

ISALIAH SHOWELL,

Appellant

v.

WICOMICO COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-26

OPINION

In this appeal, the Appellant challenges the decision of the Wicomico County Board of Education (local board) to suspend him for three days without pay for misconduct based on his behavior during a post-observation conference with the Principal and Vice Principal of Bennett Middle School.

We transferred this case pursuant to COMAR 13A.01.05.07 to the Office of Administrative Hearings (OAH) for a hearing before an Administrative Law Judge (ALJ). The ALJ issued a decision proposing that the State Board affirm the local board's suspension decision. The Appellant has not filed any exceptions to the ALJ's Proposed Decision.

FACTUAL BACKGROUND

The full factual background in this case can be found in the ALJ's Proposed Decision, Findings of Facts at pp. 4 – 5. The essential facts pertain to the Appellant's behavior during the post-observation conference on January 16, 2009. The Appellant had received a "Needs Improvement" rating on his January 9, 2009 classroom observation conducted by the Vice Principal, Ron Greene. (FOF 5, 9). During the post-observation conference, the Appellant began responding inappropriately when Mr. Greene addressed the Appellant's need to work collaboratively with the special education teacher. (FOF 8). The Appellant began laughing in an uncontrollable and excessive manner. (*Id.*). He yelled at Mr. Greene for an extended period of time. (FOF 10). Appellant told Mr. Greene that he was stupid or incompetent and that teachers refer to him as the devil. (FOF 11). The Appellant ridiculed Mr. Greene for his ideas about education. (*Id.*). He questioned whether Mr. Greene got his ideas on education from Mad Magazine. (ALJ Proposed Decision at 33). The Appellant continued his tirade despite requests to stop and refused to end the conference. (FOF 11). He also refused to sign the observation form. (*Id.*). The Appellant eventually stormed out of the Principal's office where the conference was being held and slammed the door behind him. (FOF 10).

As a result of the Appellant's conduct during the post-observation conference, he received a three day suspension without pay for misconduct in office. (FOF 14). The local board upheld the suspension. This appeal followed.

ALJ'S Proposed Decision

The ALJ determined that the Appellant's behavior constituted misconduct and recommended that the State Board affirm the local board's decision to suspend the Appellant for three days without pay. In doing so, the ALJ discussed *Resetar v. State Board of Education*, 284 Md. 537 (1979), the seminal case on teacher misconduct. The ALJ stated as follows:

The *Resetar* decision does not require a finding that either the Appellant's misconduct undermined his future classroom performance and overall impact on his students, which is the *Resetar* language, or implicated his fitness to teach, as argued by the Appellant. The *Resetar* case is materially different from this case. *Resetar* involved the grounds for a dismissal of a teacher. This case involves, not a dismissal from teaching, but a suspension.

(ALJ Proposed Decision at 35). The ALJ further stated that because this case involved a teacher suspension, and not a teacher termination, it was enough that the misconduct related directly to the Appellant's "office or, in other words, to his duties and responsibilities as a teacher." (*Id.* at 36).

STANDARD OF REVIEW

Because this appeal involves the suspension of a certificated employee pursuant to § 6-202 of the Education Article, the State Board exercises its independent judgment on the record before it in determining whether to sustain the termination. COMAR 13A.01.05.05(F)(1) and (2). The local board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05(F)(3).

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

ANALYSIS

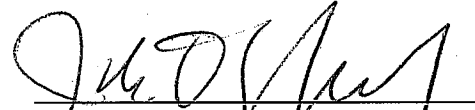
While we concur with the ALJ's conclusion that the three day suspension should be upheld in this case, we are not in full agreement with his discussion of the *Resetar* case. This Board has interpreted *Resetar* to require that the conduct that serves as the basis for the

misconduct charge bear on the teacher's fitness to teach in some manner. *See Brown v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 09-31 (2009); *McSwain v. Howard County Bd. of Educ.*, MSBE Op. No. 09-07 (2009); *Kinsey v. Montgomery County Bd. of Educ.*, 5 Op. MSBE 287, 288 (1989). The behavior either constitutes misconduct or it does not, without regard to whether the case involves the suspension or termination of the teacher.

This clarification does not, however, require disagreement with the ALJ's ultimate conclusion. In his Findings of Fact, the ALJ found that the Appellant's conduct made it impossible for the Appellant to benefit from the suggestions of Mr. Greene about how to improve his job performance. (FOF 13). We find that the Appellant's unwillingness to participate in any meaningful way in the post-observation conference and his inappropriate and antagonistic response to Mr. Greene's attempt to provide feedback from the observation bears directly on the Appellant's fitness to teach. The Appellant had received an overall "Needs Improvement" rating, with particular attention needed in the execution of his lesson planning. Due to his own inappropriate and unprofessional behavior, the Appellant was unable to benefit from Mr. Greene's observations or recommendations for improvement of Appellant's instructional ability. Consequently, the students on the receiving end of Appellant's instruction would not be able to benefit either.

CONCLUSION

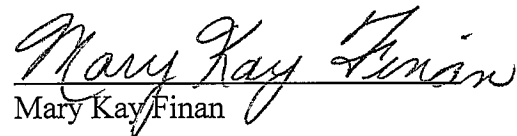
We adopt the ALJ's Proposed Decision with the clarification provided above.



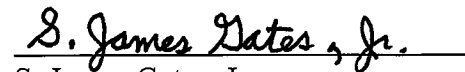
James H. DeGrafferreidt, Jr.
President



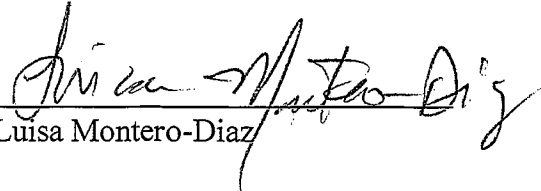
Charlene M. Dukes
Vice President



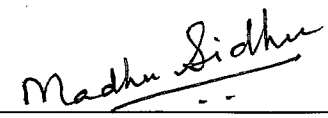
Mary Kay Finan

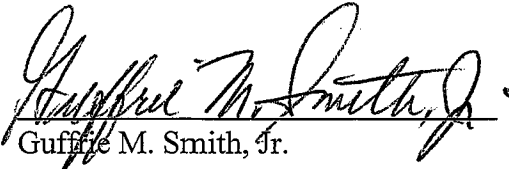


S. James Gates, Jr.

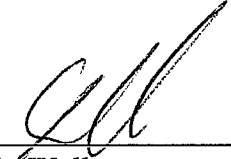

Luisa Montero-Diaz

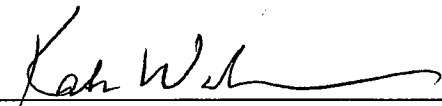
ABSENT
Sayed M. Naved


Madhu Sidhu


Guffie M. Smith, Jr.


Donna Hill Staton


Ivan C.A. Walks


Kate Walsh

July 20, 2010

ISAIAH SHOWELL,

APPELLANT

v.

BOARD OF EDUCATION

OF WICOMICO COUNTY

* BEFORE MICHAEL D. CARLIS,

* ADMINISTRATIVE LAW JUDGE,

* MARYLAND OFFICE OF

* ADMINISTRATIVE HEARINGS

* OAH No.: MSDE-BE-01-09-25318

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On or about February 2, 2009, the Superintendent of the Board of Education of Wicomico County (County Board) notified Isaiah Showell (Appellant), formerly a teacher at Bennett Middle School (Bennett), that he was recommending to the County Board that he (the Appellant) receive a three-day suspension without pay for misconduct. The Appellant acknowledged receipt of the letter "with great protest," claiming that he was "being treated as sub-human because I am and [sic] educated black man who voiced his opinion in a very professional manner." S-6.

On or about February 2, 2009, the Appellant requested a hearing to contest the Superintendent's recommendation of discipline. The hearing was held on March 24, 2009. On April 21, 2009, the County Board adopted the recommendation that the Appellant be suspended for three days without pay.

On or about May 13, 2009, the Appellant appealed the County Board's decision to the State Board of Education (State Board). On July 13, 2009, the State Board forwarded the case to the Office of Administrative Hearings (OAH) to conduct a hearing.

I conducted a hearing in Salisbury, Maryland on October 26, 2009. Kristy K. Anderson, Esquire, Maryland State Teachers Association, represented the Appellant. Fulton P. Jeffers, Esquire, and Bresler, Bennett & Scherr, LLP, represented the County Board.

The contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009); COMAR 13A.01.05; COMAR 28.02.01.

ISSUES

The issues are:

- A. Whether the Appellant's behavior at a post-observation conference on January 16, 2009 constituted misconduct, and if so;
- B. Whether the County Board's three-day suspension without pay based on the misconduct in office was consistent with the law.

SUMMARY OF THE EVIDENCE¹

Exhibits²

No additional exhibits were admitted for the County Board. The following exhibits were admitted for the County Board as part of the record at the hearing before the Local Board:

Super. #1 - Letter from C. Michael Johnson;

¹ The parties agreed to make the record before the County Board part of the record of the hearing before OAH.

² The exhibits are labeled as they appear in the record before the County Board.

- Super. #2 - C. Michael Johnson's statement;
- S - 3 - Letter from Diane Willoughby;
- S - 4 - Statement from Ron Greene;
- S - 5 - Letter from John E. Fredericksen;
- S - 6 - Letter from John E. Fredericksen;
- S - 7 - Letter from John E. Fredericksen; and
- S - 8 - Teacher Observation Form, with attachment, dated January 16, 2009, and Appellant's rebuttal.

