

JERRY H.,

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-25

OPINION

INTRODUCTION

The Appellant, who was employed by Anne Arundel County Public School as a certificated teacher for 20 years, appeals the decision of the Anne Arundel County Board of Education (local board) terminating him from his position as a physical education teacher based on immorality and misconduct in office.

We transferred the case pursuant to COMAR 13A.01.05.07 to the Office of Administrative Hearings (OAH) for review by an Administrative Law Judge (ALJ). On June 6, 2019, the ALJ issued a Proposed Decision recommending that the State Board uphold the local board's decision terminating the Appellant from employment.

The Appellant did not file any exceptions to the ALJ's Proposed Decision.

FACTUAL BACKGROUND

The factual background in this case is set forth in the ALJ's proposed decision, Joint Stipulations of Fact, pp.4-8 and Findings of Fact, pp. 8-12.

STANDARD OF REVIEW

Because this appeal involves the termination 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.01.05.06F.

The State Board transferred 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 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).

LEGAL ANALYSIS

Based on a preponderance of the evidence, the ALJ determined that the Appellant committed acts of immorality and misconduct in office when he stole money from his students while working as a physical education teacher at a high school in Anne Arundel County. We have reviewed the record and concur with the conclusions of the ALJ.

CONCLUSION

We agree with the ALJ's assessment that the record in this case supports the local board's termination of the Appellant from his teaching position on the grounds of immorality and misconduct in office. We, therefore, adopt the ALJ's Proposed Decision affirming the local board.

Signatures on File:

Warner I. Sumpter
President

Jean C. Halle
Vice-President

Gail H. Bates

Clarence C. Crawford

Vermelle D. Greene

Justin M. Hartings

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

July 24, 2019

JERRY H [REDACTED],

APPELLANT

v.

BOARD OF EDUCATION

FOR ANNE ARUNDEL COUNTY

* BEFORE JOHN T. HENDERSON, JR.,

* ADMINISTRATIVE LAW JUDGE,

* MARYLAND OFFICE OF

* ADMINISTRATIVE HEARINGS

* OAH No.: MSDE-BE-01-18-30776

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

The Appellant was employed with the Anne Arundel County Public Schools (AACPS) as a certificated teacher for twenty years. He taught physical education at [REDACTED] [REDACTED] for the last seventeen years. On November 3, 2017, the superintendent of AACPS recommended the Appellant’s dismissal on the grounds of immorality and misconduct in office.

The Appellant filed an appeal of that determination to the Board of Education for Anne Arundel County (Local Board). The Local Board appointed Andrew W. Nussbaum, Hearing Examiner (HE), to conduct a due process hearing and to provide it with a recommendation about whether to terminate the Appellant. Md. Code Ann., Educ. § 6-203 (2018).

The HE conducted a two-day hearing on March 27, 2018 and April 30, 2018. On June 29, 2018, the HE submitted a report to the Local Board, wherein he found that the Appellant

committed acts of misconduct and immorality. He recommended that the Appellant be terminated from employment as a teacher with AACPS.

On August 27, 2018, after reviewing the record below, the Local Board issued its Decision and Order in which it adopted the recommendation of the HE and found the recommended termination of the Appellant's employment to be fair and reasonable, and supported by the Record. The Local Board dismissed the Appellant from his position with AACPS. The Appellant's employment was terminated as of August 27, 2018.

On September 20, 2018, the Appellant appealed this decision to the Maryland State Board of Education (State Board) and, on October 1, 2018, the State Board transmitted the case to the Office of Administrative Hearings (OAH) for a *de novo* hearing pursuant to Code of Maryland Regulations (COMAR) 13A.01.05.06F.

On November 15, 2018, I held a telephone prehearing conference (TPHC) in this matter. I was located at the OAH in Hunt Valley, Maryland, and the following individuals participated by telephone: B. Darren Burns, Esquire, on behalf of the Local Board, and Kristy K. Anderson, Esquire, on behalf of the Appellant. On November 19, 2018, I issued a TPHC Report and Scheduling Order, which set forth the matters discussed during the TPHC.

