ADRENE HARPER,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
FREDERICK COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 02-15

OPINION

Appellant, a principal with Frederick County Public Schools ("FCPS"), challenges her two week disciplinary suspension without pay and her transfer to another position based on misconduct in office related to her use of spanking as a disciplinary measure.[1] Following a full evidentiary hearing before a three member panel of the local board and the panel's unanimous recommendation to affirm the superintendent's decision, the local board affirmed the superintendent's decision to suspend Appellant for two weeks without pay and to transfer her to an alternative assignment.

Appellant appealed the local board's decision to the State Board and the matter was transferred to the Office of Administrative Hearings. Following a hearing on December 13, 2001, the Administrative Law Judge (ALJ) issued a proposed decision which is attached as Exhibit 1 to this Opinion. The parties filed exceptions and presented oral argument to the State Board on March 26, 2002. With the following clarifications, we adopt the Findings of Fact and Conclusions of Law of the ALJ.

The local board has submitted a limited objection to the ALJ's proposed decision with regard to the ALJ's application of the Maryland Open Meetings Act to this case. The ALJ determined that the Open Meetings Act applied to the closed hearing before the board panel and that the procedural requirements for closing the meeting had not been met. However, the ALJ found that the lack of a recorded vote to close the session was harmless error and did not deny Appellant any due process rights. *See* ALJ Proposed Decision at 14-15.

The local board notes that the Open Meetings Act does not apply to a public body when it is carrying out an executive function, a judicial function, or a quasi-judicial function. Md. Code

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[1]These are two separate issues that were consolidated into one appeal before the local board for purposes of administrative economy. The two week suspension for misconduct is on appeal to the State Board pursuant to §6-202 of the Education Article. The burden of proof on the suspension lies with the local board. The transfer and reassignment is on appeal to the State Board pursuant to §4-205 of the Education Article. The burden of proof on the transfer lies with Appellant.

Ann., State Gov't §10-503(a)(1). An executive function is defined as "the administration of a law of the State. . . ." Here, the local board held its hearing as part of its responsibility to administer the requirements of §6-202 of the Education Article. Thus, if we were to rule on this matter, we would find that the hearing before the local board did not fall within the scope of the Open Meetings Act.

We note however that the Open Meetings Act sets forth the procedures to be followed by those aggrieved by a public body's failure to comply with the provisions of the Act. Section 10-510 of the State Government Article provides that an individual who is adversely affected by a public body's failure to comply with the Open Meetings Act may file a petition in the circuit court. Thus, the State Board of Education is not the appropriate forum for redress of Appellant's Open Meetings Act claims. Those claims are better left to judicial enforcement or to the Open Meetings Compliance Board.[2]

As to the other procedural issue in this case regarding the authority to delegate the evidentiary hearing in an appeal to a panel of the local board itself,[3] we note that any procedural errors that may have occurred before the local board have been cured on appeal to the State Board based on its *de novo* review of the case. *See Board of Education of Charles County v. Crawford,* 284 Md. 245 (1979)(subsequent *de novo* hearing cured any due process defects in termination decision); *Williamson v. Board of Education of Anne Arundel County*, 7 Op. MSBE 649 (1997) (failure to give prompt notice was cured by local board's full evidentiary hearing on appeal); *West & Bethea v. Board of Commissioners of Baltimore City*, 7 Op. MSBE 500 (1996) (failure to hold conference within ten days was cured by the de novo administrative hearing on merits before the local board).

CONCLUSION

For these reasons, we affirm the suspension and transfer decisions made by the Board of Education of Frederick County.

Marilyn D. Maultsby
President

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[2]The primary duty of the Open Meetings Compliance Board is to "receive, review, and resolve complaints from any person alleging a violation of the provisions of [the Act] and issue a written opinion as to whether a violation has occurred." *See* Md. Code Ann., State Gov't, § 10-502(a). The Board's opinions are advisory only. *See* Md. Code Ann., State Gov't §10-502.5(i)(1).

[3]This issue is relevant only to the claims on appeal regarding the suspension decision which is governed by section 6-202 of the Education Article. Section 6-202(a)(3)(ii) provides for an individual to have "an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing."

Reginald L. Dunn
Vice President
JoAnn T. Bell

Philip S. Benzil

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

John L. Wisthoff

April 24, 2002

Walter Sondheim, Jr. recused himself from participation in this case. Dunbar Brooks, a newly appointed member of the State Board of Education, did not participate in the consideration of this case.

