JUDITH KOENICK,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
MONTGOMERY COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 99-40

OPINION

This is an appeal of the termination of a tenured art teacher based on misconduct in office, insubordination and willful neglect of duty. In accordance with COMAR13A.01.01.03D and .03E(3), the appeal was transferred to the Office of Administrative Hearings where a hearing was held on May 20, 1999. The administrative law judge issued a proposed decision, a copy of which is attached as Exhibit 1. The parties presented final oral argument to the State Board on July 27, 1999.

Having reviewed the record in this matter and considered the arguments of the parties, we adopt the Findings of Fact and Conclusions of Law of the administrative law judge as set forth in Exhibit 1. For the reasons described by the administrative law judge, we affirm the termination decision made by the Board of Education of Montgomery County.

Walter Sondheim, Jr.
President

Edward Andrews
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Philip S. Benzil

ABSTAIN*

Reginald Dunn

George W. Fisher, Sr.

Marilyn D. Maultsby

Judith McHale

ABSTAIN*

Edward Root

John Wisthoff

* Reginald Dunn and Edward Root, newly appointed members of the State Board of Education, did not participate in the deliberation of this appeal.

August 24, 1999

EXHIBIT I

JUDITH KOENICK,	*	BEFORE JAMES W. POWER,
APPELLANT	*	ADMINISTRATIVE LAW JUDGE,
v.	*	MARYLAND OFFICE OF
BOARD OF EDUCATION	*	ADMINISTRATIVE HEARINGS
OF MONTGOMERY COUNTY	*	
	*	CASE NO. 99-MSDE-BE-01-020

* * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE

On or about October 8, 1997, Judith Koenick, ("Appellant"), art teacher, received notification from Mr. Paul Vance, Superintendent of the Montgomery County Public Schools ("MCPS"), recommending termination. The Appellant appealed the recommendation to the Board of Education of Montgomery County (the "Board"). Mr. Joseph A. Sickles, a Hearing Examiner of the Board ("Hearing Examiner") conducted a hearing on March 16, 17, April 27, May 4, 18, 20, and June 10, 17, 1998, pursuant to Md. Code Ann., Educ. § 6-203 (Supp. 1998). The Hearing Examiner upheld the termination. The Appellant appealed the Hearing Examiner's recommendation to the Board. After hearing arguments from both parties, and reviewing the record compiled by the Hearing Examiner, the Board upheld the termination on November 10, 1998. Pursuant to Md. Code Ann.,

Educ. § 6-202(4) (Supp. 1998), the Appellant appealed the Board's order to the Maryland State Board of Education and the matter was scheduled before the Office of Administrative Hearings.

Pursuant to the Code of Maryland Regulations ("COMAR") 13A.01.01.03P(1), a hearing was conducted on April 27, 1999, before James W. Power, Administrative Law Judge ("ALJ"), at the Office of Administrative Hearings, Hunt Valley, Maryland. The Appellant was represented by Richard O' Connor, Esq. Judith Bressler, Esq. represented the Board.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1995 & Supp. 1998) and the Rules of Procedure of the Office of Administrative Hearings, COMAR 28.02.01. The parties stipulated that the hearing would be a review of the record before the Hearing Officer, with supplemental testimony from the Appellant and rebuttal testimony from the MCPS.

ISSUE

The issue on appeal is whether the Appellant's termination pursuant to Md. Code Ann., Educ. § 6-202(a) (Supp. 1998) for misconduct, insubordination and willful neglect of duty, based on events which occurred in September, 1997, at the Chevy Chase Elementary School, was proper.

SUMMARY OF THE EVIDENCE

A. Exhibits

The parties jointly submitted the record of the hearing before Mr. Sickles, with exhibits, constituting 871 pages of transcript (See attached Exhibit List).

The Appellant also submitted an additional exhibit, an audiotape of approximately four minutes. (The transcript of this tape was already an exhibit.)

B. Testimony

The Appellant testified on her own behalf.

The Board presented the testimony of Ms. Kim Bobola, Principal of Westover ElementarySchool.