On March 28, 2019, I conducted a hearing at the Local Board's Legal Issues Conference Room 2C in Annapolis, Maryland.¹ Ms. Anderson represented the Appellant. Mr. Burns represented the Local Board.

The 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

¹ The hearing was originally scheduled for February 20, 2019, however, State offices were closed that day due to inclement weather. The hearing was subsequently rescheduled and held on March 28, 2019, at 10:00 a.m., in Annapolis, Maryland.

..., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); Code of Maryland Regulations (COMAR) 13A.01.05; COMAR 28.02.01.

ISSUES

1. Did the Appellant engage in immorality and misconduct in office?
2. If so, is the termination from employment ordered by the Local Board appropriate?
3. If termination is not appropriate, is some lesser sanction appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

The parties submitted the following joint exhibit, which I admitted into evidence:

Joint Ex. 1 - USB flash drive, with the following electronic copies:

1. Board Hearing Transcript, dated March 27, 2018 (459 pages)
2. HE's Findings of Fact, Conclusions of Law and Recommendation, dated June 29, 2018
3. Local Board's Opinion and Order, dated August 27, 2018
4. Local Board's Answer to Appellant's Appeal, dated October 22, 2018
5. Local Board's Answer to Appellant's Appeal, dated October 22, 2018, with attached Board Hearing Transcript (463 pages)
6. Local Board Record (107 pages):
 - Letter from AACPS to Appellant, dated November 3, 2017 (Joint Ex. 1)
 - AACPS Investigative Report, with thirteen attachments (Supt. Ex. 1)
 - Handwritten Notes (Supt. Ex. 3)
 - Photographs of Severna Park High School locker room (Supt. Ex. 4)
 - Letter from Patrick J. Bathras, Principal, Severna Park High School, to Appellant, dated February 1, 2011 (Supt. Ex. 5)
 - AACPS Investigations Employee Case Management Report, dated January 14, 2011 (Supt. Ex. 6)
7. Two Video Recordings from Board Record, undated (Supt. Ex. 2)

8. Local Board's Telephone Prehearing Conference Statement, dated October 31, 2018
9. Joint Stipulations of Fact, dated February 19, 2019
10. Local Board Exhibit List

Testimony

The Appellant testified and presented the following witnesses: Steven Paul Healey, Pastor, Light House Church, and Kenneth Bombard, Director of Men's Ministry, Light House Church.

The Local Board presented the following witness: Sarah Kivett, Senior Manager of Employee Conduct:

JOINT STIPULATIONS OF FACT

The parties stipulated to the following facts as set forth in Joint Exhibit One²:

1. The Appellant was employed by the Local Board as a certificated physical education teacher. His employment contract was executed on July 26, 1997. During most of that time, he was assigned to [REDACTED] wherein he taught physical education and served as head football coach for thirteen (13) years. At all times during his tenure, the Appellant received highly proficient, effective or outstanding performance ratings. He does admit to some conduct issues in 2010-2011, which resulted in his losing his role as head football coach and department chair. At one point, the Appellant received a counseling letter on February 1, 2011 due to his use of prescription medication.

2. In February of 2017, a student at [REDACTED] had money stolen from his wallet two times that month, when the wallet was left in the locker room while he attended his physical education class. As a result, on February 15, 2017, the student set up a

² The Joint Stipulations of Fact identified the Appellant by name. Pursuant to OAH policy, I have changed all references to the Appellant's name to "the Appellant." I also made simple edits that are to form only, but largely left the joint stipulations as written by the parties.

hidden camera in an attempt to catch the thief. The video from that date showed the Appellant taking a wallet out of a pair of pants, taking money from the wallet, and returning the wallet. The student, after viewing the video, approached Coach B█ to advise him what was captured on the video. Coach B█ shared the information with the Assistant Principal, █, who advised the students to share the information with the School Resource Officer, █.

3. Later that day, Mr. S█ met with the Appellant in the school's main office. During the conversation, the Appellant admitted to Mr. S█ that he was "using" drugs and was struggling with being a "heroin addict." The Appellant was then taken from the school by the police, and subsequently, charged with five (5) counts of misdemeanor theft (theft less than \$100.00).

