned by the Appellant. All other issues and remedies requested by the Appellant are hereby dismissed.

Edward L. Root  
President

JoAnn T. Bell  
Vice President

Philip S. Benzil

Dunbar Brooks

Calvin D. Disney

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Maria C. Torres-Queral

John L. Wisthoff

April 21, 2004

MARCY CANAVAN  
v.  
BOARD OF EDUCATION OF PRINCE  
GEORGE’S COUNTY

\* BEFORE ALAN B. JACOBSON  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH NO.: MSDE-BE-08-03-23172

\* \* \* \* \*

**PROPOSED RULING ON MOTION TO DISMISS, OR IN THE ALTERNATIVE FOR  
SUMMARY AFFIRMANCE, AND/OR FOR SUMMARY DECISION**

**STATEMENT OF THE CASE**

**ISSUES**

**SUMMARY OF THE EVIDENCE**

**FINDINGS OF FACT**

**DISCUSSION**

**CONCLUSIONS OF LAW**

**ORDER**

**STATEMENT OF THE CASE**

On January 16, 2003, Marcy Canavan, a retired Records Clerk of the Prince George’s County Public Schools (“Appellant”), filed an appeal to the Maryland State Board of Education (“State Board”), protesting a number of allegedly adverse personnel actions allegedly taken by the Superintendent of the Prince George’s County Board of Education (“County Board”) over several years prior to the Appellant’s retirement. On January 26, 2003, the Appellant filed a supplement to her appeal, and identified the actions being appealed. The supplement summarized the grounds of her action as follows: “I am appealing the Superintendent’s decision to permit retaliation for my filing an EEOC/ADA complaint.” This summary statement was followed by text divided into the following six specific subject headings: “1. Harassment Endangering My Safety, 2. ADA Violation Which Kept Me From Performing Part of My Job, 3. Ongoing Harassment, 4. Violation of the Initial ADA Complaint Settlement, 5. Violations Which Resulted in Financial Losses, and 6. Further Harassment Which Cost Me Money”. On

February 10, 2003, the County Board filed a Response, and on May 14, 2003, the County Board filed a Motion to Dismiss, Motion for Summary Affirmance and/or Motion for Summary Decision (“County Board’s Motion,” “the Motion”).

On or about February 27, 2003, the State Board referred the Appellant’s appeal to the Office of Administrative Hearings (“OAH”), pursuant to Code of Maryland Regulations (“COMAR”) 13A.01.01.03M. On August 20, 2003, a motions hearing was held on the County Board’s Motion, before Alan B. Jacobson, Administrative Law Judge, at the Prince George’s County Board of Education, Sasscer Administration Building, 14201 School Lane, Upper Marlboro, Maryland. The Appellant represented herself. The County Board was represented by Andrew W. Nussbaum, Esq., 14440 Old Mill Road, Upper Marlboro, Maryland 20772.

This case is governed by the contested cases provisions of the Administrative Procedure Act, Md. Code Ann., State Gov’t §§ 10-201 through § 10-226 (1999 & Supp. 2003), and the Rules of the State Board of Education (“State Board”) and the Office of Administrative Hearings (“OAH”), COMAR 13A.01.01 and 28.02.01, respectively.

### **ISSUES**

The issues are whether the County Board is entitled to Dismissal, Summary Affirmance, or Summary Decision on the various issues raised by the Appellant’s appeal.

### **SUMMARY OF THE EVIDENCE**

#### **A. Exhibits:**

The following exhibits, attached to the parties’ pleadings, were considered in this ruling:

#### **A. For the Board:**

- Appellant’s Memorandum in Support of Appeal to the Board.
- Affidavit of Howard A. Burnett, Chief Administrator for Human Resources for the

Prince George's County Public Schools.

B. For the Appellant:

- Excerpt from Prince George's County Public Schools Administrative Procedure No. 4170, Discrimination and Harassment.

The Board separately offered the following Exhibit, which was admitted into evidence:

- Board Ex. 1 - Prince George's County Public Schools Administrative Procedure No. 4170, Discrimination and Harassment.

In addition, the parties jointly offered the transcript of the proceedings before the Board of Education of Prince George's County, dated Thursday, November 14, 2002, which was admitted into evidence.

B. Testimony:

No testimony was offered.