No additional exhibits were admitted for the Appellant at the hearing before OAH. The following exhibits were admitted as part of the record before the County Board:

- A-1 - Teacher Observation Form, dated October 31, 2007;
- A-3³ - Paul Turner's statement;
- A-4 - S. Jean Pryor's statement;
- A-5 - Memorandum from the Appellant, dated April 7, 2008;
- A-6 - Teacher Observation Forms, dated November 2, 2005, January 6, 2006, April 6, 2006, May 17, 2006, May 23, 2006, December 12, 2006, January 18, 2007, January 19, 2007, April 25, 2007, May 15, 2007, and Teacher Evaluation Forms, dated January 25, 2006, June 5, 2006, January 19, 2007, and June 4, 2007;
- A-7 - Statements from Shelley Doane-Dashiell, R. Hunter Patton, Doris Henson, Pamela J. Ketterer, and Amy Gutierrez;
- A-8 - Letters from Clayton J. Belgie, Andrew J. Turner, III, and Douglas M. Dewitt; and
- A-9 - Letter from Kenneth Jones.

³ Appellant's Exhibit 2 was not admitted.

Testimony⁴

Ronald Allen Greene, Assistant Principal at Bennett, and Curtis Michael Johnson, Principal at Bennett, testified for the County Board at the hearing before OAH.

The Appellant testified for himself at the hearing before OAH.

FINDINGS OF FACT

I find the following by a preponderance of the evidence:

1. The Appellant has been a teacher for about twelve years.
2. The County Board hired the Appellant to teach at the Wicomico County Alternative Learning Center for the 2005-2006 school year. He taught there until the summer of 2007, when he was assigned to teach at Bennett Middle School (Bennett).
3. Curtis Johnson has been the principal at Bennett for four years.
4. Ron Greene is one of the vice principals at Bennett. The 2007-2008 school year was his first year as a vice principal.
5. On January 9, 2009, Mr. Greene observed the Appellant while he taught an algebra lesson in his eighth grade classroom. Mr. Johnson also observed the Appellant.
6. On January 16, 2009, a post-observation conference was held with the Appellant in Mr. Johnson's office. Mr. Greene conducted the conference. Mr. Johnson was present as Mr. Greene's mentor.
7. Based on the observation on January 9, 2009, Mr. Greene completed a teacher observation form (Observation Form). An observation form is used to rate a teacher in two general areas:

⁴ See note 1. Curtis Michael Johnson, Diane Willoughby, Ronald Greene, and Stephanie Moses testified for the Superintendent at the hearing before the County Board. Paul Turner, Sandy Jean Pryor, Doris Henson, Sharon Shirk, Peter Wilken, the Appellant, and Kenneth Jones testified for the Appellant before the County Board.

evidence of planning and execution. The observer also comments on how the teacher can improve in areas of relatively poor performance.

8. The post-observation conference went well until Mr. Greene addressed the Appellant's need to work collaboratively with the special education teacher. At that point, the Appellant began to laugh hysterically. His laughter was inappropriate, uncontrollable, and excessive.
9. The Appellant was rated as needs improvement in the execution of his lesson plan and in six subsections under execution. He received an overall rating of needs improvement.
10. When Mr. Greene turned the Observation Form over so that the Appellant could see the ratings, the Appellant began yelling at Mr. Johnson because, apparently, he believed Mr. Johnson was responsible for the poor assessment. The Appellant yelled loudly at Mr. Johnson for an extended period of time, after which he stormed out of Mr. Johnson's office and slammed the door.
11. During the time that the Appellant yelled at Mr. Johnson, he called him stupid or incompetent; told him that other teachers at the school called him the devil; ridiculed him for his educational theories that the Appellant said he could not understand; and refused to stop his tirade, sign the Observation Form, or end the post-observation conference when instructed to do so.
12. The Appellant's conduct at the post-observation conference was unprofessional, intemperate, and rude.
13. The Appellant's misconduct made it impossible for the Appellant to benefit from the suggestions of Mr. Greene about how to improve his job performance.
14. The suspension of the Appellant for three-days without pay was based on the misconduct in office.

DISCUSSION

The Law

Under section 6-202(a)(1)(ii) of the Education Article of the Annotated Code of Maryland, a county board may suspend a teacher for "misconduct in office" upon the recommendation of a county superintendent. The Education Article does not define "misconduct in office."

The Appellant relied on *Resetar v. State Bd. of Educ.*, 284 Md. 537, 399 A.2d 225 (1979), for the meaning of misconduct and misconduct in office. He argued that the County Board acted inappropriately because discipline is authorized only when a teacher's misconduct is willful and shows a lack of fitness to teach.

Mr. Resetar was a twelfth grade science teacher. At the end of the last day of school in June 1974, he stayed behind to secure the classroom. Although the students had left, some students had congregated on school grounds just outside the classroom's windows. They directed insults and obscene remarks at Mr. Resetar, who had previously complained to the administration about their disrespectful behavior. This time, Mr. Resetar responded to the students' insults by saying, "Look at those jungle bunnies. Somebody ought to feed them bananas." Some staff, who were in the classroom with Mr. Resetar, and some of the students heard Mr. Resetar's comments. Based on the comments, Mr. Resetar was discharged.

The *Resetar* Court "discuss[ed] together" the issues of whether Mr. Resetar had engaged in misconduct and whether sufficient evidence in the record warranted his dismissal. *Resetar*, 284 Md. at 553, 399 A.2d at 233. In its discussion, the Court reviewed decisions from foreign jurisdictions about "what conduct on the part of a teacher will warrant dismissal." *Resetar*, 284 Md. at 557, 399 A.2d at 235. The Court also reviewed the meaning of "misconduct" found in *Corpus Juris Secundum*, the meaning of "misconduct" and "misconduct in office" found in *Black's Law*

Dictionary, and its prior decision in *Emp. Sec. Bd. v. LeCates*, 218 Md. 202, 145 A.2d 840 (1958). The *Resetar* Court then returned to court decisions from Maine and California because, in refusing to uphold a teacher's dismissal, the courts in those jurisdictions "insisted that to be grounds for dismissal the act must bear upon a teacher's fitness to teach[.]" *Resetar*, 284 Md. at 561, 399 A.2d 238. The *Resetar* Court, however, held: "[W]e are of the view that the State Board could well have concluded that the remark of the teacher here might undermine his future classroom performance and overall impact on his students, to paraphrase the language used in *Wright* (Maine decision). Accordingly, we find no error of law on the part of the State Board in its conclusion that the 'jungle bunny' episode constituted misconduct in office." *Id.*

Review of the Evidence

The County Board's evidence

Mr. Johnson testified for the County Board. At the time of the Appellant's discipline, he was the principal at Bennett. He has been a principal for eleven years, a vice principal for six years, and a classroom teacher for about fifteen years. Mr. Johnson has done "hundreds" of observations of teachers and post-observation conferences.

Mr. Greene, not Mr. Johnson, conducted the post-observation conference. Mr. Johnson "sat in" on the post-observation conference because "part of my mentoring Mr. Greene as an assistant principal is to then provide feedback to him in conducting the post-observation conference, the meaningful points, recommendations for growth so that we can be consistent in our focus school-wide on what effective instruction looks like and how we can address the needs of all of our students."⁵ Transcript (March 24, 2009), page 33, line 16, through page 34, line 2.

⁵ Mr. Greene had been a vice principal at Bennett for less than one year.

According to Mr. Johnson, the post-observation conference went "very well" until Mr. Greene began to discuss the Appellant's responsibility to share lesson plans and strategies with the special education teacher. At that point,

[The Appellant] started laughing hysterically, sat back, rolled his head up, looked at the ceiling and just really almost uncontrollable laughter for some time. And then he proceeded to verbally attack the special education teacher, basically saying that she was incompetent, she was a joke, she wasn't good for the kids, etc.

Transcript (March 24, 2009), page 34, lines 12-19.

According to Mr. Johnson, Mr. Greene "refocused" the Appellant and began to review the ratings on the Observation Form.⁶ Mr. Johnson's testimony:

[The Appellant] became very -- started getting very loud and pointed at the paper saying this is -- and I'm not going to go anywhere near the volume he used -- this is Johnson, this is Johnson, I want you to hear me, this is the last time we're going to do that, this, this is the last time. Do you hear me? Do you understand? And I said -- and I just looked at him -- no, I don't. He goes, well, either you're incompetent or just stupid.⁷

⁶ The Observation Form assesses performance in: (i) Lesson Characteristics, (ii) Student/Environmental Management, (iii) Overall/Assessment of Lesson, and (iv) Comments/Plans for Growth. In the Lesson Characteristics area, a teacher is rated as commendable, satisfactory, needs improvement, or unsatisfactory in sixteen aspects of his or her "execution" of a lesson. In six categories -- (i) presented lesson to meet the needs of all students, (ii) used effective teaching methods for lesson, (iii) used class time efficiently, (iv) checked for student understanding, (v) summarized lesson appropriately, and (vi) accomplished stated purposes/goals of the lesson -- the Appellant was rated needs improvement. In three categories -- (i) provided varied learning experiences, (ii) used questioning techniques effectively, and (iii) engaged learners in instruction -- the Appellant received unsatisfactory ratings. The Appellant's overall ratings in execution and performance were needs improvement. S-8. The observer also must support all needs improvement and unsatisfactory ratings with "comments/plans for growth." In regard to the Appellant's work with the special education teacher, Mr. Greene wrote: "Special education students work with a special education teacher. When the special education teacher indicated that she was not able to modify instruction for her students as she had not received plans from [the Appellant] until that morning. Suggestion: Work collaboratively with the special education teacher. It is important for the special education teacher to have a copy of the lesson objective as well as guided and independent practice examples that will be used during the lesson, prior to that day." S-8.