FINDINGS OF FACT

After careful consideration of the record and the additional testimony presented, I find, by a preponderance of the evidence, the following facts:

1. The Appellant is an art teacher, who has been employed with the MCPS for approximately 23 years. She was first hired to teach elementary art in 1975.
2. The Appellant has not previously been suspended or reprimanded.
3. The Appellant is a graduate of the MCPS and has a bachelor's degree in art and Master's Degree in Art Education from Towson University.
4. Prior to the 1995-1996 school year, the Appellant was assigned to the Rock Creek Forest School.
5. The Appellant began the 1995-1996 school year at Chevy Chase. She returned to Chevy Chase for the start of the 1996-1997 school year, but was placed on administrative leave during an investigation into certain activities performed by her, involving confrontation with police and interaction with the community.
6. Then Appellant appealed her transfer from Rock Creek to Chevy Chase. The appeal was upheld by the Maryland State Board of Education on August 28, 1996. The Board held that the transfer to Chevy Chase did not violate the Appellant's First Amendment rights.
7. The Appellant's actions at Rock Creek impacted the school and community, and included such activities as interfering with vehicular traffic, videotaping of employees of the Maryland

National-Capital Park and Planning Commissions, as well as patrons of the park. The transfer to Chevy Chase followed a criminal contempt of court citation, for which the Appellant served seven days in jail.

8. The transfer to Chevy Chase was intended to allow the Appellant a fresh start, at a new school, and was deemed in the best interests of the school system.

9. During the 1996-1997 school year, the Appellant never raised the issue of retrieving her art materials. These materials had remained at Chevy Chase.

10. In December, 1996, a preliminary investigative report was issued concerning the Appellant's prior political and community involvement. However, a final decision about any sanction or transfer of the Appellant was not made until August 1997.

11. The MCPS investigated the various political and community activities engaged in by the Appellant, and complained about by parents. However, parents and individuals were reluctant to come forward. The investigation was therefore inconclusive and did not result in a suspension. The Appellant was on paid administrative leave during the investigation

12. Following the investigation, MCPS then decided to transfer the Appellant to Westover Elementary School. The Appellant was notified of the transfer to Westover by letter dated August 13, 1997. The change to Westover did not affect her status as a "less than full time" teacher.

13. The Appellant was to report on Westover on September 4, 1997. She failed to report to work on September 4 and only entered 1.6 hours of personal leave, although she missed the entire day.

14. On September 3, 1997, Mr. Barry Schaub, the Director of the Division of Staffing, met with

the Appellant and her attorney. This meeting was a due process meeting and was contractually required, due to the transfer and administrative leave. This meeting was not scheduled as a result of any outstanding issues or matters raised by the Appellant. Nor was the meeting held at the Appellant's request.

15. During the September 3, 1997 meeting with Mr. Schaub, the Appellant raised the issue of retrieving her art materials. These materials had remained at Chevy Chase. Mr. Schaub advised that he would work with the Appellant's attorney to set up a date and time for the Appellant to retrieve her art materials from Chevy Chase and take them to Westover.

16. During the meeting of September 3, 1997, there was no mention of the Appellant going to retrieve her art supplies on September 11, 1997. This date had never been agreed upon by the parties on September 3, 1997.

17. Art classes are not held at Chevy Chase on Wednesdays and Friday afternoons. In order to avoid class disruption, Wednesday, September 10, was eventually agreed as the day the Appellant would retrieve her materials.

18. The Appellant would not agree to retrieve her materials at any time other than normal working hours. At no time did she ever provide MCPS with a list of the materials she was seeking to recover.

19. A year earlier, on September 4, 1996, Mary Rapp, Principal at Chevy Chase, had written a letter to the Appellant inquiring about the art material and asking the Appellant to make an appointment to pick up the materials. The Appellant responded by telephone indicating she would not retrieve the material unless the Superintendent personally approved it. No other conversation or correspondence took place on this issue.