4. While at the police station, the Appellant was interviewed by Detective Moorhouse for nearly an hour. During the interview, the Appellant acknowledged taking money from students' possessions in the locker room; in doing so, he identified various amounts stolen, which ranged from \$300.00-\$400.00 although he was unclear. The Appellant repeatedly expressed remorse and concern about being fired from his job. During this interview, the Appellant asserted that he took only \$15.00 that day from the locker room, and later in the same interview stated it was \$10.00. The Appellant, in his testimony at the hearing, stated that he took \$65.00 on that date; and it was the only date on which he took money from students. He testified that he was positive that was the amount because he left school, bought six Fentanyl pills at \$10.00 each, some of which he immediately took, and put \$5.00 worth of gas in his vehicle prior to returning to school that afternoon. The Appellant acknowledged that at that time he was using every day, and because his wife had taken his debit card and his savings was depleted, he was desperate, which is why he stole from the boys' locker room on February 15, 2017.

5. Officer Swartz testified that on February 15, 2017, the Appellant appeared to him as depressed and disconnected and very “jumpy” in his thoughts. The Appellant testified that all he wanted to do after being taken to the police station on February 15, 2017 was to get out of there and make it stop so he would not have to tell his wife that he got “busted.” While Officer Swartz testified that he would take the Appellant’s statement at the police station with a “grain of salt,” the Appellant did acknowledge taking money from the wallet of a student in the boys’ locker room at ██████████ High School—both on February 15, 2017 and in his later testimony.

6. In light of the criminal misdemeanor charges, the school system conducted its own investigation into the matter. During the interview, the Appellant again asserted that he took \$65.00 from the student’s wallet, and denied taking anything else. The Appellant explained to the school system investigator, Mr. Mason, that he got the idea of taking money after he heard the announcements from the principal about securing items in the new building due to a rise in thefts.

7. In court on April 27, 2017, the Appellant pled guilty to one count of misdemeanor theft. The Appellant was granted probation before judgment and was ordered to pay restitution of \$85.00. The Appellant’s record is eligible for expungement after three years.

8. Between the February 2017 incident in school and the court hearing in April 2017, the Appellant actively worked to turn his life around through an in-patient rehab facility, a half-way house, and participation in an Intensive Outpatient Program.

9. On November 3, 2017, the Superintendent of AACPS recommended the Appellant’s termination for immorality and misconduct in office. The specific basis for the charges was that the Appellant took “\$85.00 in U.S. currency belonging to a student without his permission, thereby using [his] professional position as a teacher at ██████████ High

School for personal gain when [he] accessed the men's locker room to take this money. Moreover, [his] actions ultimately led to the filing of criminal misdemeanor charges. On April 27, 2017, in District Court for Anne Arundel County, [he] pled guilty to the charge of Theft Scheme: Less \$100 and received a disposition of Unsupervised Probation Before Judgment for a period of one (1) year.”

10. A hearing before the County Board's designated HE was conducted on March 27, and April 30, 2018. Testimony from a number of witnesses and numerous exhibits were presented by both the Appellant and the Superintendent. A Transcript of the hearing is included in the record of the Board proceedings.

11. During this hearing, the Appellant also submitted numerous letters of support and praise from parents, students, and community members, and three such witnesses came to testify personally in support of him. The statements and individuals attested to the Appellant's inspiration and profound impact on their lives, particularly those of students. The Appellant's wife also testified in support of his recovery efforts, and the significant change in his life, and the impact on their family.

12. On June 29, 2018, the HE issued his “Findings of Fact, Conclusions of Law, and Recommendation,” upholding the recommendation of the Superintendent that the Appellant's employment with AACPS be terminated. The Board, after affording the parties an opportunity to conduct oral arguments, issued its final Opinion and Order on August 27, 2018, adopting the HE's findings and recommendation, upholding the Superintendent and affirming the termination.