⁷ Diane Willoughby, a secretary at Bennett for ten years, testified on March 24, 2009. She was working in the general area of Mr. Johnson's office during the post-observation conference and heard "loud yelling." She could not identify who was yelling, except that it was not Mr. Johnson. Transcript (March 24, 2009), page 84, line 7. Ms. Willoughby also testified that she was "very much" concerned for Mr. Johnson due to "the tone of the yelling" although the yelling did not last very long. Transcript (March 24, 2009), page 82, lines 3-9. Ms. Willoughby heard the door to Mr. Johnson's room "slam," and, although she could not see who had slammed the door, "seconds" later, the Appellant walked through the guidance area where she was working. Transcript (March 24, 2009), page 81, lines 1-4; page 88, lines 2-7. Ms. Willoughby's written statement is at S-3.

Transcript (March 24, 2009), page 35, line 13, through page 36, line 1.

Mr. Johnson testified that Mr. Greene tried to refocus the Appellant, but the Appellant continued to "attack" him (Mr. Johnson) for about fifteen minutes. According to Mr. Johnson, the Appellant called him "the devil incarnate," "evil," and "stupid" and said he "didn't have a heart," and "wouldn't know differentiation if you saw it." At the hearing before OAH, Mr. Johnson testified that the Appellant said those things "in a stern, loud, and, in my opinion, threatening voice." Mr. Johnson additionally testified that the Appellant said he was often unable to understand him (Mr. Johnson) and, while looking at the bookcase in the office, asked him whether he got his ideas from the books behind him or from Mad Magazine.

According to Mr. Johnson, Mr. Greene again tried to refocus the Appellant by telling him that he (Mr. Greene), not Mr. Johnson, had completed the Observation Form and that comments about the Observation Form should be directed to him. At one point during this "very, very loud attack," Mr. Johnson told the Appellant that "we need to end this meeting," to which the Appellant replied, "It's over when I say it's over." Transcript (March 24, 2009), page 36, line 15, through page 37, line 4.

According to Mr. Johnson, Mr. Greene told the Appellant to sign the Observation Form, and when the Appellant refused, Mr. Greene read the part of the Observation Form that says the teacher's signature "indicates the teacher has read the report" and a teacher "may or may not agree" and "may submit written comments to be attached to [the Observation Form]." S-8. The Appellant then signed it, after which, according to Mr. Johnson, the Appellant "left, slammed the door in my office. And that was it." Transcript (March 24, 2009) page 37, lines 16-19.

Mr. Johnson was "insulted," felt "threatened," and thought the Appellant was "trying to intimidate" him. He felt threatened by the Appellant's "very loud tone" and "aggressive manner." Mr. Johnson testified as follows about the relationship between the Appellant's conduct and his fitness as a teacher:

Q. Okay. Mr. Johnson, what bearing on a teacher's fitness to teach does this kind of conference and this kind of demeanor have?

A. Okay. The observation/evaluation process is designed to improve instruction, to improve and increase learning per student, so areas which are marked for needs improvement or marked unsatisfactory are clearly areas that the teacher should work on or needs to work on to improve his or her skills in delivering instruction to students.

Q. Is it important for a teacher to be receptive to observations that have areas of needs to improve?

A. Yes, sir, it is.

Q. Is it important for a teacher to be receptive to criticisms that he or she may receive from a supervisor?

A. It's most important that the teacher follow through and address the recommendations that are made for professional growth in that observation or in that evaluation.

Q. And if a teacher refuses to listen to the criticisms, will they be able to follow through and make those changes?

A. No, sir.⁸

Transcript (March 24, 2009) page 40, line 16, through page 41, line 19.

Mr. Johnson recommended that the Appellant be terminated from his employment at

⁸ On cross-examination, Mr. Johnson agreed that the Appellant had incorporated suggestions for improving his teaching in the past based on the Appellant's improvement from an overall rating of needs improvement in October 2007 to an overall rating of satisfactory in March 2008. Transcript (March 24, 2009), page 49, line 14, through page 50, line 12; A 1.

Bennett based on “unprofessional behavior and insubordination [.]”⁹ Super. #1. In regard to insubordination, Mr. Johnson testified:

Q. At any point in time did you tell [the Appellant] to leave your office?

A. No ma'am.

Q. So [the Appellant] didn't ignore any directive. Or you didn't give [the Appellant] any directive during the course of that conference, correct?

A. Other than saying that this conference was over, we need to stop this, the conference was over, we need to sign the observation report, so — and he said no to both of those, saying that, as I previously stated, it's over when I say it's over and I will sign this only because I -- because I said I'll sign it kind of thing. I don't remember the exact quote. I'm not signing it because you're telling me to sign it, I'm signing it because I'm going to sign it, something of that nature.

Q. And he did ultimately sign it, correct?

A. Yes, he did.

Transcript (March 24, 2009), page 63, lines 3-21.

Mr. Johnson further testified, “The insubordination is refusing to follow the directions in the conference, both by Mr. Greene and myself, to end the conference and then initial refusal, though he did eventually sign it, to sign the observation report.” Transcript (March 24, 2009), page 70, line 21; page 71, lines 1-4.

Mr. Greene also testified for the County Board. He was in his first year as an assistant principal at Bennett in January 2009. He observed the Appellant on January 9, 2009. On January 16, 2009, he conducted the post-observation conference with the Appellant. Mr. Johnson was there “as a mentor for me because I haven't done as many observations as a lot of other experienced administrators have, and he had done that to this point for every observation I had done at Bennett Middle School and has since then.” Transcript (March 24, 2009), page 95, lines 5-9.

⁹ Mr. Johnson's contemporaneous record of the events at the conference is at Super. #2. He wrote that the Appellant's “hysterical[]” and “loud[]” laughter lasted “for some time,” and his “loud verbal attack” lasted for fifteen minutes. Super. #2.

According to Mr. Greene, the conference went well in the beginning: "We started the conference off as usual; we go through the written narrative part of the observation, highlighting different things, asking questions, commenting on different aspects of the observation itself. I actually felt the conference was going really well." Transcript (March 24, 2009), page 94, line 20, through page 95, line 4.

The turning point occurred "when I brought up a simple suggestion about a special ed[ucation] teacher that was in the room and I made the suggestion that he needed to make sure that he was giving the lesson plan to [her] early enough so that she could [] then differentiate the instruction or help with the lesson." Transcript (March 24, 2009), page 99, line 15, through page 100, line 1. According to Mr. Greene, the Appellant "[r]olled his eyes and started laughing really loud and just hysterically and was like rolling back in his seat I didn't know what to expect from it, but then he started going off after that." Transcript (March 24, 2009) page 106, lines 9-13. He began "slamming his finger on the desk and saying, this is Mr. Johnson, this is Mr. Johnson," meaning that the Appellant thought Mr. Johnson was responsible for the Observation Form. Transcript (March 24, 2009), page 100, lines 13-15; page 101, lines 1-9.

Mr. Greene described the Appellant as "getting loud," "getting upset," "yelling at [Mr. Johnson]." "I was nervous for Mr. Johnson or I was nervous for what could have transpired. I myself didn't feel threatened but it was all directed towards Mr. Johnson and I was afraid of what it could lead to or what was going to happen." Transcript (March 24, 2009), page 102, lines 13-17.

Mr. Greene also testified about the substance of the Appellant's "tirade." Transcript (March 24, 2009), page 107, lines 6-7. According to Mr. Greene, the Appellant said that (i) he did not understand some of the things that Mr. Johnson would say and did not know whether he got his

ideas from books or Mad Magazine (Transcript (March 24, 2009), page 97, lines 6-11); (ii) Mr. Johnson did not have control over the school or create a safe environment for teachers (Transcript (March 24, 2009), page 97, lines 11-13);¹⁰ and (iii) Mr. Johnson did not have a "heart" and others had told him that Mr. Johnson was the "devil." Transcript (March 24, 2009) page 98, lines 4-5; page 106, line 16, through page 107, line 2, and page 114, lines 3-11.

Mr. Greene also testified that Mr. Johnson told the Appellant several times that the meeting was over and "we" asked him to sign the Observation Form, but the Appellant said that the meeting would be over when he said it was over and that he would sign the Observation Form when he was ready to sign it. Transcript (March 24, 2009), page 98, lines 8-19; page 107, lines 8-19. According to Mr. Greene, the Appellant eventually signed the Observation Form but only because he said he was ready to sign it and "stormed out and slammed the door." Transcript (March 24, 2009), page 98, line 20, through page 99, line 9.¹¹

Ms. Moses testified at the hearing on March 24, 2009. At that time, she had been the County Board's Director of Human Resources for fourteen years. She met with the Appellant on January 16, 2009, after she had been notified by Mr. Johnson about what had happened, and, under the direction of the Superintendent, placed the Appellant on administrative leave with pay through January 23, 2009. S-5. She described the Appellant as "agitated" (Transcript (March 24, 2009),

¹⁰ Mr. Greene testified that the Appellant referred to a "pretty large fight" that had occurred at the school in November 2008 as an example of Mr. Johnson's loss of control over the school environment. Mr. Greene testified that, at that point, he "spoke up" and told the Appellant that he (Mr. Greene) "[took] offense because he is part of Mr. Johnson's administrative team "and if Mr. Johnson is not doing something right, now you are accusing me of not doing something right. I said we are doing our best to maintain control of the school." Transcript (March 24, 2009), page 97, line 14, through page 98, line 2:

¹¹ Mr. Greene's contemporaneous summary of what occurred at the conference is at S-4. Mr. Greene's testimony was generally consistent with the written summary, although in the summary, Mr. Greene wrote that the Appellant also called Mr. Johnson "stupid" and either incompetent or heartless. He also wrote: "Throughout the entire episode he (the Appellant) was very loud and rude and would not allow me or Mr. Johnson to respond to any of his comments." S-4. Mr. Greene guessed that the "tirade" lasted up to twenty minutes, but, "I was sort of in shock so I don't really remember a whole lot about what the time frame was." Transcript (March 24, 2009), page 116, lines 5-14.

page 128, line 9), acting bizarrely (Transcript (March 24, 2009), page 126, line 16, through page 127, line 3), "a little less than cooperative" (Transcript (March 24, 2009), page 128, lines 9-10), and "almost intimidating." Transcript (March 24, 2009), page 128 lines 16-21.