20. A substitute teacher was obtained for September 10, 1997, to allow the Appellant to go to Chevy Chase and retrieve her materials. Both principals (Chevy Chase and Westover) were notified that the Appellant would go to Chevy Chase on Wednesday, September 10, 1997, at 8:15 a.m. to retrieve her materials. However, these arrangements were not finalized until late in the day before, September 9, 1997.

21. Mr. Schaub contacted the Appellant's attorney in an effort to let him know of the schedule change. The Attorney was to contact the Appellant and notify her that she was report to Chevy Chase on September 10, 1997. However, the Attorney did not leave the message in time for the Appellant to hear it, and the Appellant left for work on September 10, thinking she was to go to Westover.

22. On September 10, the Appellant did not report to Chevy Chase, but went to Westover. The Appellant had not received the information about the schedule change to Chevy Chase. The principal at Westover, Ms. Bobola, informed the Appellant when she arrived, that she was supposed to go to Chevy Chase to retrieve her materials. The Appellant stated that her lawyer had told her to go to Westover, and that the "Board of Education and Stan Schaub don't know what the fuck they are doing." She refused to leave Westover on September 10th and go to Chevy Chase.

23. There was no agreement between Ms. Bobola, the principal at Westover, and the Appellant on September 10, 1997 that the Appellant would go to Chevy Chase the next day to retrieve her art supplies. Although a substitute was still available to fill in on September 11, there was never an agreement that the Appellant go to Chevy Chase on September 11, 1997.

24. On September 10, Ms. Bobola advised the Appellant to wait until a definite date was set,

before going to Chevy Chase. The Appellant refused, and left Westover on September 10, with the intention of going to Chevy Chase the next day.

25. Upon learning that the Appellant had gone to Westover, instead of Chevy Chase on September 10, Mr. Schaub then started making arrangements on September 10 to have the materials picked up on Friday, September 12, 1997, since there were no art classes in the afternoon on that day.

26. On September 10, despite being told by Ms. Bobola not to go to Chevy Chase the next day, the Appellant notified Ms. Bobola that she intended to got to Chevy Chase the next day, September 11, 1997 to retrieve her art supplies.

27. Mr. Schaub learned from Ms. Bobola that the Appellant intended to go to Chevy Chase on September 11, 1997 and notified the Appellant's attorney that September 11 was not an available day. The Appellant's attorney contacted the Appellant, notified her that she should wait till September 12 to get her materials. The Appellant told her attorney she intended to go on September 11.

28. The Appellant's attorney notified Mr. Schaub on September 10, that the Appellant indicated she was going to Chevy Chase on September 11, despite her attorney's advice that she go the 12th. The attorney stated to Mr. Schaub that "we've notified her [Appellant] of that date but she still indicates that she is going over on the 11th."

29. Mr. Schaub notified Dr. Wilhoyte of the Office of School Administration of the Appellant's plans to go to Chevy Chase on September 11, 1997.

30. On September 11, Dr. Wilhoyte went to Chevy Chase at 8:00 a.m. to meet the Appellant, the Principal and to deal with whatever situation might arise.

31. The Appellant arrived at Chevy Chase at approximately 8:30 a.m. Students had already started arriving and people were in the hallways.

32. The Appellant went over to the front office and indicated her intention to retrieve her art supplies. Dr. Wilhoyte identified himself to the Appellant and asked her at least four times to come into the office to discuss the matter. The Appellant refused, and stayed in the hallway.

33. When the Appellant entered Chevy Chase, she had a tape recorder in her hand, and recorded the conversation between Dr. Wilhoyte and herself.

34. After being told several times by Dr. Wilhoyte that she could not retrieve her art supplies that day, the Appellant said "How in the hell am I supposed to get my materials?".

35. During the conversation with Dr. Wilhoyte, which was being tape recorded, the Appellant repeatedly stated that she had been trying for over a year to obtain her art supplies and that school personnel had stolen them.

36. During the conversation with Dr. Wilhoyte, the Appellant's tone of voice was hostile and belligerent. The Appellant had no interest in anything but going to the art room and retrieving her art supplies. She gave no explanation why she would not go into the office.