EXHIBIT - 1

ADRENE HARPER	*	BEFORE LOUIS N. HURWITZ,
APPELLANT	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF MARYLAND OFFICE OF
BOARD OF EDUCATION OF	*	ADMINISTRATIVE HEARINGS
FREDERICK COUNTY	*	OAH No.: MSDE-BE-01-200100007
	*	

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

PROPOSED DECISION

STATEMENT OF THE CASE

On or about February 21, 2001, Adrene Harper ("Appellant"), a principal employed by the Frederick County Public Schools ("FCPS"), received notification from Jack Dale, Superintendent of Schools, that he was recommending a two week disciplinary suspension (without pay) for misconduct in office related to her actions in using spanking as a disciplinary measure. The letter also advised the Appellant that Dr. Dale was removing her from her position as principal of Parkway Elementary School and offering her an alternate assignment of assistant principal or teacher, within her area of certification. The Appellant appealed the recommendation regarding the suspension and the alternate assignment to the Board of Education of Frederick County ("the Board"). A three member panel of the Board conducted a hearing in this matter on April 19, 2001 and April 30, 2001. Md. Code Ann., Educ. § 6-203 (1999). The panel presented its unanimous recommendation to the

Board to adopt the Superintendent's recommendation for a two-week suspension without pay and affirm the Superintendent's decision to transfer and reassign the Appellant. On May 31, 2001, the Board adopted the Superintendent's recommendation for a two-week suspension without pay and affirmed the Superintendent's decision to transfer and reassign the Appellant. On or about July 2, 2001, the Appellant appealed the Board's order to the Maryland State Board of Education ("State Board"), and the matter was scheduled before the Office of Administrative Hearings ("OAH"). Md. Code Ann., Educ. § 6-202(a)(4) (1999).

Following a telephonic prehearing conference on October 30, 2001, a hearing[1] was conducted on December 13, 2001, before Louis N. Hurwitz, Administrative Law Judge ("ALJ"), at OAH, 11101 Gilroy Road, Hunt Valley, Maryland. Code of Maryland Regulations ("COMAR") 13A.01.01.03P. The Appellant was present and was represented by Willie Mahone, Esquire. Judith Bresler, Esquire, represented the Board.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board of Education, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1999 & Supp. 2001); COMAR 13A.01.01.03D; COMAR 28.02.01.[2]

ISSUES

The issues on appeal are:

[1] In the pre-hearing conference in this matter, the parties acknowledged that the regulations provide that the record of the entire proceedings before the Board be made a part of these proceedings. In light of the fact that the applicable regulations also provide for a *de novo* review of the Board's decision to suspend, the Parties were given the opportunity to supplement the record below.

[2] The current regulations are published at 27:26 Md. Reg. 2360 (Dec. 29, 2000, effective Jan. 8, 2001) (proposed 27:18 Md. Reg. 1678-1684 (Sept. 8, 2000)) (to be codified at Code of Maryland Regulations ("COMAR") 28.02.01).

1. Whether the two week suspension for misconduct imposed upon the Appellant by the Board of Education of Frederick County ("the Board") under Md. Ann. Code Ann., Educ. § 6-202(a)(ii) (1999) is supported by a preponderance of the evidence.
2. Whether the Appellant's transfer and reassignment by the Superintendent was illegal or arbitrary and capricious under Md. Code Ann., Educ. § 4-205 and § 6-201.

SUMMARY OF THE EVIDENCE

A. Exhibits

The parties' JOINT Exhibit 1, the 206-page transcript from the hearing before the Board, was admitted into evidence.

The following Appellant's exhibits from the hearing before the Board were admitted into evidence on behalf of the Appellant:

APP. Ex.A. FCPS Performance Evaluations dating from 1981-2000 (36 pages)

APP. Ex.B. Letters of Recommendation and Commendation (13 pages)

APP. Ex.C. Letters from the FCPS regarding her annual assignment (23 pages)

APP. Ex.D. Letter from Mr. Mahone to Dr. Dale, dated March 2, 2001

The following Superintendent's exhibits from the hearing before the Board were admitted into evidence:

Exhibit 1 Investigative Report dated February 12, 2001

Attachment 1 -Chronology of Events

Attachment 2- Letter dated January 24, 2001 from Janet Farmer, Esquire

Attachment 3 -FCPS Regulation 400-47- "Child Abuse and Neglect"

Attachment 4- Statement of Michele Concepcion dated January 29, 2001

Attachment 5- Letter dated 1/30/01 from Adrene Harper

Attachment 6- COMAR 13A.08.01.11.E -Corporal Punishment

Attachment 7 -Board of Education Policy 313 -"Corporal Punishment"