On January 26, 2009, Ms. Moses again met with the Appellant. At this meeting, she listened to his explanation about what had happened at the post-observation conference. She also extended his administrative leave with pay until January 29, 2009, when he was to report to Wicomico High School for his new assignment. S-7.

Ms. Moses notified the Appellant on February 2, 2009, that the Superintendent was recommending a suspension without pay for three days based on misconduct. S-6. She explained why: "[W]hile there can be people upset, you can agree to disagree, there is a manner in which you do that and it's not yelling at someone, calling names, being disrespectful, especially to your immediate supervisor. That is just considered to be inappropriate." Transcript (March 24, 2009), page 133, line 16, through page 134, line 2. According to Ms. Moses, less severe discipline was not appropriate "[b]ecause of the severity of -- again, it goes back to behavior with your immediate supervisor. I think there's a certain implied understanding of appropriate behavior and conduct, and that you are not insubordinate; that, again, you can agree to disagree but you don't sit there and call your supervisor the devil incarnate and yell and be disrespectful, you know, just having the tone of, you know, it will be done when I say it's done, that type of thing." Transcript (March 24, 2009), page 135, line 14, through page 136, line 6.

The Appellant's Evidence

The Appellant has been a teacher for more than twelve years. He was hired to teach in Wicomico County in 2005. For the first two years, he taught at the Wicomico County Alternative Learning Center. During the 2005-2006 school year, he received two evaluations, was observed

four times, and had four post-observation conferences. The Appellant received an overall satisfactory rating on both evaluations: one for the period from September 2005 to January 2006, the other for the period from January 2006 to June 2006. He also received an overall satisfactory rating on each post-observation forms: in November 2005, January 2006, April 2006, and May 2006.

During the 2006-2007 school year, the Appellant received two evaluations, was observed four times, and had four post-observation conferences. He received an overall satisfactory rating on both evaluations: one for the period from August 2006 to January 2007, and the other for the period from January 2007 to June 2007. The Appellant also received an overall satisfactory rating on each post-observation forms: in December 2006, January 2007, April 2007, and May 2007. Anne Ashe was a signatory on the four evaluations and the post-observation forms in November 2005, January 2006, April 2006, May 2006, December 2006, and April 2007. A-6.

According to the Appellant, during the 2007-2008 school year, he was assigned to teach algebra at Bennett, but when he reported to his classroom on the first day of school, another teacher was assigned to the classroom. Mr. Johnson told him that he had been reassigned to teach sixth grade mathematics intervention with another teacher. "There was no professional development. Me and -- I don't [] want to say her name to bring someone else in -- we never got to sit down and meet each other first, where we can say, I don't agree with this guy, I can say I don't agree, I don't think I can work with her. I stayed with her for probably about a month." Transcript (March 24, 2009) page 210, lines 15-21.

Mr. Johnson observed the Appellant on October 31, 2007, and conducted a post-observation conference on November 16, 2007. A-1. The Appellant received an overall "needs improvement" rating. "I got my first evaluation and I was cited for not having a lesson plan. I didn't know what to

plan, to be honest. And I had four needs improvement. Mr. Johnson set me down and said every teacher should have a lesson plan. I said, okay, no problem. I didn't say anything about I didn't think it was fair, blah, blah, blah. All I said was, I'll make sure I have a lesson plan for you from now on." Transcript (March 24, 2009), page 211, lines 1-8.

The Appellant testified that "[n]ot too much later my assignment changed again" and "I got moved a few more times." Transcript (March 24, 2009), page 211, lines 9-10 and 18. According to the Appellant, the circumstances of the moves were the same: "[N]o chance to say goodbye to the kids, no sit-down meeting, no meeting with the new teacher just, you know, I pop up and say, I've got a new schedule. I'm working with you." Transcript (March 24, 2009), page 211, line 18, through page 212, line 1. But, he did not "get frustrated." Transcript (March 24, 2009), page 212, line 14.

Mr. Johnson observed the Appellant again on March 11, 2008. "I actually got a really good evaluation on that." Transcript (March 24, 2009), page 215, lines 8-9. The post-observation conference took place on March 27, 2008. A-1. The Appellant received an overall satisfactory rating. Mr. Johnson wrote that "[p]ositive student rapport was evident;" he commended the Appellant for implementing student-centered activities and establishing positive rapport.¹²

On May 23, 2008, Mr. Johnson and Ms. Ashe gave the Appellant an overall satisfactory rating on his evaluation for the period from August 2007 to June 2008. A-1. They commended as follows: "[The Appellant] has demonstrated professional growth in developing lesson plans and communicating expectations on what students are to learn as a result of the day's lesson." They

¹² Although the Appellant's overall rating was satisfactory, he received needs improvement in the categories of "[u]sed questions effectively" and "[c]onveyed appropriately high expectations for students." He received a commendable rating for "[e]xhibited appropriate rapport with pupils." The remaining categories were rated satisfactory. A-1.

also wrote that “[the Appellant] has a unique ability to relate to the middle school student. He established positive rapport with students and maintained a safe and orderly learning environment. We look forward to working with [the Appellant] in the 2008-2009 school year.” A-1. According to the Appellant, at this evaluation conference, “in a nice way I said I would like to move to Bennett High, I think the high school would be a better fit for me. I was trying to find a positive way to say I don’t want to be here.” Transcript (March 24, 2009) page 215, lines 13-17.¹³

The Appellant was assigned to teach eighth grade algebra during the 2008-2009 school year, with three other staff: a math intervention teacher, someone to work one-on-one with a student, and a special education teacher. At a team meeting in the beginning of the school year, with Mr. Greene present, the Appellant raised a concern about three students in his classroom who were “gang members.”¹⁴ It appears that the Appellant’s concern was that the three students should have been dispersed to different classrooms, not placed in the same classroom, especially one with students with special needs.¹⁵

The Appellant testified that, on an unspecified date, but during a “professional development meeting” in front of Michelle McGoogan, the “professional development coach,” a teacher criticized the special education teacher for not doing her job. According to the Appellant, Ms. McGoogan asked him whether the criticism was valid. “I said . . . I’ll tell you the truth if that’s what you want. She said, yeah. I said, that’s exactly what happened and, I said, yes, I have said

¹³ The Appellant also testified that he submitted transfer requests three times in April and twice in May, but no one ever contacted him about the requests. A-5 contains three e-mail messages to Ms. Moses about a transfer. The first e-mail, on April 7, 2008, requests a transfer. The second e-mail, on April 28, 2008, inquires about the status of his request. Ms. Moses replied that his request was late and, therefore, might not be considered. The Appellant’s third e-mail, on May 28, 2008, again asks about the status of his transfers, to which Ms. Moses replied as she had before.

¹⁴ Mr. Greene acknowledged that he was present when these concerns were raised.

¹⁵ The Appellant frequently gave very long, often unresponsive, narrative testimony during his examination at both the hearing on March 24, 2009 (*see, e.g.*, page 208, line 2, through page 218, line 1; page 225, line 11, through 230, line 15; and page 242, line 18, through 264, line 2) and at the hearing before me.

something to her before.” Transcript (March 24, 2009), page 228, lines 12-20. The Appellant also testified that Mr. Greene “approached me and said, does she (the special education teacher) ever do her job[?]” He told Mr. Greene that “the only concern I have that I will voice now is the inappropriate interactions and conversations with students, that is what concerns me because it puts us all in jeopardy.”¹⁶ Transcript (March 24, 2009), page 229, line 11, through page 230, line 2.

Mr. Johnson observed him again on November 5, 2008, for, according to the Appellant, about thirty-seven minutes.¹⁷ The post-observation conference was held on November 10, 2008.

The Appellant testified as follows, when asked what rating he had received:

Oh, God. I saw eight needs improvements, overall needs improvement. And when I saw it I was shocked, because I was thinking he left twice, he probably would say something like I’ll do it another time because I had to leave twice during the observation. When I get that thing back and it says what it says, I’m sitting there saying, oh, man, what just happened.