37. Dr. Wilhoyte then advised the Appellant a fifth time that she would be considered trespassing if she remained in the hallway and did not move into the office. During this conversation the Appellant also called the principal of Chevy Chase, Ms. Rapp, a thief.

38. After being advised that she would be considered a trespasser, the Appellant left the building and went to her car. The conversation between Dr. Wilhoyte and the Appellant lasted approximately five or six minutes. During the conversation between the Appellant and Mr. Wilhoyte, there were children in the hallway who had to be redirected, due to the disturbance

caused by the Appellant.

39. After leaving the building, the Appellant removed a preprinted sign from her car, which read "Mary Rapp is a thief". The Appellant then drove around the circle in front of the building several times, with the sign displayed in the car window.

40. The Appellant left Chevy Chase and drove to Westover, where she reported approximately thirty minutes later than required.

41. Later in the day on September 11, 1997, the Appellant was advised that she was being placed on administrative leave with pay, pending an investigation into her conduct that day.

42. On September 14, and 15, 1997, the Appellant went to Mary Rapp's neighborhood and placed signs on the street which read, "Mary Rapp, give me back my personal property."

43. On October 8, 1997, the Superintendent recommended to the Board that the Appellant be terminated.

44. The Appellant believes the meeting of September 3, 1997 was somehow designed to deal with the return of her art supplies, and other matters raised by the Appellant and unrelated to the transfer.

45. The Appellant believes that being placed on administrative leave with pay is the equivalent of a disciplinary suspension.

46. The Appellant believes that any sanction for her conduct on September 11, 1997, be minimal, such as the loss of thirty minutes pay, for reporting late to Westover on September 11, 1997.

47. The Appellant believes her termination is the result of being "set up" by the school system.

48. The Appellant believes that the decision to transfer her was made in December, 1996, when the preliminary report was issued.

DISCUSSION

The Appellant in this case has worked many years for the MCPS as an art teacher. She has received satisfactory evaluations and has never been disciplined in the past. The termination in the present case involves events occurring in early September, 1997, when the Appellant was transferred to Westover Elementary School. Specifically, the termination centers around the Appellant going to Chevy Chase Elementary School on September 11, 1997, and refusing to discuss the issue of her art supplies in the office with Dr. Wilhoyte.

The Appellant maintains that there were options short of termination, which the MCPS could have imposed, but did not. These options supposedly included a reprimand or suspension. She maintains that her behavior does not rise to the level of conduct justifying termination.

One must look at the Appellant's conduct within a larger context than simply the history of suspensions, as well as the Appellant's attitude toward her behavior. What the Appellant is suggesting is that a form of progressive discipline should have been imposed, in light of her years of service with no prior suspensions.

In order for a progressive system of discipline to be effective, there are certain prerequisites, which must exist. The purpose of a progressive system is to modify behavior by putting an individual on notice that certain behavior is inappropriate. This requires several rational components on the part of the offending individual. First, the individual must have an accurate understanding of what she has done, so as to avoid doing it again in the future. Second, the offending individual must have some realization that the conduct is inappropriate, and exhibit a willingness to avoid such conduct in the future. An individual who fails to realize what she has done, and exhibits no willingness to change her behavior in the future, should not be given the benefit of a lenient sanction, which is designed to deter

future misconduct.

In reviewing the extensive record in this case, and having heard the Appellant testify in person, I conclude the Appellant shows an abiding and deep seated denial of her conduct, and exhibits no willingness whatsoever to modify her behavior. In light of these conclusions, a progressive system of discipline, as suggested by the Appellant, is an exercise in futility. For these reasons, I recommend the termination be upheld.

As a teacher of elementary school children, the Appellant is no doubt aware that asking children "why" they do certain things is often futile, until the child realizes "what" he or she has done. Asking a child "what" he or she has done is often more useful than asking "why". The gentle " I touched him ", which is how a child may characterize his behavior, may be far different than the forceful blow to the head, which is in fact what occurred. The child's characterization that he "spilled" his art supplies on the table, is completely different from the reality of throwing a temper tantrum and deliberately throwing paint all over a desk. Until the child realizes "what" he has done, the teacher will receive nothing but explanations, denials and rationalizations in response to the question "why" he did it.