Attachment 8- Calendar Handbook for 2000-2001 School Year" Corporal Punishment"

Exhibit 2- Letter dated February 21, 2001 from Jack Dale to Adrene Harper

Exhibit 3- Letter dated February 26, 2001 from Willie Mahone to Ron Peppe

Exhibit 4 - Letter dated March 5, 2001 from Jack Dale to Adrene Harper

Exhibit 5- Letter dated March 5, 2001 from Willie Mahone to Jamie Cannon

Exhibit 6- Letter dated April 2, 2001 from Judith Ricketts to Willie Mahone

Exhibit 7- Letter dated March 9, 2001 from Willie Mahone to Ron Peppe

Exhibit 8- Letter dated March 14, 2001 from Jack Dale to Willie Mahone

Exhibit 9- Statement from CS, student at Parkway Elementary School

Exhibit 10- Board of Education Policy 304 -"Discipline"

Exhibit 11- FCPS Regulation 400-8- "Discipline"

The record was held open for the Board to provide redacted documents regarding disciplinary action taken against FCPS professional staff during the last several years. The Board's submission was postmarked, as provided, by the close of business on December 21, 2001, and subsequently admitted as the Board's Exhibit 12.. The parties were then given the opportunity to submit a supplemental closing argument, postmarked by the close of business on January 2, 2002, the record closing date. The supplemental closings were submitted in a timely fashion.

B. Testimony

The parties presented testimony to supplement the record below and made additional oral argument. In the hearing below, conducted on April 19, 2001 and April 30, 2001 before a panel of the Board, the following persons testified in support of the Superintendent's recommended decision to suspend for two weeks and his decision to remove the Appellant from her position as principal and to assign her to another position:

Janet Farmer, court appointed attorney for CS**

Michele Krantz, Assistant Superintendent, FCPS

Jack Dale, Superintendent, FCPS

The Appellant testified in her own behalf and presented testimony from the following witnesses in the hearing before the Board:

Angela Gladchuck, parent of students at Parkway

R. Conn, parent and volunteer at Parkway

Officer M. R. Bollard, parent and School Community Officer

Sushil Battacharchee, former Director of the Big Brothers and Sisters Program in Frederick County

Earl Robbins, Jr., former member, Frederick County Board of Education

Rachel Toft, parent of former Parkway student

John George, Elementary Curriculum Specialist, FCPS

Stacey Lee Collins, parent of a Parkway student

Gary Hughes, parent of a Parkway student

Leslie Williams, grandparent volunteer at Parkway[3]

The Board presented additional testimony from the following witness at the instant hearing:

Jack Dale, Superintendent, FCPS

[3] Subsequent to the Board's hearing, Ms. Williams has become a paid Instructional Assistant at Parkway.

The Appellant testified in her own behalf and presented additional testimony from the following witnesses at the instant hearing:

John George, Elementary Curriculum Specialist, FCPS

Leslie Williams, Instructional Assistant at Parkway

FINDINGS OF FACT

After careful consideration of the record below and the supplemental testimony and documentary evidence taken at the present hearing , I find, by a preponderance of the evidence, the following facts:

1. The Appellant has been employed by FCPS since 1980.
2. From 1980 until 1990, the Appellant served in various capacities with FCPS: as a classroom teacher, mentor for other teachers, teacher specialist, and team leader.
3. From 1990 until 1994, the Appellant was employed as Assistant Principal at Monocacy Elementary.
4. Since 1994, the Appellant has served as Principal at Parkway Elementary School ("Parkway").
5. On December 4, 2001, the Appellant attended a meeting for elementary school principals and made pointed comments critical of the Superintendent, Dr. Jack Dale's, administration.
6. On January 24, 2001, the Frederick County Department of Social Services ("local department") received an allegation from a confidential informant who stated that a fifth grade student at Parkway, CS, was in the Principal's office on January 19, 2001 for matters related to homework when he saw another child in what CS identified as "the spanking" chair. After a short exchange of words with CS, the child reported that the Appellant grabbed him by one arm and "whacked" him on the bottom with her other hand.