And the reason I didn’t saying [sic], because certain comments were made that made me feel like you better not saying [sic] anything¹⁸ He said something that, like I said, it wasn’t very supportive. He said, there was no learning going on in your classroom. I was saying to myself, like, man, no learning? Like, I’ve been doing this twelve years, you know, it would be pretty hard for me not to teach somebody something, I can do it by osmosis pretty much. Like I said, when I got his verbal reviews, none of that was written in the eval -- post-observation. I said to myself, because, I’ll be honest, I’m devastated, because I’ve been teaching twelve years and this has never happened. I’m rocked to the core. I’m, like, what just happened. He left my room twice. I was thinking, no way he’d come back with anything that needs improvement, yet here’s this eight. I thought it was very unfair, but I thought it was wise not to say anything to Mr. Johnson, because, like I said, my experiences with him prior to that have been, you know, keep your mouth closed because he has, obviously, has some kind of opinion of you he’s tried to catch me in lies before, which I don’t know why, so I said I’d better just be quiet.

¹⁶ Mr. Greene acknowledged that the Appellant had talked to him about this teacher’s inappropriate relations with students.

¹⁷ According to the Appellant, observations usually last fifty minutes. The Appellant testified that Mr. Johnson had been called out of the observation twice for a total of about thirteen minutes.

¹⁸ The reporter at the hearing before the County Board repeatedly asked the Appellant throughout his testimony to slow down to allow her accurately to record the testimony.

Transcript (March 24, 2009), page 231, line 18, through page 233, line 9.

The Appellant testified that he did not say anything at the November 2008 post-observation conference because he “wanted to make sure I didn’t say the wrong thing.” Transcript (March 28, 2009), page 234, lines 9-10. He later apologized to Mr. Johnson for not talking when he was asked whether he wanted to respond to Mr. Johnson’s critique.¹⁹ He also testified that he contacted Ms. Ashe to tell her he had received a “terrible” evaluation and to alert her that she might have to help him transfer from Bennett. At that time, Ms. Ashe reminded him that he was in “a nontenured year.” Transcript (March 24, 2009), page 233, lines 10-17.

The Appellant testified that Mr. Johnson called him into his office on November 11, 2008, and told him he had just finished talking to Ms. Moses and that he wanted to make sure he (the Appellant) knew he was “nontenured.” According to the Appellant, he tried to explain that he was working on the credits he needed for tenure, but Mr. Johnson “cut me off in the middle of speaking and said, that’s all. And I was, like, okay, and I just walked out and just, you know, kind of tucked my tail between my legs and got on out of there.”²⁰ Transcript (March 24, 2009), page 234, lines 13-21.

Ms. Ashe conducted the next observation on November 18, 2008, and “the weirdest thing happened.” Transcript (March 24, 2009), page 235, lines 6-7. He explained:

Mr. Johnson comes in in the middle of the observation, pulls her (Ms. Ashe) out and they are talking in the hallway. And, I’ll be honest, I feel uncomfortable because, like I said, a lot of things people were trying to convenience [sic] me to jump on board with, I’m starting to see where they said he’ll go to your supervisor, convince them you are not doing a good job and you’ll get a poor evaluation from them, too. I said, yeah, right, guys, whatever. You know, I I feel uncomfortable because this is what I’ve heard, the seed has been planted.

¹⁹ Mr. Johnson acknowledged the apology. Transcript (March 24, 2009), page 64, lines 14-20.

²⁰ Mr. Johnson acknowledged telling the Appellant he was non-tenured. He testified that is his practice whenever he learns that a teacher is non-tenured.

Transcript (March 24, 2009), page 235, lines 6-17.

The post-observation conference with Ms. Ashe was on November 20, 2008. According to the Appellant, the day before the conference, he had gone to Mr. Johnson and requested a copy of the post-observation form Mr. Johnson had completed for the conference on November 10, 2008. The Appellant testified that Mr. Johnson said he did not have it, but he "did act like he [looked] for it. He opened a file cabinet but never looked in any file, and said, I don't seem to have it."

Transcript (March 24, 2009), page 237, lines 8-13. Then,

I get to Anne Ashe the next day and sit down and we're talking and I said, I said, Mrs. Ashe, I said, the evaluation he gave me, that's not what happened in my room. She said, oh, yeah, I saw that but it did not influence mine. Of course, you know, I'm thinking, ding, ding, ding. I said, please tell me it's not so. She turns over her observation, and they are practically identical. I'm sitting there, like, you have got to be kidding me. At that point -- I'm not crying man, but I feel like, I mean, man, I had some tears behind my eyes. I'd have loved to let go, but my manhood said, hang on, brother, wait until you get home.

Transcript (March 24, 2009), page 237, line 14, through page 238, line 5.

The Appellant next testified about the post-observation conference on January 16, 2009. It was at a round table in Mr. Johnson's office, with Mr. Greene and Mr. Johnson present. At the beginning of the conference, the Observation Form was face down on the table.

According to the Appellant, Mr. Greene began the conference by asking him to review what he thought had transpired during the observation. After Mr. Greene reminded him what the objective of the lesson was that day, the Appellant testified he was able to "exactly" review what had happened. After that, "we talked a little bit," and, then, Mr. Greene turned the Observation Form over.

The Appellant testified that he "noticed some things that disturbed me off the top," especially an unsatisfactory rating in three categories. But, according to the Appellant, "I didn't say

anything,” because, “being that I already had two that were kind of not so great, I’m thinking when you get there, boy, don’t you say anything. You know, my intention was to say nothing again.” Transcript (March 24, 2009), page 243, lines 12-21.

The Appellant testified that Mr. Greene continued to talk about how the lesson had gone. According to the Appellant, Mr. Greene made the suggestion that “you need to have the special education teacher prepared.” The Appellant was “confused” at this point because “this is the same man that had come to me in confidence saying why doesn’t she ever do your [sic] job, which means you are obviously aware something is not right there, but then you’d write it in my evaluation.” Transcript (March 24, 2009), page 244, lines 8-13. “I laughed for about five seconds. And I did -- like I said, I’m a pastor. I looked up to God and said, God, you’ve got to be kidding me, this is not happening . . . and I might have chuckled for about five to seven seconds, and I thought that was warranted, actually.”²¹ Transcript (March 24, 2009), page 244, line 18, through page 245, line 5.

The Appellant also testified that he asked Mr. Greene how he could be “cited” for someone who Mr. Greene knew did not do her job. He testified that he told Mr. Greene he had not taken any notes during the observation and then “I went down the list” -- although “it was not a tirade”-- about the conduct of the special education teacher, his mistreatment at Bennett, and the gang fight during American Education Week.

The Appellant testified that he told Mr. Greene that he was “embarrassed” by the fight because “we all looked so incompetent,” and that the fight might have been avoided had Mr. Greene not ignored concerns about gang members that had previously been raised.

At that point there was some yelling. Mr. Greene took offense to what I had said about the incompetent thing and how we looked, and he said, I ain’t incompetent. He stood up out of his seat and said, I ain’t incompetent, and raised his voice quite a few octaves.

²¹ The Appellant testified he was a pastor.

Transcript (March 24, 2009), page 251, lines 1-6.

The Appellant testified that what he said at the post-observation conference had been misconstrued by the Local Board's witnesses: "And that's to give clarity to a lot of comments that they are saying that I made, but the words were taken so far out of context and bent up so badly that, you know, I'm sitting here, I'm recalling it myself and I do see how they could get it twisted but not as twisted they did." Transcript (March 24, 2009), page 254, lines 10-15.

The Appellant explained how the misperception that he had called Mr. Johnson stupid. According to the Appellant, at the post-observation conference, he said, "I don't know if you all think I'm stupid or what but I can see what you are doing to me on paper and it's not fair." Transcript (March 24, 2009), page 254, lines 5-7. And, "what I said was [] Mr. Johnson [] you either don't know or don't care when it comes to my professional career." "I said, I don't know if it's a combination of both or what, but, I said, if you are going to help me, then help me, but if not, just tell me[:] you are on your own in this building." Transcript (March 24, 2009), page 253, lines 8-15.

In regard to the testimony that he had called Mr. Johnson a devil or the devil incarnate, the Appellant testified that what he actually had said to Mr. Johnson was, "I'm going to tell you the truth -- I said, people have always talked bad about you since I entered your building[.] [T]hey call [] you the devil and some more things, and I have always defended you." Transcript (March 24, 2009), page 252, lines 12-19.

About the Mad Magazine comment, the Appellant testified:

And I said, even some of the theories that you come up with, I said, Mr. Johnson, I said I don't understand, I said, I see your books back there, I said, I don't know if there's Mad Magazine in there, I don't know what's going on, but sometimes when you make decisions or you tell me some-

thing, it's not clear.

Transcript (March 24, 2009), page 253, line 16, through page 254, line 1.

In regard to his refusal to end the post-observation conference when Mr. Johnson said that the conference was over, the Appellant acknowledged that, when the "meeting was getting to the end," Mr. Johnson said that "this meeting's over." Transcript (March 24, 2009), page 257, lines 1-4; *see also*, page 265, pages 5-7. "I said, Mr. Johnson, I said, listen – and they said, are you refusing to sign it. I said, Mr. Johnson, I'm definitely going to sign this observation but I'm going to make sure that I say everything that I want to say now because, in case you haven't noticed, I never do this, and I only want to have to do this one time. And, like I said, a lot of stuff I said was taken way out of context. And I said, I'm going to sign this, I did have a couple more things to say, and I appreciate you even listening." Transcript (March 24, 2009) page 259, line 18, through page 260, line 7. Later, in response to counsel's direct question whether he had said to Mr. Johnson that he would sign the observation form when he was ready, the Appellant testified:

No. What I did say was, I said, I'm going to sign this as soon as I finish saying this last portion. And Mr. Johnson said something about this conference is over. I said, Mr. Johnson, if this observation [sic] is over, you would have left already. That's what I was saying. And, what I did say was, Mr. Johnson, I am signing it right now because I am done saying what I have to say. I did not say it's over when I say it's over, because that would be something he could trap me on. I'll be honest, that's what I thought had been going on for a long time.