While such euphemistic and distorted descriptions of behavior are understandable with small children, whose developmental and cognitive processes are not completely formed, it becomes intolerable with adults who should know better. Unfortunately, the Appellant exhibits a long and extensive record of denial and mischaracterization of the events in question. It is no surprise that the Appellant insists on explaining "why" she did what she did, and basis this position on her first amendment right to protest.

She insists that being on administrative leave with pay is the same as a disciplinary

suspension.[1] She cannot grasp the simple distinction between being disciplined and placed on leave pending an investigation, with pay.

She mistakenly assumes that the decision to transfer her to Westover was made in December, 1996, when a preliminary report was made concerning her political activities. In fact, this report was simply preliminary and no decision was made until August, 1997. The Appellant insists she was kept from returning to work for no reason, oblivious to the investigation that was ongoing.

She insists that she made numerous efforts to retrieve her art supplies at Chevy Chase, yet when asked to document a single instance of when she did this, she cannot reply. Yet in her mind she went through an entire year with repeated attempts to retrieve her art supplies. The record shows no efforts whatsoever.

The Appellant believes the meeting of September 3, 1997 was somehow designed to deal with issues raised by her, including obtaining her art supplies. In fact, this meeting was a routine meeting, contractually required after a teacher is transferred. The issue of her art supplies was not part of the agenda and was certainly not the primary purpose of the meeting. Nevertheless, the Appellant believes that this was the purpose of the meeting.

The Appellant believes that September 11, 1997 was an agreed upon date for her to retrieve her art supplies. She bases this on little more than the fact that this issue was addressed at the September 3, 1997 meeting. She was told by Ms. Bobola, as well as her attorney, on September 10,

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[1]The fact that the Appellant considers being placed on administrative leave with pay the same as suspension, is even more reason not to use a progressive system of discipline. If the Appellant, in her mind, was being suspended, then it clearly had no impact in terms of her future conduct. She would have already been given the benefit of a lesser sanction, in the hope her behavior would change. Therefore, the Appellant's own belief that she was actually suspended, is further evidence that such suspension would serve no purpose in the present case.

not to go to Chevy Chase on September, 11, 1997, nevertheless, she somehow believes that this was an agreed upon date.

The most significant example of the Appellant's denial of reality is found in her testimony involving the conversation with her attorney, about going to Chevy Chase on September 11, 1997. The question of whether her attorney told her to go to Chevy Chase on September 11 was a rather straightforward one, requiring a simple yes or no answer. From the record, it is clear that her attorney in fact communicated this to the Appellant, and told her not to go to Chevy Chase on September 11, 1997. Transcript pp 659-669. Nevertheless, the Appellant's response to this question consumed fifteen pages of transcript before Mr. Sickles, and she never answered the question, other than to say she no longer works with that attorney. Mr. Sickles was somewhat charitable in his characterization of the testimony as "evasive, to say the least." Hearing Officer's Decision, p 45.

Perhaps most disturbing is the Appellant's belief that the school system was "setting her up." This paranoid belief arose in response to my questioning. The Appellant suggests that somehow the school system orchestrated the events leading up to her termination. Not only is this untrue, but it is a complete reversal of the facts of the case. [2]When asked how the school system set her up, the only response the Appellant could make was that they let her go back to work, which they were legally obligated to do.

Assuming the Appellant had some insight into her behavior, she certainly does not exhibit an

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[2]It should be noted that the action in this case does not involve the Appellant's failure to go to Chevy Chase on September 10. That failure was clearly due to a miscommunication on the part of the Appellant, her attorney and the school system. If the school system was looking for an opportunity to set up the Appellant, it had such an opportunity on September 10, when the Appellant failed to go to Chevy Chase and went to Westover. The school system took no action at that time and made an effort to reschedule the appointment for September 12.

attitude amenable to progressive discipline. Indeed, it was she who set up the school system, not vice versa.