7. On January 25, 2001, the local department elected not to conduct an investigation. The Superintendent's investigation began immediately upon notification of the local department's decision.
8. FCPS notified the Appellant that it was placing her on administrative leave pending an investigation into the allegations and that she would remain on leave throughout the investigation process.
9. Dr. Michele Krantz, FCPS Associate Superintendent for Curriculum, Administration, and School Improvement, investigated the allegation referenced above.
10. During the course of FCPS's investigation, Dr. Krantz interviewed 14 Parkway students, 10 staff members, and 4 parents.
11. Dr. Krantz's investigation revealed the following facts:
    a. On January 19, 2001, CS was sent to the Appellant's office (for failing to do his homework) where he observed a younger child sitting in a blue chair. The Appellant told the younger child that she "could spank him." CS told other students present that spanking students was abuse and that he was calling Social Services if the Principal spanks him. The Appellant pulled CS out of his chair by his arm and swatted him on the bottom with her hand.
    b. Later the same day, the Appellant saw CS's mother in front of school and informed the mother that she had "a conversation" with CS that day and had to straighten him out. As she spoke, the Appellant made a gesture resembling two sideways strokes with her hand, which upon reflection, the parent took as a demonstration of a swatting motion.
    c. Three other fifth graders observed the January 19, 2001 incident described above.

d. Also on Friday January 19, 2001, the Appellant smacked another fifth grader, MM, on the buttocks, after he was sent to her office for talking. On Monday January 23, 2001, MM's parent confronted the Appellant about the incident, which the Appellant did not deny.

e. The mother of another child, TB, a first grader, specifically requested the Appellant to spank her child for inappropriate behavior in school. The Appellant complied with the request and later informed TB's mother that she had struck the child's buttocks with her hand three times.

f. The Appellant hit JT, a first grader, with a ruler on the hand and on the buttocks.

g. The Appellant disclosed to Beverly Lewis, a secretary at Parkway, "a couple of years ago" an incident regarding a child she had paddled.

h. Three of the children interviewed referred to the blue chair in the Appellant's office as "the spanking chair."

12. Spanking constitutes corporal punishment.

13. Corporal punishment is not permitted in Maryland public schools and has not been permitted in FCPS since 1993.

14. The Appellant has demonstrated strong leadership skills at Parkway, which has a diverse school environment, with students from various social, ethnic, and economic backgrounds.

15. The Appellant has demonstrated a strong ability to motivate children.

16. A principal has responsibilities over the administration of a school while receiving little or no supervision.

17. On February 15, 2001, Dr. Dale met with the Appellant to notify her of the charges against her and to offer her the opportunity to respond.

18. In a notice letter dated February 21, 2001, Dr. Dale informed the Appellant that he was recommending a two-week suspension (without pay) as a result of the findings that she used

spanking as a disciplinary measure. He also informed her that he was removing her from her position as principal and assigning her to an assistant principal position or a teaching position in her area of certification.

19. In making his decision, Dr. Dale considered the Appellant's long tenure of 20-plus years exemplary service with the FCPS and her reputation as an excellent educator.
20. Dr. Dale also rejected the Assistant Superintendent, Dr. Krantz's, recommendation that the Appellant be suspended for 30 days without pay.
21. Dr. Dale's decision to remove the Appellant from her position as principal was based on his lack of confidence and trust in her as a result of a pattern of conduct involving the use of spanking as a disciplinary measure.
22. In June 2001, shortly after the Board's May 31, 2001 decision to accept Dr. Dale's recommended suspension and affirm his decision to remove the Appellant from her position as principal at Parkway, Dr. Dale met with the Appellant and advised her that he was no longer considering her for an assistant principal position but was instead going to assign her to a position as a teaching specialist.
23. The Appellant's suspension without pay has been held in abeyance pending the outcome of this matter.

DISCUSSION

Suspension Appeal

The applicable law provides that a teacher may be suspended or dismissed, for cause, by a local board on the recommendation of the local superintendent, and that the teacher has a right to a hearing on such a dismissal or suspension. Md. Code Ann., Educ. § 6-202(a) (1999) reads, in pertinent part, as follows:

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

(i) Immorality;

(ii) **Misconduct in office**, including knowingly failing to report suspected child abuse in violation of § 5-704 of the Family Law Article

(iii) Insubordination;

(iv) Incompetency; or

(v) Willful neglect of duty.

(2) Before removing an individual, the county board shall send the individual a copy of the charges against him and give him an opportunity within 10 days to request a hearing.

(3) If the individual requests a hearing within the 10-day period:

(i) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; and

(ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing.

(4) The individual may appeal from the decision of county board to the State Board.

(Emphasis added.)

The standard of review in an appeal of a suspension case to the State Board is prescribed by COMAR 13A.01.01.03E. In pertinent part, COMAR 13A.01.01.01E provides:

(3) Teacher Dismissal and Suspension.