### **FINDINGS OF FACT**

After considering all of the evidence and arguments, I find the following facts by a preponderance of the evidence:

1. Until June 30, 2001, the Appellant was employed by the Prince George's County Public Schools, principally as a Record Clerk.
2. Salaries within the Prince George's County Public School system are determined by a number of factors, including, but not limited to, Negotiated Agreements with various unions representing various groups of employees, professional qualifications, years of experience, and previous positions served within the school system.
3. The Appellant's salary was set consistently with the policies of the Prince George's County Public Schools and the salary scale for her position under the appropriate Negotiated

Agreement applicable to her, known as Unit III of ASASP.

4. On June 28, 2001, Dr. Iris T. Metts, Superintendent of Schools, sent a Reduction-in-Force (“RIF”) letter to the Appellant, informing her that it was necessary to eliminate the Appellant’s position with the Prince George’s County Board of Education, effective at the conclusion of the then current fiscal year, June 30, 2001.
5. The June 28, 2001 letter from the Superintendent further indicated that, at the time of its writing, a position was not available for the Appellant, but that she would be notified of the rescission of the RIF Notice, if any, and she would at that time be extended an offer of employment.
6. The Office of Student Records was closed effective July 1, 2001, and all employees assigned to that office were “rified” or reassigned to other positions within the school system, according to their qualifications.
7. On July 13, 2001, the RIF action for the Appellant was rescinded, and a position at Kenmoor Middle School as an Accounting Secretary was offered to her, in accordance with the provisions of the Negotiated Agreement applicable to her. There continued to be no vacant or available position in Unit III of ASASP for which she was qualified.
8. In accordance with the Negotiated Agreement, the Appellant’s rate of pay, grade, and step would remain the same for three years.
9. The Office of Student Records was closed on July 1, 2001, with the exception of limited activities for the purpose of reconciliation of responsibilities with the Pupil Service Division, and assignment of duties and responsibilities to other employees as appropriate.
10. Although the Appellant was rified effective July 1, 2001, and not reassigned until July 13,

2001, she never lost any salary or benefits during that period of time.

11. The Appellant continued to receive her salary, with appropriate salary increases and benefits, until the date of her retirement from the Prince George's County Public School System.
12. The person identified by the Appellant as having performed the same work as she did, Terry H., who received a higher salary and raises than the Appellant, was in fact paid in accordance with the Negotiated Agreement between the Board of Education of Prince George's County and the collective bargaining unit of which that person was a member. The Appellant did not qualify for the same benefits as Terry H.
13. One of the Rules of the Sick Leave Bank for employees of the Prince George's County Public Schools, from which the Appellant drew benefits, provides:

When the Approval Committee may reasonably presume that an applicant for a grant or an extension of a grant may be eligible for disability retirement benefits, if available, from the Maryland State Teacher's Retirement System, or Maryland State Employees' Retirement System and/or Social Security, the Approval Committee will request that the grant applicant apply for the disability benefits. Failure to apply would disqualify the applicant for Sick Leave [Bank] grants.

14. After an exchange of correspondence between the Sick Leave Bank and the Appellant, the Appellant's Sick Leave Bank application was granted, and she remained on Sick Leave Bank, receiving her full salary, until the effective date of her retirement on July 1, 2002.

### **DISCUSSION**

The present case has been brought before the State Board by the Appellant's appeal from the decision of the County Board. The County Board, in essence, upheld the decision of the Superintendent of Schools/CEO, effectively denying the Appellant's claims. The Appellant

described her appeal to the County Board as follows:

I am appealing the Superintendent's decision to permit retaliation for my filing of an EEOC/ADA complaint. The Superintendent's attorney signed an agreement, which settled and affirmed my complaint. Subsequently the Superintendent permitted and caused retaliation, which resulted in harassment and serious financial damage to me. I am asking the board to take action to correct the financial damage done to me.

Appellant's Memorandum, filed with the County Board, at page 1.

### Jurisdiction

The basis on which both the County Board and the State Board of Education have jurisdiction in this matter is the Maryland Annotated Code, Education Article, § 4-205(c) (Supp.2003). Section 4-205(c)(1) provides that a county superintendent of schools shall explain the true intent and meaning of the school law and the applicable bylaws of the State Board.

Subsection (c)(2) provides that the superintendent shall:

[D]ecide all controversies and disputes that involve:

- (i) The rules and regulations of the county board; and
- (ii) The proper administration of the county public school system.

Section 4-205(c)(3) provides that:

A decision of a county superintendent may be appealed to the county board if taken in writing within 30 days after the decision of the county superintendent. The decision may be further appealed to the State Board if taken in writing within 30 days after the decision of the county board.