The issue of retrieving art supplies never arose until the September 3 meeting. It was the Appellant, not the school system, who raised this issue.

The school system went to great pains to find a date when the Appellant could retrieve her supplies. This was clearly to be a day when art classes were not in session. The Appellant deliberately went to Chevy Chase on a day when there were art classes, knowing she was not supposed to be there.

The Appellant entered the school with a tape recorder, in the hopes she could catch some comment made by a school official, to be used later in some other forum. Having ignored the issue of her art supplies for a year, and having made no effort whatsoever to recover or document attempts to recover these materials, the Appellant took great pains to put on the tape recording of September 11, repeated statements to Mr. Wilhoyte about a year's worth of efforts to recover her property. The tape recording was simply a self-serving tool by the Appellant, designed to suggest that she had done things, which in fact she had never done.[3]

The Appellant had a preprinted sign stating "Mary Rapp is a thief", which she had in her car and was ready to use. In light of the fact that the Appellant had made no prior efforts to retrieve her materials from Ms. Rapp's school, the creation of this sign is nothing less than slanderous.

These actions are indicative of an individual who is confrontational and wishes to resolve disputes in the public forum, such as the hallway of an elementary school. The Appellant could have

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[3]While parts of the tape are not very audible, particularly Mr. Wilhoyte's words, the Appellant's repeated statement about her extensive efforts to retrieve her materials can be heard loud and clear.

simply gone into the office to discuss the matter with Mr. Wilhoyte, but she refused, and gave no reason why.

The Grievant's suggestion that at worse she should be docked thirty minutes of pay for arriving late at Westover on September 11, is but a further indicator of how little insight she has into the situation. The Appellant is a person who refused to make any arrangement for picking up her art supplies at any time other than work hours. Her time is evidently valuable to her. Yet in her testimony, she admitted that it's better to lose a half-hour of pay than lose her job. It was apparent from her testimony that the Appellant to this day sees nothing wrong with what she did, and her half-hearted suggestion that she be docked a half- hour pay is simply an effort to save her job.

The Board's action this case is based upon Md. Code Ann. Educ. § 6-202, which states:

(a) Grounds and procedure for suspension or dismissal.-

(1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:

* * *

(ii) Misconduct in office…,
(iii) Insubordination;

* * *

(v) Willful neglect of duty.

Misconduct is behavior which is sufficiently comprehensive to include misfeasance as well as malfeasance, and as applied to professional people it includes unprofessional acts even though such acts are not inherently wrongful. Whether a particular course of conduct will be regarded as misconduct is to be determined from the nature of the conduct and not from its consequences. 58 C.J.S. (1948).

The Appellant's suggestion that there was no impact on the school as a result of the Appellant's behavior, misses the meaning of misconduct, and is also not true. The Appellant went to

Chevy Chase with a sign, clearly intended to be seen by those at the school. She remained in the hallway, with teachers and students in the area, who made comments and had to be rerouted around the disturbance. One must question why an individual like this should be reprimanded or suspended, when all indications are that she would do it again if given the opportunity.

Whether or not the Appellant is subject to dismissal for misconduct however, does not revolve around the impact of her action, but the nature of the conduct. One incident may reveal a wealth of information about an individual's character. It is true that her behavior in the present case did not cause a major disturbance in the school, although it did affect those in the immediate area. However the determination of whether this behavior is misconduct does not hinge on how many people were disturbed. Nor does it hinge on how many people heard her say "how the hell am I supposed to get my materials". While the Appellant urges me to parse this behavior into it's smallest elements, and analyze the case in terms of whether "hell" is an inappropriate word to use, how many people heard it said, etc., such parsing would essentially distort the overall reality of what occurred.[4]

Teachers may work alone in the classroom, but they are part of a larger system involving various resource people including administrators. A teacher's professional conduct depends in large part on how well she works within a system. The various procedures, guidelines, curriculum etc, which teachers implement, are not always of their own making, but hey are expected to abide by them and implement them.