13. The Appellant continues to be very involved in the Care & Recovery program at Lighthouse Church where he participates in a step program as well as a men's group; he maintains a sponsor and attends Narcotics Anonymous as well as a number of Church activities, including serving as a leader in the Celebrate Recovery program at the Lighthouse

Church. Throughout this process, the Appellant testified to a long history of alcohol and drug use, and acknowledged that he was an addict in recovery, but was committed to doing whatever it would take to be successful.

14. Nothing in these stipulations is intended to supersede or modify the testimony and evidence presented to the Board; negate or invalidate the content of the HE's findings and recommendation; or otherwise alter the local record. Further, nothing in these stipulations is intended to prevent either party from relying upon the Board Record in arguing their case, or to prevent the Administrative Law Judge and the State Board from making reference to, or considering the Local Record in their review of the appeal.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Appellant is fifty-seven years of age, and served in the United States Marine Corps from 1979 through 1983 as a flight engineer.
2. The Appellant attended the University of Northern Iowa (UNI) where he played college football as a defensive back.
3. The Appellant earned a bachelor's degree from UNI and earned a master's degree subsequently in exercise physiology.³
4. The Appellant has been employed with AACPS for twenty years. His teaching career totals twenty-seven years.
5. The Appellant began his teaching career as a physical education and health teacher in the State of Kansas and was involved in the football program there. He received a Teacher of the Year award in 1991.

³ The evidence did not identify the school from which the Appellant earned his master's degree.

6. The Appellant came to AACPS around 1996 where he taught physical education and coached football first at ██████ High School and then at ██████, where he also served as department chair. He was the head football coach at ██████ for thirteen years. He received the Coach of the Year award in 2005.

7. The Appellant, holding a Maryland certification for teaching, taught as an AACPS teacher the courses of physical education, health, basic fitness for life, weight training and drug education.

8. The Appellant's personnel file with AACPS reveals the following performance evaluations:

<u>Date</u>	<u>Outcome</u>
December 9, 1997	Highly Proficient
June 1, 1998	Highly Proficient
November 4, 1998	Highly Proficient
June 1, 1999	Highly Proficient
May 31, 2000	Outstanding
May 31, 2002	Outstanding
May 25, 2006	Outstanding
June 14, 2007	Outstanding
May 28, 2008	Outstanding
June 7, 2011	Highly Effective
June 6, 2012	Highly Effective
June 19, 2014	Highly Effective
June 11, 2015	Highly Effective
June 17, 2016	Highly Effective

9. The Appellant's personnel file with AACPS reveals the following disciplinary actions:

<u>Date</u>	<u>Outcome</u>
October 27, 2005	Letter of Reprimand (disputes with colleagues)
November 23, 2010	Warning Letter (did not show for work on November 19, 2010)
February 1, 2011	Counseling Letter (admitted to taking prescription medication)
August 16, 2011	Letter of Reprimand (left school on June 14, 2011 without authorization)
August 16, 2011	Counseling Letter (sent email with foul language and verbal threats to faculty staff)

10. Sometime in the years 1999-2000, a doctor prescribed to the Appellant opioids⁴ to which the Appellant became addicted. The Appellant took the opioids to treat pain he suffered as a result of football injuries.

11. The Appellant became addicted to heroin⁵ in 2000.

12. On February 15, 2017, the Appellant went to the boys' locker room of Severna Park and took without permission \$85.00 from a student's wallet. The wallet was left in the pocket of the student's jeans.

13. The Appellant searched those jeans and the personal property of other students left within the boys' locker room.

⁴ Opioids are a class of drugs that act on opioid receptors in the brain. Signals sent to these receptors can block pain and lead to feelings of euphoria. Different types of opioids differ in a few key ways: the form of the drug (i.e. powder, tar, pill, liquid, etc.), how potent they are, how long their effects last and their potential for addiction. Whether or not a particular opioid is regulated and produced in a standardized manner also impacts its potency and safety. <http://www.drugpolicy.org/drug-facts/difference-heroin-fentanyl-morphine-oxycodone> (Last viewed May 16, 2019).