(a) The standard of review in teacher dismissal or suspension shall be de novo as defined in §E(3)(b).

(b) The State Board shall exercise its independent judgment on the record before it in determining whether to sustain a disciplinary infraction.

(c) The county board shall have the burden of proof.

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

In *McCrumb v. Board of Education of Howard County*, 2 Opinions of MSBE 78, 80 (1979), the State Board described the interrelationship of the Superintendent's authority to suspend under Md. Code Ann., Educ. § 6-202(1) and the authority of a board of education to suspend under § 6-202. The Superintendent's authority is limited to an emergency power only to address an immediate crisis. A superintendent's decision to suspend certificated personnel which involves a forfeiture of pay must be made as part of a recommendation to the board. The Superintendent had the burden of supporting his

recommendation for suspension to the Board and the Board has the burden of proof in the appeal before the State Board.

In the Appellant's appeal of her suspension by the Board, the ALJ, on behalf of the State Board, exercises independent judgment on the record. COMAR 13A.01.01.03E(3).

Transfer/Reassignment Appeal

The second portion of the Appellant's appeal involves the Superintendent's decision to remove her as Principal of Parkway and place her in a teaching position. Md. Code Ann., Educ. § 6-201(b) (1999) reads, in pertinent part, as follows:

> (b) Appointment of professional personnel.—
>
> (1) The county superintendent shall nominate for appointment by the county board:
> * * *
> (i) All principals, teachers and other certificated personnel
>
> (1) As to these personnel, the county superintendent shall:
> (i) Assign them to their positions in the schools;
> (ii) Transfer them as the needs of the school require;
> (iii) Recommend them for promotion; and
> (i) Suspend them for cause and recommend them for dismissal in accordance with § 6-202 of this article.

In *Pepperman v. Montgomerv County Board of Education*, 7 Opinions of the Maryland State Board of Education (MSBE) 1047,1052-1053 (1998), the Maryland State Board of Education ("State Board") reiterated the "broad statutory authority" of a county superintendent to transfer and reassign professional staff:

> In numerous prior decisions, the State Board has held that, pursuant to Md. Educ. Code Ann. §6-201, the local superintendent has broad statutory authority to assign professional personnel and transfer them as the needs of the schools require. *See Earl Hart* v. *Board of Education of St. Mary's County,* MSBE Opinion No. 97-30 (June 27,1997); *Chenoweth* v. *Board of Education of Baltimore County,* MSBE Op. No.95-20 (1995); *Cameron* v. *Board of Education of Baltimore County,* 6 Op. MSBE 814, 915 (1995); *Hurl* v. *Board of Education of Howard County,* 6 Op. MSBE 602, 605 (1993), affd 107 Md. App. 286 (1995). Further, a tenured employee may be transferred from an administrative position to that of a teacher without a hearing and without having to demonstrate good cause if the transfer is made in the interests of good administration. *Id.*

Accordingly, the Appellant bears the burden, with respect to the transfer portion of her appeal, of showing that the Superintendent's decision to remove her as principal of Parkway and place her in a teaching position was either illegal or was arbitrary and capricious. Counsel argues that his client was suspended indefinitely with pay, as part of a punitive removal from her position, with the opportunity to move to a new position. I disagree with the Appellant's assertion that the Appellant's removal from her position as Principal of Parkway does not qualify as an assignment or transfer as contemplated by Md. Code Ann., Educ. § 6-201(b).

The Appellant did not dispute the applicability of the respective burdens of proof just discussed. She did, however, contend that there was no transfer and reassignment, but a "punitive removal and offer to go to another position." I find that the Board appropriately allocated the two burdens of proof referenced above when it conducted its hearing and rendered its decision in this matter.

Hearing Before a Panel of the Board

The Board convened the Appellant's evidentiary hearing in this matter before a panel of the Board. Appellant's counsel argues that his client was entitled to an evidentiary hearing before the full Board in the absence of specific statutory authority of school boards to use "a designated committee" or a hearing examiner. He notes that Md. Code Ann., Educ. § 7-305, which governs student expulsion and suspension hearings, specifically allows for such a delegation, while § 6-202 makes no such provision for the use of a designated committee. I do not find the specific language found in § 7-305 regarding the use of a designated committee for student expulsion and suspension cases negates the inherent authority of a county school board under § 6-202 to delegate its authority to a hearing officer *or* to a panel of the board, as in this case.