The Appellant's conduct in this case is not reprehensible simply because she used the word

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[4]The Appellant offered the testimony of Prof. Raskin, a constitutional law scholar. However, Prof. Raskin's opinion about whether "hell" is an offensive term and could be the basis for termination, is precisely the type of microscopic analysis which I find inappropriate to this case.

"hell", or used a taperecorder. These are but details of a much larger problem. The Appellant's misconduct in this case was a deliberate effort to cause a scene in a public school, using confrontational tactics. The Appellant used her working hours, a public school corridor, tape recorder and preprinted sign to make a statement which involved her personnel problems, and was unrelated to the learning process. This is misconduct, and not the type of behavior, which a teacher should display. It would be misconduct, even if the word "hell" was not used, and took place in a high school.

Although the Appellant has taught for many years, she has evidently arrived at the point in life where she believes she no longer needs to work within a larger educational system. While many teachers would like to simply be left alone and teach, most educational professionals realize that they are part of a larger system and work cooperatively within that system.[5]

With respect to the ground of insubordination, the evidence is also sufficient to find the Appellant should be terminated. The Appellant was told in no uncertain terms by her principal that she was not to go to Chevy Chase on September 11, 1997. Despite the Appellant's attempt to characterize this as a "misunderstanding", there simply was no misunderstanding. Once at Chevy Chase, she defied Dr. Wilhoyte, and repeatedly refused to move the discussion into the office.

The ground of willful neglect of duty is the corollary of insubordination in this case. By going to Chevy Chase on September 11, the Appellant was not where she was supposed to be, i.e.

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[5] *Fernald v. City of Ellsworth Superintend. Sch. Com.*, 342 A.2d 704 (Me. 1975) Teacher wrote a letter to her superintendent advising that she wished to take a one-week leave from school to accompany her husband on a trip sponsored by a fraternal organization. In her letter she said she had arranged for a substitute and thus was "sure [her] classes w[ould] be very capably covered." The superintendent wrote a letter back advising that her plans were "not approved." She went anyway. Dismissal was upheld.

Westover. She arrived a half-hour late.

The Appellant cites *Resetar v. Md. Bd. of Educ*., 284 Md. 437, 562, 399 A.2d 225 (1979), in support of the position that her past record outweighs the present conduct.

> We can conceive of situations in which dismissal for a single act
>
> of misconduct by a teacher possessed of an otherwise clean record might be held upon judicial review to be arbitrary and capricious. Since there had been prior admonitions by the County Board to Resetar, we point out that in this case we are not obliged to decide what the result might have been had Resetar's prior record been without blemish.

The Court in Resetar does not elucidate how termination because of a single incident might be arbitrary or capricious. Indeed, the Court went on to say: " It is impossible to catalogue just what would or would not constitute arbitrary action on the part of an administrative agency such as the State Board in imposing sanctions, since each situation must be judged on its own facts. Certainly the agency is obliged to take the factual setting and circumstances of the misconduct into consideration, as was done here." Id. at 562.

I can also conceive of situations where termination based on a single incident may be arbitrary or capricious. However, Westover was the third school the Appellant had been assigned in the last three years. The administrative transfer resulted from conduct, which was similar to the present case, involving confrontational tactics and alienation of parents and school personnel. The Appellant has therefore been given chances in the past, and repeatedly chooses to engage in behavior which makes her involvement in the school system as a teacher all but impossible.

Having judged the facts of this case on their own merits, as stated in *Resetar*, I recommend the termination be upheld.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Appellant is subject to termination under Md. Code Ann. Educ. §6-2-2 (a) ii, iii, v.

PROPOSED ORDER

It is proposed that the decision of the Board of Education of Montgomery County terminating the Appellant for insubordination, misconduct and willful neglect of duty be **UPHELD**.

Date: May 20, 1999

James W. Power
Administrative Law Judge

NOTICE OF RIGHT TO FILE OBJECTIONS

Any party adversely affected by this proposed decision has the right to file objections with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, within ten (10) days of receipt of the proposed decision, in accordance with COMAR 13A.01.01.03P(4).