⁵ Heroin is processed from morphine. It is classified as a Schedule I substance, which means the federal government has determined that it has no currently accepted medical use. However, heroin (diacetylmorphine) is available medically in some limited circumstances, particularly in Europe and Canada. In the U.S., almost all heroin comes from the unregulated market.

14. The Appellant was looking for cash to purchase heroin or fentanyl⁶. With the stolen money, the Appellant drove to Baltimore and purchased thirteen capsules of heroin and used two of them after purchase. He then returned to school intending to resume his teaching duties.

15. The Appellant stealing money from students was discovered due to a hidden camera set up by one of the students and placed inside the boys' locker room.

16. The Appellant was arrested by the Anne Arundel County police, held in custody for interrogation, charged and booked for five counts of misdemeanor theft of less than \$100.00.

17. On April 27, 2017, the Appellant pled guilty to one count of misdemeanor theft before the District Court of Maryland for Anne Arundel County. He was sentenced to unsupervised probation before judgment and was ordered to pay restitution of \$85.00.

18. On November 3, 2017, the Superintendent of AACPS recommended the Appellant be terminated from employment for immorality and misconduct in office.

19. The Local Board held a hearing before the HE on March 27, 2018 and April 30, 2018.

20. On June 29, 2018, the HE recommended upholding the Appellant's termination from employment with the AACPS.

21. On August 27, 2018, the Local Board affirmed the Appellant's termination from employment with the AACPS.

22. The Appellant's Maryland teaching certificate is currently valid for teaching physical education.

⁶ Fentanyl is one of the most powerful opiate-based painkillers, used to treat chronic pain patients who have developed a resistance to other less powerful opiates such as morphine or oxycodone. Its effects are active at much lower doses than other opiates, so its non-medical use is riskier due to its increased potency. Like morphine, fentanyl is a Schedule II substance. In recent years, much of the U.S. heroin supply has been mixed with synthetically created illegal and unregulated fentanyl, leading to skyrocketing overdose death rates since 2013. <http://www.drugpolicy.org/drug-facts/difference-heroin-fentanyl-morphine-oxycodone> (Last viewed May 16, 2019).

23. The Appellant attends Narcotics Anonymous meetings, mentors addicts at his church and is two years into his sobriety.

24. The Appellant is married and has three children ages thirty, twenty-eight and fourteen.

25. The Appellant is currently five months employed with Lash Mechanical (an HVAC⁷ and Plumbing Company) as a project manager.

26. The Appellant is a leader and mentor at Light House Church. He leads Bible study, serves as a motivational speaker and is working toward becoming a minister.

DISCUSSION

General Legal Background

Section 6-201 of the Education Article of the Maryland Annotated Code provides that the county superintendent “shall . . . [s]uspend [teachers] for cause and recommend them for dismissal in accordance with § 6-202 of this subtitle.” Md. Code Ann., Educ. § 6-201(b)(2)(iv). Section 6-202 of the Education Article provides that “[o]n the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant” for reasons including “immorality and misconduct in office.” Md. Code Ann., Educ. § 6-202(a)(1)(i)(ii).

Section 602(a)(2)-(4) set forth the procedure for such removal, including notice, opportunity for a hearing before the county board, in person or by counsel, and to bring witnesses to the hearing, and the right to appeal the decision of the county board to the State Board. *Id.* § 6-202(a)(2)-(4). The county board may have the proceedings heard first by a hearing examiner, who, with certain exceptions not applicable here, must be an attorney admitted to practice law in Maryland. *Id.* § 6-203(a), (b).

⁷ Heating, Ventilation and Air Conditioning.

Section 6-203 further provides in pertinent part:

- (c) The hearing examiner shall submit to the county board and appellant:
 - (1) A record of the proceedings and exhibits; and
 - (2) The hearing examiner's findings of fact, conclusions of law, and recommendation.
- (d) Parties to the proceedings before the hearing examiner may make arguments before the county board.
- (e)
 - (1) After it reviews the record and the recommendation of the hearing examiner, the county board shall make a decision.
 - (2) The decision may be appealed to the State Board as provided in this article.