On May 14, 2003, the County Board filed the Motion, which is the subject of this decision. On June 11, 2003, the Appellant filed a response to the County's Motion ("Response").<sup>1</sup>

In the Response, the Appellant asserted that the State Board has "visitorial" powers over the County Board, citing *Zeitschel v. Board of Education*, 274 Md. 69, 80 (1975). In *Zeitschel*, the

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<sup>1</sup> The Appellant was granted additional time beyond the 15 days provided in the OAH rules to respond to the Motion at the telephonic pre-hearing conference.

court noted that the State Board generally has sweeping powers to enforce the education laws of the State. However, in that case, the Court of Appeals in effect overruled an order of the State Board, which would have nullified an action of a County Superintendent in terminating a teacher's contract. Thus, there are limitations on the "visitorial power."

Further, the Appellant notes in her Response that the Memorandum in Support of the Motion cites the decision of the State Board in *Emel v. Montgomery County Board of Education*, MSBE Op. No. 00-37 (2000). The County Board cited *Emel*, because in that case the State Board was presented with an appeal which the State Board characterized as "consisted of a myriad of allegations" in which the Appellant complained of "harassment, slander, verbal abuse, and other violations of workplace rights allegedly committed by the head of her department, as well as the school system's failure to effectively address her concerns." As the County Board points out, the State board dismissed the *Emel* appeal, finding that:

[W]hile it is not abundantly clear what laws, policies or rights Appellant claims have been violated, there are other appropriate avenues that exist to address the issues raised by Appellant.

*Emel*, slip op. at 2. The County Board in the present matter argues that the same vagueness of the charges found in *Emel* is present in the present case, and therefore the present Appellant ought not be granted any relief.

The Appellant's answer to the charge of vagueness, in which she specifically attempts to distinguish *Emel*, is as follows:

In the current case it is clear which laws, policies or rights Appellant states have been violated: Administrative Procedure 4170, the negotiated agreement between ASASP and the Prince George's County board of Education, and the ADA, *among others*. (Emphasis supplied.)

I must emphasize, that at this stage of the proceedings, where the Appellant is called upon

to respond to a Motion to Dismiss or for Summary Affirmance, etc., merely providing me with a list of authorities which *might* be invoked by the Appellant, does not provide me with sufficient specificity to counter the County Board's Motion. The State Board did not dismiss *Emel* simply for lack of specificity regarding the *authority* to consider the subject of harassment. For example, the decision states:

For example, the appropriate forum for addressing Appellant's complaints of harassment is through Title VII [of the Federal Civil Rights Act of 1964] procedures. Appellant's grievances against her superior should be addressed through the grievance procedure.<sup>2</sup>

In other words, *Emel* was dismissed because the Appellant in that case had not demonstrated that her administrative remedies, either below or parallel to the Board, had been exhausted.

In another case, the State Board reiterated the basic rule, as follows:

The State Board has consistently held that an appellant must pursue *and exhaust* statutorily prescribed administrative remedies in the appropriate manner. (Emphasis added.)

*Davison v. Baltimore County Board of Educ.*, MSBE Op. No. 99-32 (1999), and cases cited therein. In other words, while the Appellant in the present case states that she has followed local procedures and brought various grievances to the attention of the appropriate office(s), that is not enough to bring the matter to the State Board. She must have shown, as she has not in her Response to the Motion, that she has **exhausted** such remedies. Thus the State Board in its *Davison* decision, continued:

The procedures of the State Board require that a matter must first be decided by the local board of education before it is submitted to the State Board on appeal. *See* Md. Code Ann., Educ. § 4-205(c)(4).

*Davison*, slip op. at 2.

Short of an actual written opinion by the County Board disposing of an issue, a showing

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<sup>2</sup> I do not mean to imply that such a grievance is still available to a retiree. That question is not before me.

such as *Davison* requires might consist of an affidavit, listing with particularity such items as: what issues were filed, in what manner, where filed, when filed, whether all procedural requirements have been met, the time periods that have passed since such filing, and whether any legal significance attaches to the passage of such time. Short of such a showing, the reviewing authorities are left with a mere allegation of wrongdoing, without demonstrating any duty which has been violated by the County Board.

Additional reasons for this warning regarding the required showing of specificity are discussed below.

### Motions and Responses

Under State Board regulations, the State Board may, on its own motion, or on motion filed by any party, dismiss an appeal. COMAR 13A.01.01.03 J. Also, under State Board regulations, a decision may be issued on a Motion for Summary Affirmance when there are no genuine issues as to any material facts. COMAR 13A.01.01.03K.