Transcript (March 24, 2009), page 264, line 19, through page 265, line 14.

The Appellant denied that he had slammed the door to Mr. Johnson's office. He explained that the building is old and there is nothing "that checks that door, so the weight carries it whichever

way you move it. When I left the door, I pulled it to and let go and it closed on its own.”²²

Transcript (March 24, 2009), page 261, lines 15-21.

The Appellant testified that he believed it had been Mr. Johnson, not Mr. Greene, who wrote the Observation Form.²³ He told that to Mr. Johnson at the conference: “I said, Mr. Johnson, I believe you wrote this, I believe that because it looks just like what you have done to me in the past. And I said, there are a lot of commonalities here; every observation I’ve had this year you’ve been involved directly and I keep seeing the same result every time you’re involved and I don’t appreciate it.” Transcript (March 24, 2009), page 257, line 15, through page 258, line 1; *see also*, Transcript (March 24, 2009), page 260, line 18, through page 261, line 11.

The Appellant thought Mr. Johnson became upset with him because he criticized Mr. Johnson for unfairly “rak[ing] [him] across the coals [in the Observation Form]” for the special education teacher’s lack of preparation when he (Mr. Johnson) probably had done nothing about the special education teacher’s incompetence. Transcript (March 24, 2009, page 254, line 16, through page 255, line 8. The Appellant felt “abused” and treated “no better than a common slave” for more than a year by Mr. Johnson. Transcript (March 24, 2009), page 256, lines 16-19. He emphatically denied he had been “belligerent” or “disrespectful” during the conference,

because, like [I] said, one thing I did keep in the back of my mind, this man had called me in his office, said you know you’re not tenured, right, gave me that little smile he gives and then cut me off and said that’s all. I took that as, brother, you’d better watch your step because I can nail you if I want to.

Transcript (March 24, 2009), page 255, lines 13-21.

²² The Appellant testified that he thought he talked about his unhappiness with the observation form and with how he had been treated at Bennett for about five to six minutes. Transcript (March 24, 2009), page 266, lines 8-15.

²³ Mr. Johnson testified that he did not share the notes he had taken during the observation with Mr. Greene and did not complete the Observation Form. Transcript (March 24, 2009), page 33, lines 14-16.

On March 24, 2009, the Appellant offered the testimony of the following individuals at the hearing before the County Board: Paul Turner, a history teacher at Bennett with twenty-one years experience; Sandy Jean Pryor, a teacher at Bennett with thirty-two years experience; Doris Hanson, an educator with twenty-nine years experience and the Special Education Facilitator at Bennett; Peter Wilken, a neighbor and "ministerial friend" for four or five years; Kenneth Jones, a teacher who worked with the Appellant at the Wicomico County Alternative Learning Center before the Appellant's assignment to Bennett, and Sharon Shirk, a member of the Appellant's church. These witnesses, except for Ms. Shirk and Mr. Wilken, also submitted written statements. A-3, A-4, A-7, and A-9.

Mr. Turner worked "alongside" the Appellant at Bennett. He described the Appellant as "a patient and understanding man who plays a very important role in the lives of our students." A-3. Mr. Turner has never seen the Appellant "loud or disrespectful." Transcript (March 28, 2009), page 156, line 19 through page 157, line 11. He opined that the Appellant has "solid character" and is a "truthful individual," to the best of his knowledge. Transcript (March 24, 2009), page 155, lines 14-19; page 156, lines 8-11.

Ms. Pryor testified that she has known the Appellant for six or seven years, and taught with him as a teacher at night school and at Bennett and as a lead teacher at summer school. She "like[s]" the Appellant's teaching style (Transcript (March 24, 2009), page 170, line 4); he is "pretty good about taking criticism" (Transcript (March 24, 2009), page 170, lines 13-15); and when she has given him a directive, he has immediately complied in a "very congenial" and "very easy going" manner. Transcript (March 24, 2009), page 171, lines 4-11. Ms. Pryor opined that the Appellant is "[v]ery conscientious, very dedicated, very honest and to the extent of admitting his own faults." Transcript (March 24, 2009), page 172, lines 1-6. She has never seen him loud or

disrespectful. In her written statement, she described the Appellant as “dedicated,” “hard-working,” “determined to do an excellent job,” “dependable,” “very responsible,” and “extremely knowledgeable,” with “good teaching skills and excellent rapport with the students.” A-4.

Ms. Hanson testified that she has known the Appellant as a colleague and member of the community for four years. She opined that the Appellant is “dependable,” “reliable,” a “positive role model,” and “very student-oriented.” Transcript (March 24, 2009), page 186, lines 1-7. When asked her opinion about the Appellant’s truthfulness, she testified that “he’s never told me anything wrong” and “[b]ecause of the Christian background he has, he hasn’t ever shared with me anything that I didn’t believe or could go back and find out to be true.” Transcript (March 24, 2009), page 186, line 17, through page 187, line 4. She described the Appellant as “reliable, jolly-go, happy-go-lucky.” Transcript (March 24, 2009), page 187, lines 5-8. Ms. Hanson thinks the Appellant is a good teacher and they have disagreed about educational matters without conflict. In her written statement, she praised the Appellant as “a pillar in the field of education,” a “positive role model and father figure” to students, and a teacher by whom parents have requested their children be taught. A-7.

Ms. Shirk testified that she has known the Appellant for about five years and is a member of his church.²⁴ He has “taught me and [sic] awful lot about integrity and honesty and how to live my life.” Transcript (March 24, 2009), page 193, line 21, through page 194, line 2. The Appellant is “easygoing,” “kind,” “generous,” “wonderful,” and “very, very easy to get along with.” Transcript (March 24, 2009), page 194, lines 8-15. When she has expressed an opinion different from the Appellant’s, he responds “with a little giggle” before he gives his opinion. Transcript (March 24,

²⁴ The Appellant is a pastor of a small congregation that worships in his home.

2009), page 195, lines 4-11. She "absolutely" has never seen him loud or disrespectful. Transcript (March 24, 2009), page 195, lines 15-17.

Mr. Wilken has known the Appellant for four or five years as a neighbor and "ministerial friend." He has a "very positive" opinion of the Appellant's character, and described him as "very kind," "would do anything for you," "compassionate," and "congenial." Transcript (March 24, 2009), page 201, lines 16-21. Mr. Wilken has never seen the Appellant be loud or disrespectful, and, when he has disagreed with the Appellant, the Appellant has been "very respectful." Transcript (March 24, 2009), page 202, lines 9-13.

Mr. Jones has taught for twenty-two years, eleven years at Wicomico County Alternative Learning Center, where he met the Appellant in 2005 and taught with him. When asked about his opinion of the Appellant's character, Mr. Jones testified that "I found him to be a very caring individual," with "great rapport with the students." Transcript (March 24, 2009), page 292, lines 13-21. When asked whether he had ever observed the Appellant to be loud or disrespectful, he testified: "Well, we always laugh loud, he and I. Some would say that's loud. But I've never known him to be disrespectful to anyone." Transcript (March 24, 2009), page 293, lines 11-13. Mr. Jones testified that the Appellant's demeanor is his strength. In his letter of support, Mr. Jones wrote:

I find that [the Appellant] has a deep conviction for truth. In the four years that I have known [the Appellant], to my knowledge he has never lied to me, nor has any of our conversations had a hint of lying in them. I could and can always count on him to tell me the truth, even if the truth hurt, was uncomfortable, or non [sic] convenient at the time. These types of men are rare today in our society, but he is one such man. He will speak truth to you or say nothing at all.

A-9.²⁵

Analysis

The County Board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05F(3).

Was the Appellant's conduct misconduct?

The factual dispute involves what happened at the post-observation conference on January 16, 2009. The County Board agreed with the Superintendent that the Appellant had engaged in misconduct in office under section 6-202(a)(1)(ii) of the Education Article and approved a three-day suspension without pay. The Appellant denied he had done anything objectionable or deserving of discipline.

²⁵ The record from the hearing before the County Board also contains letters of support from: (i) Shelley Doane-Dashiell, Dean of Students at the Wicomico County Alternative Learning Center, who worked closely with the Appellant; (ii) R. Hunter Patton, a math intervention teacher who worked with the Appellant at Bennett; (iii) Pamela J. Ketterer, a math teacher at Bennett, with over thirty years teaching and administrative experience, who worked with the Appellant; (iv) Amy Gutierrez, a teacher at Bennett who worked with the Appellant; (v) Clayton J. Belgie, the principal at the Wicomico County Evening High School; (vi) Andrew J. Turner, III, a supervisor of the Appellant's at the Summer School and Evening High School; and (vii) Douglas M. Dewitt, Ph.D., a professor at Salisbury University, who has taught the Appellant.

On March 18, 2009, Ms. Doane-Dashiell was "pleased to write a character reference for [the Appellant.]" She described him as possessing a "quiet, cooperative, respectful and polite demeanor," who "accepts constructive criticism as a means to improve upon his abilities for the betterment of himself and others." A-7.

R. Hunter Patton praised the Appellant's teaching ability. He wrote that the Appellant showed an impressive ability to establish rapport with very difficult students and to create a "safe, comfortable learning environment," with an "unmatched" ability to motivate his students." R. Patton considered the Appellant "a leader and mentor" to him and "truly an asset to Bennett." A-7.