Id. § 6-203(c)-(e).

Pursuant to COMAR 13A.01.05.03E(1), (2), when a decision is appealed to the State Board, the local board shall transmit the record of the local proceedings with its response to an appeal, including a transcript of the proceedings.

COMAR 13A.01.05.06F sets forth the standard of review in an appeal to the State Board:

- F. Certificated Employee Suspension or Dismissal pursuant to Education Article, §6-202, Annotated Code of Maryland.
 - (1) The standard of review for certificated employee suspension and dismissal actions shall be *de novo* as defined in §F(2) of this regulation.
 - (2) The State Board shall exercise its independent judgment on the record before it in determining whether to sustain the suspension or dismissal of a certificated employee.
 - (3) The local board has the burden of proof by a preponderance of the evidence.
 - (4) The State Board, in its discretion, may modify a penalty.

Pursuant to COMAR 13A.01.05.07A, the State Board shall transfer to the OAH the appeal of a certificated employee suspension or dismissal pursuant to section 6-202 of the Education Article. Subsections B, D, and E further provide in pertinent part as follows:

B. Transcripts.

- (1) Except as provided in §B(2) of this regulation, in an appeal of a suspension or dismissal of a certificated employee, the entire record of the proceedings before the local board shall be prepared and transcribed at the expense of the local board and shall be made a part of the record of the proceedings.
- (2) Both parties may agree by way of written stipulation to omit from the record and transcript portions not relevant for consideration by the State Board.

...

- D. Except as otherwise provided in this chapter, hearing procedures shall be in accordance with the Administrative Procedure Act, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 28.02.
- E. The administrative law judge shall submit in writing to the State Board a proposed decision containing findings of fact, conclusions of law, and recommendations, and distribute a copy of the written proposed decision to the parties.

Accordingly, on behalf of the State Board and on the record before me, I am exercising my independent judgment and discretion to determine whether the Local Board established by a preponderance of the evidence, that the Appellant engaged in immorality and misconduct in office; whether the Appellant's termination from employment with AACPS was an appropriate sanction; and if termination is inappropriate, is some lesser sanction appropriate.

Parties' Contentions

The Local Board contends that it dismissed the Appellant from employment with AACPS because of immorality and misconduct in office. The theft from the students of \$85.00 cash committed by the Appellant on February 15, 2017 is not disputed by the parties.

The Appellant argues that there are mitigating circumstances that should warrant consideration against a sanction of termination from employment. He argues that the fact he was addicted to opioids and heroin is not offered by him as an excuse for stealing money from his students. Instead, he argues that the decision to terminate his employment should not rest on the

theft, or as his counsel stated “on the simple notion of he stole, therefore he must be terminated.”

The Appellant argues that the Local Board, to include the hearing examiner, did not take into account his disease of drug addiction. According to the Appellant, the sanction of termination was more in line of treating the Appellant as a non-addict, as opposed to analyzing his disease prior to deciding to terminate.

Analysis

The Appellant cited *Resetar v. State Bd. of Ed. of Md.*, 284 Md. 537 (1979) as a case defining misconduct and an individual’s fitness to teach. In that case, the teacher’s school district terminated his employment for misconduct in office. The *Resetar* Court did not find prior Maryland cases, which addressed the question of “whether certain conduct on the part of a teacher might or might not be misconduct in office. *Id.* at 548. However, it looked toward other jurisdictions and annotations for guidance. It noted that the “immorality issues [were] concerned with intemperance, gambling, financial irresponsibility, (sic) dishonesty, fraud, and use of profane language.” *Id.* at 556.

Here, the Appellant focuses on the Court’s consideration of 78 Corpus Juris Secundum (C.J.S.) Schools and School Districts, section 202, (1952), which stated the following:

Among the causes which, either under statute or contract or as a proper exercise of discretionary power by the school board, have been held sufficient to constitute grounds for dismissal of a teacher . . . are included **insubordination or violation of the rules and regulations of the school board; lack of cooperation; inability or incompetency; lack of efficiency in teaching or discipline; negligence in discharge of, or inattention to, duty; willful and persistent negligence; membership in a subversive organization or engaging in subversive activities; refusal to waive immunity in appearing or testifying before a court or legislative committee; or improper conduct, or, according to other decisions on the question, immoral, or unprofessional conduct.**

Id. at 557. (Emphasis added.)