Under the OAH Rules of Procedure, upon motion, a judge may issue a proposed or final decision dismissing an initial pleading which fails to state a claim for which relief may be granted. Also, under the OAH rules a party may move for summary decision on any substantive issue in a case. Such a motion may be granted when it is determined that "there is no genuine issue as to any material fact and that a party is entitled to prevail as a matter of law." COMAR 28.02.01.16D. I will consider the County Board's Motion under both regulations.

A motion for summary affirmance is the State Board's equivalent of a motion for summary judgment. As in a motion for summary decision, in a motion for summary affirmance a moving party must demonstrate that no genuine issues exist as to any material fact, and that it is

entitled to prevail as a matter of law. COMAR 13A.01.01.03K(1). Because Md. Rule 2-501 and Federal Rule of Civil Procedure 56 set nearly identical standards for summary judgment, the requirements of those rules, as analyzed by appellate courts, are particularly instructive in analyzing the standards for summary affirmance in State Board administrative proceedings.

In *Washington Homes, Inc. v. Interstate Land Development Co.*, 281 Md. 712, 382 A.2d 555 (1978), the Court of Appeals summarized the standards for summary judgment set forth in numerous other Maryland cases:

The summary judgment procedure is not a substitute for a trial, but a means by which the trial court may determine, summarily, whether a trial is necessary... [I]f there is a genuine dispute as to any material fact, summary judgment would not properly be granted." *Brown v. Suburban Cadillac, Inc.*, 260 Md. 251, 255, 272 A.2d 42, 44 (1971). "(E)ven where the underlying facts are undisputed, if those facts are susceptible of more than one permissible inference, the choice between those inferences should not be made as a matter of law, but should be submitted to the trier of fact." *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 138, 265 A.2d 256, 258 (1970), and cases therein cited. The function of the trial judge is much the same as that which he performs at the close of all the evidence in a jury trial when motions for directed verdict or requests for peremptory instructions require him to determine whether an issue requires resolution by a jury or is to be decided by the court as a matter of law. *Lynx, Inc. v. Ordnance Products*, 273 Md. 1, 8, 327 A.2d 502 (1974); *Salisbury Beauty Schools v. St. Bd.*, 268 Md. 32, 41, 300 A.2d 367 (1973).

A court cannot rule summarily as a matter of law until the parties have supported their respective contentions by placing before the court facts which would be admissible in evidence. *Rooney v. Statewide Plumbing*, 265 Md. 559, 563-564, 290 A.2d 496 (1972); *Shatzer v. Kenilworth Warehouses*, 261 Md. 88, 95, 274 A.2d 95 (1971); *Brown v. Suburban Cadillac, Inc.*, 260 Md. at 255, 272 A.2d 42. "**(W)hen the moving party has set forth sufficient grounds for summary judgment, the party opposing the motion must show with some precision that there is a genuine dispute as to a material fact.**" *Shatzer*, 261 Md. at 95, 274 A.2d at 44 (quoting *Brown*, 260 Md. at 255, 272 A.2d 42). "**A bare allegation in a general way that there is a dispute as to material facts is never sufficient to defeat a motion for summary judgment. ...General allegations which do not show facts in detail and with precision are insufficient to prevent the entry of summary judgment.**" [Emphasis supplied.] *Lynx, Inc.*, 273 Md. at 7-8, 327 A.2d at 509. A material fact is one "the resolution

of which will somehow affect the outcome of the case." *Rooney*, 265 Md. at 564, 290 A.2d at 499.

*Washington Homes, Inc.*, 281 Md. at 716-18, 382 A.2d at 557-59 (1978). *See also Dietz v. Moore*, 277 Md. 1, 5, 351 A.2d 428, 431 (1976); *King v. Bankerd*, 303 Md. 98, 111, 492 A.2d 608, 614 (1985); *Hurl v. Howard County Board of Education*, 107 Md. App. 286, 667 A.2d 970 (1995) (involuntary transfer of a teacher); *Ewing v. Cecil County Board of Education*, 6 Op. MSBE 818 (1995).

Accordingly, to contest the truth of a fact attested to, such as those facts attested to by the Burnett Affidavit in support of the County's Motion in the present case, or a fact otherwise documented in support of a motion for summary decision, and render it disputed, the party against whom the motion is directed *must respond with specific disputed facts, supported by attestation or documentation*. In the present matter, the County Board submitted an Affidavit and supporting documentation in support of the Motion. The Appellant offered little actual evidence in opposition to the Motion.