On January 26, 2009, Ms. Ketterer described the Appellant as "excellent at discipline," and "very respectful to me and our students." This thirty-year veteran teacher praised the Appellant's ability effectively to teach troubled students, and indicated she had learned from him. A-7.

On January 18, 2009, Ms. Gutierrez praised the Appellant's ability to teach "difficult to teach" students. She worked daily with the Appellant and considered him a "role model" for the students, whom they "definitely respected." According to Ms. Gutierrez, these difficult students "listen and respond [to the Appellant] in a way that does not happen with other teachers." A-7.

On March 11, 2009, Mr. Belgie wrote that he is "most impressed with both [the Appellant's] professionalism and genuine care for his students[.]" A-8.

On March 20, 2009, Mr. A. Turner wrote that the Appellant was "an effective professional teacher and a competent subordinate." A-8.

On March 23, 2009, Dr. DeWitt praised the Appellant as "very engaging," with a "strong work ethic" and "admirable" sense of humor. It was clear to Professor DeWitt that the Appellant "views teaching as a calling and not just a job." A-8.

Only three people attended the post-observation conference: the Appellant, Mr. Greene, and Mr. Johnson. Ms. Willoughby did not attend the conference, but she heard loud yelling coming from Mr. Johnson's office, where the post-observation conference was held, and the door to Mr. Johnson's office slam shut.

Mr. Greene conducted the conference. Mr. Johnson was there as an observer because Mr. Greene was inexperienced and still learning how such conferences should be conducted. Mr. Greene and Mr. Johnson agreed that the conference went well until Mr. Greene suggested how the Appellant could improve collaborative teaching with the special education teacher. At that point, according to Mr. Greene, the Appellant "[r]olled his eyes and started laughing really loud and just hysterically and was like rolling back in his seat like this (demonstrating) laughing like that." According to Mr. Johnson, the Appellant "started laughing hysterically, sat back, rolled his head up, looked at the ceiling and just really almost uncontrollable laughter for some time."

The Appellant agreed he laughed, but he minimized it and rationalized it. According to the Appellant, he laughed "for about five seconds," and, as for rolling in his seat, "I looked up to God and said, God, you've got to be kidding me, this is not happening," and "I might have chuckled for about five to seven seconds."

Based on this evidence, I find that, in response to Mr. Greene's suggestion about how to improve collaborative teaching with the special education teacher, the Appellant loudly, inappropriately, and excessively laughed.

At some point during the post-observation conference, Mr. Greene showed the Observation Form to the Appellant. By the Appellant's own testimony, this triggered his criticism of Mr. Johnson's leadership at Bennett. The Appellant criticized Mr. Johnson for (i) a failure to address what the Appellant believed was the special education teacher's incompetence and misconduct; (ii)

a failure to respond to the Appellant's concern about too many "gang" affiliated students assigned to one classroom; (iii) a failure to prevent a fight among students that occurred while parents were visiting; (iv) a failure to support, encourage, and fairly evaluate the Appellant's job performance; and (v) influencing Ms. Ashe and Mr. Greene unfairly to rate his job performance.

Mr. Greene testified that the Appellant's criticism was a "tirade," during which he was "extremely loud," "yelling," and rude. Mr. Greene was "very surprised" by the Appellant's behavior; it was something he had "never seen" before, and he was "sort of in shock." Mr. Greene also "was nervous for Mr. Johnson" and "afraid of what it could lead to or what was going to happen." Mr. Greene also testified that the Appellant "stormed out [of Mr. Johnson's office] and slammed the door."

Mr. Johnson described the Appellant's behavior as a "very, very loud attack" on him that lasted for about fifteen minutes.²⁶ He felt "threatened." Mr. Johnson also testified that the Appellant "slammed" the door when he left the office.

Ms. Willoughby heard yelling from Mr. Johnson's office. She could not identify the voice or voices, but she knew it was not Mr. Johnson's. She was "very much" concerned for Mr. Johnson because of "the tone of the yelling." Ms. Willoughby also heard the door slam and, although she did not see who slammed the door, just seconds later, she saw the Appellant walk by her desk.

The Appellant denied yelling or raising his voice "at all" during the post-observation conference. He agreed there had been yelling, but it was from Mr. Greene. He denied that he had slammed the door and suggested that it sounded like he had, it was because the door had no hinge or stop to slow its velocity when he pushed it shut.

²⁶ Mr. Greene testified the Appellant's tirade lasted fifteen or twenty minutes, but he "was sort of in shock, so I don't really remember a whole lot about what the time frame was." Transcript (March 24, 2009), page 116, lines 5-14.

Based on this evidence, I find that, for some length of time,²⁷ the Appellant yelled so loudly at Mr. Johnson that two reasonable people -- Mr. Greene and Ms. Willoughby -- were concerned about Mr. Johnson's well-being. I also find that the Appellant stormed out of the post-observation conference and slammed the door to Mr. Johnson's office.

I do not credit the Appellant as a witness. As between Mr. Johnson and Mr. Greene, on the one hand, and the Appellant, on the other hand, I believe Messrs. Johnson and Greene. Their testimony is mutually corroborative. Although they are colleagues, as the Appellant pointed out in his argument, no evidence even suggests a conspiracy between Mr. Johnson and Mr. Greene to fabricate their testimony or any motive for either Mr. Greene or Mr. Johnson to want to harm the Appellant.

Mr. Johnson denied that he had influenced Mr. Greene's observation of the Appellant's classroom performance or Mr. Greene's evaluation of the Appellant on the Observation Form. Mr. Greene explained "it was my observation, not Mr. Johnson's observation, and if he had an issue with it that he needed to address it towards me and not Mr. Johnson." Transcript (March 24, 2009), page 100, lines 15-19. Furthermore, no evidence suggests that Mr. Greene had a motive to lie or to want to hurt the Appellant. In fact, the Appellant testified that he and Mr. Greene "got along great" (Transcript (March 24, 2009), page 251, lines 7-8), and had somewhat of a social relationship while the Appellant was at Bennett. Transcript (March 24, 2009), page 117, line 9, through page 118, line 9.

²⁷ The length of time of the yelling is not terribly significant. Mr. Johnson thought it was about fifteen minutes. Mr. Greene thought it could have been fifteen minutes, but he did not know. Ms. Willoughby heard yelling for a much shorter period of time. The Appellant denied that he had yelled at the conference, but acknowledged he "went down his list" (Transcript (March 24, 2009), page 246, lines 7-8.) of criticism for five or six minutes.

The Appellant, on the other hand, was a biased witness. He had a significant interest in the outcome of the case. Furthermore, the record offers a possible explanation for the Appellant's misconduct: By his own testimony, he was primed for an angry outburst directed at Mr. Johnson well before the post-observation conference. The Appellant described himself as "devastated" and "rocked to the core" by Mr. Johnson's "very unfair" observation of him on October 6, 2007. When Mr. Johnson reminded the Appellant in November 2008 that he was "nontenured," the Appellant "tucked my tail between my legs and got out of there." During a post-observation conference with Ms. Ashe in November 2007, he "spilled it out" that he wanted to transfer from Bennett and told Ms. Ashe that his "confidence in [Principal Johnson] as a leader is betrayed." The Appellant also believed that Mr. Johnson had somehow convinced two school administrators -- Ms. Ashe and Mr. Greene -- falsely to rate him as a substandard teacher. And, finally, the Appellant felt "abused" by Mr. Johnson for more than a year and "treated no better than a common slave [by him]." This evidence of the Appellant's emotional state vis-a-vis Mr. Johnson provides an explanation of what otherwise seems to have been his uncharacteristic outburst during the January post-observation conference.²⁸

Mr. Johnson testified that, during the Appellant's angry denunciation, the Appellant called him "incompetent or just plain stupid," "evil," and the "devil incarnate." He testified that the Appellant said he did not "have a heart," ridiculed him as possibly getting his ideas about teaching from Mad Magazine, and refused to stop his tirade even though he was told several times that the conference needed to end. According to Mr. Johnson, the Appellant said the conference would end

²⁸ Although the record contains impressive evidence relevant to the Appellant's character and ability to teach, the issue here is the Appellant's behavior on January 16, 2009. Both Mr. Greene and Mr. Johnson testified virtually the same as to what they saw and heard at the conference.

when he was ready for it to end, and he would sign the Observation Form when he was ready to sign it.

Mr. Greene testified that the Appellant called Mr. Johnson "stupid," ridiculed him as possibly getting ideas about education from Mad Magazine, said that he was "incompetent or just didn't have a heart," and told him that others had said he was the devil. Mr. Greene also testified that the Appellant refused to stop his tirade when Mr. Johnson told him the conference had to end and, instead, told Mr. Johnson that the conference would end when he (the Appellant) was ready for it to end.

The Appellant, on the other hand, denied calling Mr. Johnson names and testified that some things he had said at the conference were taken out of context. According to the Appellant, he said that others at Bennett, but not he, had called Mr. Johnson the devil, but that he always defended Mr. Johnson. The Appellant also denied that he had called Mr. Johnson stupid, but, instead, had said, "I don't know if you (Mr. Johnson) think I'm stupid."

The Appellant acknowledged, however, that he implied that Mr. Johnson may have relied on Mad Magazine for his theories about education. The Appellant also acknowledged that, when Mr. Johnson said the conference was over and instructed him to sign the Observation Form, he said he would sign the Observation Form later because he was "going to make sure that I say everything that I want to say now because, . . . I only want to have to do this one time."