An Attorney General's opinion, found at 64 Op. Att'y Gen. 118 (1979), addressed the right of the Baltimore City Board of School Commissioners' use of a hearing examiner "to conduct the evidentiary hearing, assemble the record, and make recommendations to the City Board" on the dismissal of a professional employee. I agree with the Board's position that if the County Board has the inherent authority to delegate the evidentiary hearing to a hearing examiner, it has authority to delegate it to a panel of the Board itself.

The Appellant had notice and an opportunity to be heard in a full evidentiary hearing before a panel of the Board. The full Board considered the complete record created by the panel. I find that a full evidentiary hearing before the panel was not only within the Board's inherent authority to grant, but I find that the process utilized did not prejudice the Appellant or deny her due process of law.

Denial of a Public Hearing

The Appellant argued that the panel's hearing in closed session was in a violation of the Maryland Open Meetings Act, found at Md. Code Ann., State Gov't § 10-501 (a). She further contended that the Board acted arbitrarily and capriciously in denying her a public hearing. The Appellant also argued that, even if the proceeding before a panel of the Board fell within an enumerated exception under Md. Code Ann., State Gov't § 10-508 (a), § 10-508 (d) requires the Board to conduct a recorded vote on closing the meeting and to make a written statement of the reason for closing the meeting, including a citation of the authority and a listing of the topics to be discussed.

I find that the panel of the Board appropriately conducted its hearing in this matter in closed session pursuant to Md. Code Ann., State Gov't § 10-508 (a)(1), which provides that a public body may meet in closed session when it is discussing "the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or

performance evaluation of appointees, employees, or officials over whom it has jurisdiction…" The subject matter of the hearing involved several of the aforementioned matters.

The Board does not address the fact that it did not comply with the § 10-508 requirement that the Board conduct a recorded vote on closing the meeting and make a written statement of the reason for closing the meeting. Section §10-510 governs a public body's failure to comply with the above provisions when a person is affected adversely. In such a case, the person's remedy lies with the circuit court that has venue. A person may request the court to determine the applicability of the relevant section, require the public body to comply with the section, or void the action of the public body. There has been no showing that the Appellant has made any such request of the circuit court. Regardless, the jurisdiction for enforcing the applicable section does not lie in this forum. Parenthetically, I would note that there is no showing that the Appellant was adversely affected by the above omission of failing to conduct a recorded vote and make a written statement. Due process notice and hearing requirements were adhered to and the panel made a complete record of the full evidentiary hearing it conducted in closed session and upon which the Board relied in making its decision in this case.

Merits

In the instant case, the Board seeks to suspend the Appellant for two weeks from her employment with the FCPS on the ground of misconduct, based on several incidents of corporal punishment, i.e.-spanking elementary school students. The origin of the initial inquiry involved a report made to the local Department of Social Services regarding the Appellant having spanked a fifth grader in her school on January 19, 2001. Dr. Krantz, an Assistant Superintendent with the FCPS, conducted the investigation along with the Board's in-house counsel, Jamie Cannon. The investigation included interviews of 28 individuals (14 students, 10 staff, and four parents). The Board argued that the investigation revealed that the original allegation of a spanking incident had

merit as did three other allegations of the Appellant administering corporal punishment in her school, which arose during the investigation process. The Board considered that corporal punishment in public schools is prohibited both by Maryland law and by the Board's policy. The Board found that a pattern of conduct provided a sufficient basis for a misconduct finding and the disciplinary suspension recommended by the Superintendent and adopted by the Board. Accordingly, counsel for the Board argued that the suspension of the Appellant should be upheld.

Similarly, the Board argued that the Superintendent's decision to reassign the Appellant to a teaching position, pursuant to his statutory authority under Md. Code Ann., Educ. § 6-201, should be upheld. It maintained that the Superintendent's decision was not made merely on a whim, arbitrarily or capriciously nor was it illegal. The Board notes that the Superintendent's decision was based on his no longer having confidence in the Appellant's judgment as the instructional leader of a school.

The Appellant's attorney characterized the investigation as a "witch hunt" that gathered intensity as it proceeded. He questioned the motives of the Superintendent and the methodology of the interviewing process, alleging that broad questions were asked and only disgruntled parents were contacted. The Appellant also questions Dr. Krantz's motives, as the investigator, in light of the interaction the two had after a December 2000 elementary school principals' meeting, where the Appellant made pointed remarks at the Superintendent's leadership.

At the December 2000 meeting, the Appellant describes her emotional speech, in which she invoked the names of trailblazing and courageous black women such as Sojourner Truth, Harriet Tubman, and Rosa Parks. The Appellant brought books and/or photographs of the three women to the meeting and displayed them, as she did at the instant hearing, and chastised the Superintendent, Dr. Dale, and FCPS, for not appropriately recognizing three African American principals for their school's achievement in standardized testing.