The County Board's counsel argued in the Memorandum in Support of the Motion, and in fact throughout this proceeding, that, although the Appellant has raised six issues in her appeal to the State and County Boards, only one of such issues even involves decisions by the Superintendent (now Chief Executive Officer) or her administrative staff. The other issues, he argued, do not involve decisions at all, but rather concern allegations of various forms of conduct by certain [other] individuals, and as such those issues were not properly before the County Board for determination, and are likewise not properly before the State Board in this appeal. Responses to the issue properly before the Board for review, the Board's counsel argued, are detailed in the Affidavit of Howard Burnett, which is attached to the referenced Memorandum.

The Appellant's six identified issues are as follows:

1. Harassment Endangering My Safety

The Appellant states:

I was required to stay in the RMS Building alone after dark (Inauguration Day, 2001), with no security.

The rest of the Appellant's description of this item details how she was left in that situation and the dangers involved, since she uses a scooter for mobility due to her disability. The County's Counsel responds that she did not show any grounds for concluding that this action was the result of "harassment" or a "decision" by the Superintendent. I believe that it is more important to note that she has not shown that this situation was pursued through available administrative procedures and "exhausted." In light of the above, I propose that this issue be dismissed.

2. ADA Violation Which Kept Me from Performing Part of My Job

In this section, the Appellant states that she was required to attend a meeting in an accessible building, but that the building did not contain an accessible restroom. The County's Counsel responds that this issue raises compliance with the Federal Americans with Disabilities Act. Therefore, he argues that this is not a decision by the County Superintendent.

Regardless that the requirement may arise from Federal law, there may well be a duty by the County Board to comply with the statute, which duty is implicated by the failure to supply an accessible restroom. However, as noted above, until the Appellant has shown that she has exhausted her rights at the local level regarding this matter, the State Board will not review it. I propose that this issue be dismissed.

3. Ongoing Harassment

In this ground the Appellant asserts that she was denied the option to schedule audits of school records, as required by her job duties, so as to avoid having to load her scooter, which she uses due to her disability, in inclement weather. As a consequence, she claims that she was exposed to rain and other bad weather. There is no showing that this was due to “harassment.” More importantly, here too, there was no showing that this issue was pursued through local procedures to legal exhaustion. As such, I propose that this issue be dismissed.

#### 4. Violation of the Initial ADA Complaint Settlement

In this issue, the Appellant alleged that she had a “settlement” of her “original ADA complaint.” According to the Appellant she was to be permitted to adjust her hours to accommodate a ride to work with someone working different hours than she. However, she claims that on two occasions she needed advance approval, which was not workable under the circumstances.

The County responds that this issue “involves implementation of a settlement agreement as it relates to February 14, 2001,” without further explanation. Once again, the Appellant has not shown that she has exhausted local remedies to resolve the issue. Moreover, it was apparently a problem which came up only twice “between August 2000 and May 2001,” and it is difficult to understand why this issue is not now moot, as the Appellant is now retired. I propose that this issue be dismissed.

#### 5. Violations which Resulted in Financial Losses

In this section, the Appellant complains that another employee was appointed to work in her office shortly before it was closed, and that person was paid more money than she was. She also complains about the procedures followed to implement a reduction in force, or RIF, in which

her being riffed allegedly put her in a lower position than the other employee. The County Board's Counsel concedes that these were decisions by the Superintendent, properly before the Board and fit subjects for appeal to the State Board. However, he asserts that the claims are fully answered by the Burnett Affidavit, attached to the Motion.

The County Board's Counsel summarizes the position attested to by the Burnett Affidavit as follows:

In this section, [the Appellant] first complains about the appointment and salary of [the other employee]. She next complains about being "riffed" (reduced in force); and she finally complains about the closure of the Office of Student Records. The Affidavit of Howard A. Burnett [attached to the Motion] fully answers each of these issues in paragraphs 10 through 19. First, Mr. Burnett indicated that [the other employee] was properly appointed to her position and was properly placed on the pay table. [The Appellant] has presented no evidence to the contrary. As to her being riffed, Mr. Burnett described the process by which [the Appellant] was properly riffed, and he noted that the RIF was ultimately rescinded, and [the Appellant] was offered a position in the school system. She chose not to accept that position, and instead, she applied for and was granted Sick Leave Bank benefits. Mr. Burnett also noted that [the Appellant] never lost any salary or benefits, because she continued to receive her salary, along with appropriate salary increases, and benefits, until the date of her retirement from the school system. Mr. Burnett also described, in detail, the reasons for the disparity in pay between [the Appellant] and [the other employee], in paragraph 17. Finally, Mr. Burnett detailed the decision by the school system to close the Office of Student Records, as a cost saving measure, in paragraph 19. Although [the Appellant] lacks the proper standing to object to the action taken by the school system, the Office of Student Records was properly closed to meet the budget issues then in existence.