Based on this evidence, I find that the Appellant called Mr. Johnson stupid or incompetent, told him that others at Bennett called him the devil, ridiculed him as possibly relying on Mad Magazine for ideas about education, and refused to end the conference and sign the Observation

Form upon Mr. Johnson's instruction. I do not find that the Appellant called Mr. Johnson the devil incarnate or the devil, based on Mr. Greene's testimony.²⁹

Was the Appellant's conduct misconduct in office?

The Appellant argued that the County Board's discipline was unfair because it was based merely on Mr. Greene's and Mr. Johnson's dislike of what he had said at the post-observation conference and because his behavior at the conference, assuming it was misconduct, had not been willful or implicated his fitness to teach. For the following reasons, I disagree.

The Appellant's behavior was patent misconduct. The *Resetar* Court referred to definitions of misconduct found in *Corpus Juris Secundum* (CJS) and *Black's Law Dictionary*. The CJS definition includes "unprofessional acts even though such acts are not inherently wrongful." *Resetar*, 284 Md. 561, 399 A.2d 237, quoting, C.J.S. Misconduct (1948). *Black's Law Dictionary's* definition includes "improper or wrong behavior," synonymous with "misbehavior." *Resetar*, 284 Md. 561, 399 A.2d 237, quoting, *Black's Law Dictionary* (4th ed. 1968).³⁰

The Appellant's behavior at the post-observation conference was very clearly improper, wrong, and unprofessional. This behavior included: loud, inappropriate, and excessive laughter; yelling, storming out of the office, and slamming the door; calling Mr. Johnson stupid and indirectly calling him the devil; ridiculing Mr. Johnson's ideas about education; and refusing to stop his

²⁹ I do not find it significant that Mr. Johnson's and Mr. Greene's versions of what was said at the post-observation conference were different in some respects. The post-observation conference was emotionally charged, and the Appellant's behavior caused both Mr. Johnson and Mr. Greene anxiety. Under those circumstances, some differences in recollection are normal.

³⁰ The current edition of *Black's Law Dictionary* defines "misconduct" as "[a] dereliction of duty; unlawful or improper behavior and "willful misconduct of an employee" as "[t]he deliberate disregard by an employee of the employer's interests, including its work rules and standards of conduct, justifying a denial of unemployment compensation if the employee is terminated for the misconduct." *Black's Law Dictionary* 1019 & 1020 (8th ed. 2004).

misconduct and sign the Observation Form when instructed by his principal to do so. Accordingly, I find that the Appellant's behavior was misconduct.³¹

The *Resetar* Court found that the State Board of Education's dismissal of Mr. Resetar based on the "jungle bunny" episode was not an error of law. According to the *Resetar* Court, "[T]he State Board could well have concluded that the remark of the teacher here might undermine his future classroom performance and overall impact on his students[.]" *Resetar*, 284 Md. at 561, 399 A.2d at 238.

I find that the Appellant's misconduct constituted misconduct in office. The *Resetar* decision does not require a finding that either the Appellant's misconduct undermined his future classroom performance and overall impact on his students, which is the *Resetar* language, or implicated his fitness to teach, as argued by the Appellant. The *Resetar* case is materially different from this case. *Resetar* involved the grounds for a dismissal of a teacher. This case involves, not a dismissal from teaching,³² but a suspension.

In its decision, the *Resetar* Court relied on two cases from foreign jurisdictions that also involved grounds for the dismissal of a teacher. In a dismissal from teaching circumstance, the

³¹ The statute that authorizes a county board to discipline a teacher for misconduct in office does not include "willful" as a modifier of misconduct. The *Resetar* Court's referred to *Employment Sec. Board v. LeCates*, 218 Md. 202, 145 A.2d 840 (1958), in its discussion of the meaning of a "willful" or "deliberate" misconduct. The *LeCates* decision involved whether a former employee was correctly denied unemployment insurance benefits based on the statutorily disqualifying commission of the former employee's "deliberate and willful misconduct connected with his work[.]" *LeCates*, 218 Md. at 206, 145 A.2d 842. The *LeCates* Court found deliberate and willful "within the meaning of the statute because Mr. LaCates's conduct -- the unauthorized taking of his employer's vehicle for his personal use and failing to notify the employer he had damaged the vehicle in an accident -- "evinced an utter disregard of the employee's duties and obligations to his employer was calculated to disrupt the discipline and order requisite to the proper management and control of a large food processing company which had given him employment as a supervisor over other employees working for the same company." *LeCates*, 218 Md. at 211, 145 A.2d at 844-845. The relevant statute here does not contain the "deliberate and willful" language that is contained in the unemployment insurance statute. The *LaCates* decision is further not apposite to this case because this case is not a discharge case. Nonetheless, it is beyond cavil that the Appellant's conduct at the conference "evinced an utter disregard" for his obligation to act professionally, courteously, and respectfully throughout the observation conference.

³² The Appellant currently teaches at Wicomico High School.

Resetar Court required that the school district's disciplinary action be based on misconduct that reasonably could have undermined Mr. Resetar's his future classroom performance and overall impact on students.

In this case, the County Board's disciplinary action was a suspension, not a removal of the Appellant from teaching. Under these circumstances, "misconduct in office" does not require the Appellant's misconduct to undermine his future classroom performance and overall impact on students. It is enough that the misconduct relates directly to the Appellant's office or, in other words, to his duties and responsibilities as a teacher.

As a teacher at Bennett, the Appellant had a duty to participate in post-observation conferences. Implicit in this duty is the responsibility to behavior professionally. The Appellant, however, turned the post-observation conference into an aggressive diatribe against his superiors. Such unprofessional, disrespectful, and rude behavior is clearly misconduct in office.

Moreover, the purpose of a post-observation conference is to improve a teacher's job performance. The Appellant, however, used at least part of the post-observation conference as a springboard for a lengthy tirade against Mr. Johnson for real or perceived injustices. By this misconduct, he hijacked the conference, perverted the conference's purpose, and, thereby, "undermine[d] his future classroom performance and overall impact on students." *Resetar*, 284 Md. at 561, 399 A.2d at 238. The County Board's discipline is fully justified.

CONCLUSIONS OF LAW

I conclude the following:

A. The Appellant engaged in misconduct in office during the post-observation conference on January 16, 2009. Md. Code Ann. Educ. § 6-202(a)(1)(ii) (2008); *See Resetar v. State Bd. of Educ.*, 284 Md. 537, 399 A.2d 225 (1979).

B. The County Board's three-day suspension without pay based on the misconduct in office was justified and appropriate. Md. Code Ann. Educ. § 6-202(a)(1)(ii) (2008); *See Resetar v. State Bd. of Educ.*, 284 Md. 537, 399 A.2d 225 (1979).

PROPOSED ORDER

I **PROPOSE** that the decision of the Board of Education of Wicomico County to suspend the Appellant for three days without pay based on misconduct in office be **SUSTAINED**.

January 25, 2010
Date Decision mailed

Michael D. Carlis
Administrative Law Judge

MDC/CH
110790

NOTICE OF RIGHT TO FILE OBJECTIONS

Any party adversely affected by this Proposed Decision has the right to file written objections within fifteen days of receipt of the decision; parties may file written responses to the objections within fifteen days of receipt of the objections. Both the objections and the responses shall be filed with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

Decision Mailed To:

Kristy K. Anderson, Esquire
Maryland State Teachers Association
140 Main Street
Annapolis, MD 21401

Fulton P. Jeffers, Esquire
Carnaey, Kelehan, Bressler, Bennett & Scherr
212 West Main Street, Suite 102
Salisbury, MD 21801

ISAIAH SHOWELL,
APPELLANT
v.
BOARD OF EDUCATION
OF WICOMICO COUNTY

* BEFORE MICHAEL D. CARLIS,
* ADMINISTRATIVE LAW JUDGE,
* MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: MSDE-BE-01-09-25318

* * * * *

FILE EXHIBIT LIST

No additional exhibits were entered at the hearing before OAH. The following exhibits were admitted as part of the record before the County Board:

- A 1 - Teacher Observation Form, dated October 31, 2007;
- A 2 - Not admitted;
- A 3 - Paul Turner's statement;
- A 4 - S. Jean Pryor's statement;
- A 5 - Memorandum from the Appellant, dated April 7, 2008;
- A 6 - Teacher Observation Forms, dated November 2, 2005, January 6, 2006, April 6, 2006, May 17, 2006, May 23, 2006, December 12, 2006, January 18, 2007, January 19, 2007, April 25, 2007, May 15, 2007, and Teacher Evaluation Forms, dated January 25, 2006, June 5, 2006, January 19, 2007, and June 4, 2007;
- A 7 - Statements from Shelley Doane-Dashiell, R. Hunter Patton, Doris Henson, Pamela J. Ketterer, and Amy Gutierrez;
- A 8 - Letters from Clayton J. Belgie, Andrew J. Turner, III, and Douglas M. Dewitt; and
- A 9 - Letter from Kenneth Jones.

No additional exhibits were admitted for the County Board. The following exhibits were admitted as part of the record before the Local Board:

- Super. #1 - Letter from C. Michael Johnson;

- Super #2 - C. Michael Johnson's statement;
- S - 3 - Letter from Diane Willoughby;
- S - 4 - Statement from Ron Greene;
- S - 5 - Letter from John E. Fredericksen;
- S - 6 - Letter from John E. Fredericksen;
- S - 7 - Letter from John E. Fredericksen; and
- S - 8 - Teacher Observation Form, with attachment, dated January 16, 2009, and Appellant's rebuttal.