The Appellant implies that it is more than coincidence that she finds herself facing disciplinary action approximately two months after she made a public pronouncement at an FCPS function that the FCPS administration's statement that minorities are not achieving is "disgraceful and disrespectful." The Appellant also commented on the climate of fear in the FCPS under Dr. Dale.

The Appellant also stated her personal belief that the Superintendent's actions against her in this case are motivated by an undercurrent of racial insensitivity. She believes that the Superintendent has historically operated in an atmosphere of non-communication with minority administrators.

Dr. Dale denies that the disciplinary suspension or transfer was made in retaliation for the Appellant's outspokenness. He cites the results of the investigation and the Appellant's own admission to spanking TB as the bases for the proposed suspension and the transfer to a teaching position. Even though Dr. Dale stated that he did not send a representative to talk to the Appellant about the content of her remarks, this case is not about the Appellant's right to free speech and expression under the First Amendment to the U.S. Constitution. This case is about allegations of corporal punishment imposed by the Appellant upon students and whether the parties can meet their respective burdens of proof.

With respect to the merits of the allegations, the Appellant acknowledged in her meetings with Dr. Krantz and Dr. Dale that the three spanks she administered to TB's buttocks at the parent's request was wrong. She stated, however, that had not initially realized that the "taps" on TB's behind amounted to corporal punishment. She promised not to use corporal punishment in the future.

The Appellant strongly denies that she struck any other student on the behind so as to constitute spanking. Regarding CS, the child whose allegation began the investigation, the Appellant denies spanking the child's buttocks. She described the contact she had with CS's buttocks on January 19, 2001 as more of patting him along, to get him to move to the other room. She emphasized that she was not disciplining him.

The Appellant maintains that her otherwise stellar FCPS work record was marred by one indiscretion or act of poor judgment. For that, she noted, she should be reprimanded and returned to her position as Principal at Parkway. She emphatically stated that she will never again administer what she now understands to be corporal punishment.

Having carefully reviewed and considered the entire record below as well as the arguments of counsel, I find that the Board has met its burden by a preponderance of the evidence, and I recommend the that the Appellant's suspension for two weeks for misconduct for the reasons cited above be upheld for the following reasons.

The evidence supports a finding that the Appellant administered corporal punishment to a child on more than one occasion. I do not find that the incident involving TB, who the child the Appellant spanked at the child's mother's request, to be an isolated one. As the Appellant should know, the definition of corporal punishment does not require that an object is involved to strike a child or that it be proven that child physical abuse occurred. It is the admitted incident and at least three other incidents during the 2000-2001 school year that constitute a course of conduct that entered into the Board's consideration.

Although the Appellant denies telling Dr. Dale in her February 15, 2001 meeting with him that "breaking rules is sometimes necessary to help your kids," her conduct in administering corporal punishment shows a disregard for the clear prohibition against corporal punishment found in Md. Code Ann., Educ. § 7-305, COMAR 13A.08.01.11 and in FCPS policy. I find the Appellant's protestation that she did not initially understand that her spanking of TB was corporal punishment to be disingenuous, at best. Even though corporal punishment in public schools has not been outlawed throughout the Appellant's tenure with the FCPS, she would have no doubt participated, since 1993, in any number of in-service training sessions or would have received written policy directives about the prohibition. Certainly as the principal of a school, the Appellant was responsible for not only

knowing vital rules and regulations but she remained responsible for insuring compliance from her staff.

In addition to the admitted incident, three fifth grade children present in the Appellant's office on January 19, 2001 reported seeing the Appellant spank CS on the bottom with her hand. The children were quoted as follows: AD said, "She beat his behind." MH reported, "She whooped him on the butt." And DC stated, "She picked him up and spanked him." The Appellant also indicated to CS's mother when the child was being picked up on the day in question that she had to have a conversation with CS to get him "straightened out," gesturing with her hand a sideways swatting motion.

Also on Friday January 19, 2001, the Appellant smacked another fifth grader, MM, on the buttocks, after he was sent to her office for talking. On Monday January 23, 2001, MM's parent confronted the Appellant about the incident, which the Appellant did not deny. Another student, JT, a first grader, reported that the Appellant struck him on the bottom with a ruler and also hit his hand with it when he was not following directions. Three children referred to the blue chair in the Appellant's office as the "spanking chair." The Appellant disclosed to Beverly Lewis, a secretary at Parkway, "a couple of years ago" an incident regarding a child she had paddled. I find the students' account of their first hand experiences and eyewitness observations to be consistent and persuasive.