Memorandum in Support of the County's Motion, at p. 5.

In essence, the Appellant's response to the Burnett Affidavit is that Mr. Burnett's assertions were untrue, or were not supported in logic. However, she has not shown that she is in a better position to judge the decisions of the Board regarding the salary calculations, or the RIF than was Mr. Burnett, who has been the Chief Administrator for

Human Resources of the County Board since October 2001. She has merely made bare, unsupported allegations. As such, I propose that summary affirmance on this issue be granted to the County Board under COMAR 13A.01.01.03K, and summary decision be granted under COMAR 28.02.01.16D.

#### 6. Further Harassment Which Cost Me Money

As noted by County Counsel, in this section the Appellant complains of actions taken in the administration of the sick leave bank, but appears to suggest that the problem was ultimately resolved. Certainly, since she accepted her pay through the sick leave bank for nearly a year before her retirement and never reported to work during that period, she has not stated a pending cause of action in this regard, and the issue appears to be moot. As such, I propose that this issue be dismissed.

#### Remedies

Finally, the Appellant has requested that the Board grant her three remedies:

1. Reimburse her for attorneys' fees she incurred;
2. Pay her the salary which she was allegedly denied, totaling over \$18,000; and
3. "[T]ake whatever steps are necessary to ensure that my last year of employment is reflected as \$17,000 higher than was paid to me."

I agree with the County's Counsel that these "remedies" have no support in law or fact. First, under general Maryland law individuals have no entitlement to have the opposing party pay their legal fees unless they meet certain statutory requirements, in certain limited circumstances not applicable here. Even if an individual "prevails" in an appeal before the Board of Education, there is no right in statute or elsewhere for the Board to award such a request for reimbursement

of attorneys fees. The other two issues have already been considered and rejected with regard to the alleged miscalculation of salaries for the Appellant and the other employee to whom she attempted to draw a comparison. I propose that the claim for Remedies be dismissed as groundless.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I propose that Summary Affirmance and Summary Decision be granted as a matter of law to the County Board on the issue of the Appellant's rights in regard to the closing of her office, the subsequent reduction in force, and with regard to the relative pay differentials as between the Appellant and the other employee with whom she attempted to draw a comparison. COMAR 13A.01.01.03K, COMAR 28.02.01.16D. I further propose that all other issues and remedies claimed by the Appellant in her present appeal should be dismissed as a matter of law. COMAR 13A.01.01.03 J. *Davison v. Baltimore County Board of Educ.*, MSBE Op. No. 99-32 (1999), and cases cited therein.

### **PROPOSED ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, I propose that Summary Affirmance and Summary Decision be GRANTED to the County Board on the issue of the Appellant's rights in regard to the closing of her office, the subsequent reduction in force, and with regard to the relative pay differentials as between the Appellant and the other employee with whom she attempted to draw a comparison, and I Propose that it be ORDERED that all other issues and remedies requested by the Appellant in the present appeal to the State Board be DISMISSED.

September 30, 2003

Alan B. Jacobson  
Administrative Law Judge

#56314

**NOTICE OF RIGHT TO FILE OBJECTIONS**

Any party adversely affected by this Proposed Decision has the right to file written objections within ten (10) days of receipt of the decision; parties may file written responses to the objections within ten (10) days of receipt of the objections. Both the objections and the responses shall be filed with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.01.03P(4). The Office of Administrative Hearings is not a party to any review process.

MARCY CANAVAN \* BEFORE ALAN B. JACOBSON  
 v. \* AN ADMINISTRATIVE LAW JUDGE  
 BOARD OF EDUCATION OF PRINCE \* OF THE MARYLAND OFFICE OF  
 GEORGE’S COUNTY \* ADMINISTRATIVE HEARINGS  
 \* OAH NO.: MSDE-BE-08-03-23172

\* \* \* \* \*

**EXHIBIT LIST**

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A. For the Board:

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The Board separately offered the following Exhibit, which was admitted into evidence:

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A. For the Appellant:

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In addition, the parties agreed that I should have a copy of and consider the transcript of the proceedings before the Board of Education of Prince George’s County, dated Thursday, November 14, 2002.