However, the C.J.S. section reviewed by the *Resetar* Court is not suggesting a school board should consider only the grounds listed within the C.J.S. to determine a sanction of

termination from employment. A school board is not limited in its review of causes to determine grounds for dismissal. There can be many causes not listed within the C.J.S. cited by the *Resetar* Court that would be causes for termination from teaching employment. The Appellant suggests that the *Resetar* Court stands for a two-prong test where the school board should consider the teacher's misconduct as deliberate and willful in nature; and then determine whether the misconduct bears upon the fitness of the person to teach, or not. If such a two-prong test is applied to this case, the competent and relevant evidence presented by preponderance shows that the Appellant, in a deliberate and willful manner, stole money from his students. Stealing from students, by anyone's definition, bears upon the fitness to teach.

At the conclusion of its analysis, the *Resetar* Court affirmed the teacher's termination from employment. In considering the State Board's review and findings, the *Resetar* Court stated the following:

We have found that there was a sufficient predicate for the State Board's findings of fact and that it properly found Resetar's conduct to amount to misconduct in office within the meaning of the statute. We have further found that the State Board was not guilty of arbitrary, capricious or illegal conduct when it took the prior reprimands to Resetar into consideration in meting out punishment any more than it would have been arbitrary if because of a teacher's prior unblemished record it concluded that such conduct warranted a punishment less than the ultimate sanction of dismissal. That leaves us with the question, however, of whether dismissal in this instance was action so harsh as to amount to arbitrary and capricious action on the part of the State Board. 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. If, for example, the teacher here had merely uttered the racial epithet relative to the students under his breath so that it was heard only by a colleague of the teacher's race standing next to him, a reviewing court might determine dismissal to be so harsh a sanction as to be arbitrary conduct, while no question of arbitrariness would arise if dismissal were ordered because a teacher directed such an epithet at a student then in the process of reciting in the teacher's class. 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.

In reviewing the action of an administrative agency, so long as we do not find it to have been arbitrary or capricious in the sanction imposed, we are not permitted to specify a sanction which we might have considered more appropriate. As held by this Court in *Insurance Comm'r v. Nat'l Bureau, supra*, in reviewing the action of an administrative agency we must not engage in judicial fact-finding or substitute our judgment for that of the agency. In this instance we find no arbitrary conduct on the part of the administrative agency, the State Board.

Accordingly, we find no grounds for reversal. JUDGMENT AFFIRMED.

Id. at 562.

Immorality was not defined by the *Resetar* Court, nor apparently, has it been defined by the Court of Appeals of this State in the context of termination from teaching. *Black's Law Dictionary* (10th edition), defines immoral as "inconsistent with what is right, honest and commendable; contrary to standards of ethical rightness." The HE determined from evidence he received that AACPS does not have a specific policy regarding theft from school buildings, but the AACPS employee handbook has a section on ethics, which covers obeying applicable laws. In addition, AACPS, according to the HE, administers to its employees a standards test, which advises employees to consider whether their actions are illegal and if so, the employee should not engage in such behavior.

The Appellant's character witnesses certainly describe the Appellant as a person who is committed to remaining sober, maintaining his faith, and importantly, using his life as a lesson to help others journey through their difficult times of addiction or other life issues that tend to be a heavy burden upon people. The Appellant presented himself at the hearing as being sincere and committed to his sobriety. His wife was at his side during the hearing and appeared to ensure he receives the love and support needed to help him with his sobriety.

There is every indication that today, the Appellant is a man striving to do and be better. However, his efforts to do and be better do not afford him a teaching position with AACPS.

Teaching is a noble profession. When teachers teach children, from kindergarten to twelfth grade, there are parents and guardians of those children who entrust to teachers the welfare, safety and intellectual stimulation of their children during the school day. The Appellant breached that trust on February 15, 2017 when he stole money from his students. The AACPS has no legal requirement to consider the disease of addiction in mitigation of the Appellant's crime and breach of trust. The Appellant had due process as required by law.