The evidence also indicates that the Appellant is a positive force, both at Parkway and in the community. She routinely deals with special circumstances involving troubled students, such as problems associated with issues of abuse and neglect in the home. The Appellant makes an effort to get to know the students and their families. The Appellant is also very involved in the community. It is not an exaggeration to say that she has dedicated her entire working career to children.

The Appellant acknowledged playing a role in cultivating her image as a strong, authoritarian figure at Parkway. She is known for her stern demeanor at times. For example, the Appellant testified

that she is known in school as "the shoe lady" because she either wears slippers or no shoes in school and warns students to behave by removing one of her slippers and asking, "Who wants the shoe?" This is relevant because of the Appellant's contention that, aside from the situation involving her spanking TB, talk of physical discipline by the Appellant is just that, talk.

In furtherance of that point, the Appellant's witness, Leslie Williams, a former volunteer and current paid Instructional Assistant at Parkway, described what she called healthy banter the Appellant occasionally engages in with students. Ms. Williams stated that the students can relate to warnings from the Appellant, when she admonishes a child by saying "Do that and get your butt whooped" or "I'm going to bust you." Ms. Williams went on to explain that such language is used by the Appellant to illustrate that such a remedy involving physical force is not the best way to resolve a matter. Ms. Williams continued to explain that the Appellant is an extremely involved and effective leader at Parkway and a major positive influence in the school.

The Appellant's comments to students are consistent with her conduct in physically punishing them. Furthermore, Ms. Williams' testimony does not support the Appellant's position that she only used corporal punishment on one occasion but instead corroborates the Board's position of a pattern of conduct.

I find, however, that the evidence supports a finding that more than the one acknowledged incident of corporal punishment occurred and that there was more than just harmless talk of removing a slipper or "whooping" a child's buttocks. I find that the touching of the other students was more than a harmless "patting" or "tapping."

I find that the Board has met its burden and that the suspension of the Appellant for two weeks should be upheld.

With respect to the Superintendent's decision to remove the Appellant from her position as principal at Parkway, I find that the Appellant has not met her burden of showing that the Superintendent's decision was either illegal or was arbitrary and capricious.

The Superintendent likewise found that the corporal punishment was not confined to an isolated incident, as the Appellant contended. He further considered the gravity of her behavior in the context of the important leadership position entrusted to her. Dr. Dale first advised the Appellant, in his letter dated February 21, 2001, that she was going to be offered an alternative assignment of either assistant principal or a teaching assignment within her area of certification. The Superintendent then met with the Appellant after the Board's May 31, 2001 decision in this matter and told her that she was not being considered for an assistant principal position. Dr. Dale testified that it was a lack of confidence and trust in the Appellant and her need to be supervised, in light of the incidents, that were the controlling reasons for his decision to assign her to a staff development position. In the staff development position, the Appellant will be responsible for improving test scores.

The Appellant is unable to show that the Superintendent's decision was either illegal or was arbitrary and capricious. She acknowledges making a mistake, i.e.- spanking TB at the child's parent's request, for which she is willing to accept responsibility. Although the Appellant clearly disagrees with the Superintendent's decision to transfer and reassign her, she is unable to show that his decision was made without rationale. Accordingly, I find that the Superintendent's decision to transfer the Appellant to a teaching position should be upheld.

The Appellant's track record of exemplary service to FCPS, the children, and the community certainly played a role as a mitigating factor in the Board's decision. There is no showing that the suspension and removal from her position were disproportionate with her conduct in this case.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Board's two-week suspension of the Appellant, a tenured teacher serving as a principal, for misconduct is supported by a preponderance of the evidence. Md. Code Ann., Educ. § 6-202(a)(ii) (1999); COMAR 13A01.01.03E.

Based on the foregoing Findings of Fact and Discussion, I further conclude, as a matter of law, that the Board's decision to remove the Appellant from her position as principal and reassign her to a teaching position, is supported by a preponderance of the evidence. Md. Code Ann., Educ. § 6-201(b).

PROPOSED ORDER

It is proposed that the decision of the Frederick County Public Schools suspending the Appellant for two weeks for misconduct and removing her from her position as principal and assigning her to a teaching position be **UPHELD**.

Date: February 15, 2002

Louis N. Hurwitz
Administrative Law Judge

NOTICE OF RIGHT TO FILE OBJECTIONS

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