The Local Board provided the Appellant with a hearing where he was able to present a case in mitigation. The HE determined that the school board reasonably terminated the Appellant's employment.

It is undisputed by a preponderance of the evidence considered during my *de novo* review of this matter, that the Appellant stole money from his students. The evidence shows that the theft was an immoral act constituting misconduct in office. The Local Board reasonably lost trust in the Appellant as an employee. I agree and conclude that the appropriate sanction is termination.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Local Board established that the Appellant violated state law by stealing money from students on February 15, 2017. Criminal Law Article 7-104(g)(3); Education Article 6-202(a)(1)(i)(ii).

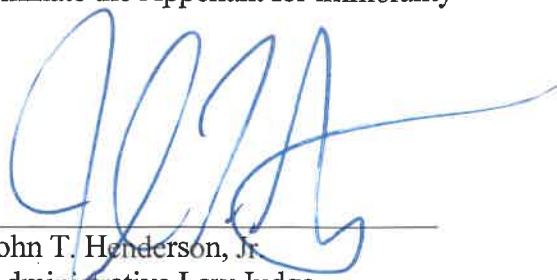
I further conclude, as a matter of law, that the Local Board established that the Appellant committed immorality and misconduct in office pursuant to the incidents of February 15, 2017. Education Article, Section 6-202(a)(1)(i)(ii).

Finally, I conclude, as a matter of law, that the Appellant's immorality and misconduct committed on February 15, 2017, negatively affects his fitness to teach and that termination of his employment with the Local Board is appropriate. Education Article, Section 6-202; *Resetar v. State Board of Education*, 284 Md. 537 (1979).

PROPOSED ORDER

I **PROPOSE** that the decision of the Local Board to terminate the Appellant for immorality and misconduct in office be **UPHELD**.

June 6, 2019
Date Decision Mailed



John T. Henderson, Jr.
Administrative Law Judge

JTH/emh
#179226

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this Proposed Decision has the right to file written exceptions within 15 days of receipt of the decision; parties may file written responses to the exceptions within 15 days of receipt of the exceptions. Both the exceptions 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.

Copies Mailed to:

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JERRY H [REDACTED],

APPELLANT

v.

BOARD OF EDUCATION

FOR ANNE ARUNDEL COUNTY

*** BEFORE JOHN T. HENDERSON, JR.,**

*** ADMINISTRATIVE LAW JUDGE,**

*** MARYLAND OFFICE OF**

*** ADMINISTRATIVE HEARINGS**

*** OAH No.: MSDE-BE-01-18-30776**

*** * * * ***

FILE EXHIBIT LIST

The parties submitted the following joint exhibit, which I admitted into evidence:

Joint Ex. 1 - USB flash drive, with the following electronic copies:

1. Board Hearing Transcript, dated March 27, 2018 (459 pages)
2. HE's Findings of Fact, Conclusions of Law and Recommendation, dated June 29, 2018
3. Local Board's Opinion and Order, dated August 27, 2018
4. Local Board's Answer to Appellant's Appeal, dated October 22, 2018
5. Local Board's Answer to Appellant's Appeal, dated October 22, 2018, with attached Board Hearing Transcript (463 pages)
6. Local Board Record (107 pages):
 - Letter from AACPS to Appellant, dated November 3, 2017 (Joint Ex. 1)
 - AACPS Investigative Report, with thirteen attachments (Supt. Ex. 1)
 - Handwritten Notes (Supt. Ex. 3)
 - Photographs of [REDACTED] High School locker room (Supt. Ex. 4)
 - Letter from [REDACTED] Principal, [REDACTED] High School, to Appellant, dated February 1, 2011 (Supt. Ex. 5)
 - AACPS Investigations Employee Case Management Report, dated January 14, 2011 (Supt. Ex. 6)
7. Two Video Recordings from Board Record, undated (Supt. Ex. 2)