

MAMIE BENJAMIN

Appellant

v.

BALTIMORE CITY BOARD  
OF SCHOOL  
COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 22-18

## OPINION

### INTRODUCTION

This case involves the termination of a teacher after the Baltimore City Board of School Commissioners (“local board”) determined that the teacher failed to timely appeal and request a hearing on the recommendation of termination.

We transferred this case pursuant to COMAR 13A.01.05.07(A)(1)(b) to the Office of Administrative Hearings (“OAH”) for review by an Administrative Law Judge (“ALJ”). On May 2, 2022, the ALJ issued a Proposed Order on Motion for Summary Decision finding that the local board properly rejected Appellant’s appeal hearing request as untimely and recommending that the State Board affirm the local board’s decision terminating the Appellant from employment.

The Appellant filed exceptions to the ALJ’s Proposed Order and the local board responded. The State board heard oral argument on the exceptions on August 23, 2022.

### FACTUAL BACKGROUND

The Appellant has been employed by Baltimore City Public Schools (“BCPS”) since 2006. For the 2021-2022 school year, she was assigned to Montebello Elementary/Middle School and Woodholme Elementary/Middle School as a Teacher Secondary – Technology. (Appeal, Ex. A).

On September 23, 2021, the BCPS issued a Notice of Probable Cause of Termination of Employment by email and regular mail advising that she had three days to either report to work or provide documentation to substantiate her absences. The school system found that she failed to comply and on October 26, 2021, Gerry Grant, Labor Relations Specialist for BCPS, held a *Loudermill* hearing regarding the Appellant’s dismissal from her employment. The Appellant was represented by Cindy Sjoquiest, her Field Representative from the Baltimore Teacher’s Union (“BTU”). Kim Williams, Manager, School Staffing Solutions, represented Human Capital. *Id.*

After the hearing, the Appellant began investigating whether she would be able to retire with full benefits. (Benjamin Affidavit).

On November 9, 2021, Jeremy Grant-Skinner, Chief Human Capital Officer, acting as the Chief Executive Officer's Designee, sent the Appellant a letter ("Suspension Letter") stating that Human Capital was recommending Appellant's termination to the local board. *Id.* The Suspension Letter stated that Appellant had been suspended without pay on November 5, 2021, pending the local board's decision. It also informed Appellant of her right to request a hearing, pursuant to Education Article §6-202 and stated that the request for a hearing must be submitted in ten days of the date of the letter and provided the address. The Suspension Letter further stated that if Appellant did not request a hearing, the matter would be submitted to the local board for action at its next regularly scheduled meeting. The Suspension Letter directed the Appellant to contact the Office of Labor Relations & Negotiations with any questions. *Id.*

Attached to the Suspension Letter was a Statement of Charges that detailed the basis for Human Capital's recommendation for termination. The Statement of Charges stated that the termination was being made pursuant to Education Article §6-202. *Id.*

Although not referenced in the Suspension Letter, attached to the letter was a copy of BLA Form 1, an appeals form used by BCPS when an appeal is requested pursuant to Education Article §4-205. BLA Form 1 was not applicable to Appellant's appeal under §6-202 and was attached to the Suspension Letter in error. BLA Form 1 asks an appellant to fill out basic identifying information and state the date and nature of the action being appealed, what evidence will be presented, the remedy requested, whether appellant will be represented by counsel, and whether oral argument and/or an evidentiary hearing is being requested, and includes a signature page. BLA Form 1 does not reference Education Article §4-205 or a submission deadline, but it does reference local board Policy BLA.

The Policy document entitled "Procedures in Appeals and Hearings Under Section 4-205 of the Education Article," which can be found online, indicates that an appeal under §4-205 must be filed within thirty days, in accordance with Education Article §4-205(c)(3). Section 4-205(c)(3) provides that "A decision of a county superintendent may be appealed to the county board in writing within 30 days after the decision of the county superintendent."

On November 13, 2021, the Appellant received the Suspension Letter with the attached Statement of Charges and BLA Form 1 via regular mail. That same day, Appellant forwarded a copy of the Statement of Charges and BLA Form 1 to Cynthia Sjoquist, her BTU Field Representative. On November 23, 2021, Julie Richardson at BTU contacted the Appellant to inform her that MCPS had enclosed the wrong form with the Statement of Charges and emailed the correct form to the Appellant.

On December 3, 2021, Appellant learned that she was not eligible to retire immediately with full benefits.

On December 7, 2021, Appellant retained counsel. On December 7, 2021, counsel for Appellant, Ms. Heilman, submitted an appeal request to the local board via email, stating that

although she believed the Appellant had already requested a hearing, she was attaching a copy of Appellant's hearing request. (Appeal. Ex. C).

On December 8, 2021, at 3:41 p.m., Tenesha Moore, an Executive Assistant at the local board office, accidentally responded by email on behalf of the local board stating that it had received the Appellant's appeal, and asked if Appellant would like an in-person or a remote hearing. *Id.* Ms. Moore had intended to save the email as a draft but accidentally sent it instead. Ms. Moore recalled the email at 3:43 p.m.

On December 9, 2021, Christian Gant, Esq., Board Executive, sent a letter to the Appellant on behalf of the local board informing her that her request for a hearing had been dismissed as untimely as it had not been received within ten days of the charges pursuant to Education Article §6-202(a)(3). (Appeal, Ex. D).

The local board terminated Appellant on December 14, 2021.

### 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.01.05.06(F).

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(b).

### LEGAL ANALYSIS

The Appellant raised two exceptions to the ALJ's Proposed Order.

#### *Timeliness of Hearing Request*

The Appellant contends that:

The ALJ erred by not finding that after the Loudermill hearing in this matter, the parties entered into settlement discussions, which prompted the Appellant to investigate her eligibility to retire. She further erred by concluding these settlement discussions, along with the Board's provision of the wrong form associated with a different deadline to appeal, could not have led a reasonable person to misunderstand the deadline to request a hearing.

State statute requires that, before terminating a teacher, a local board must send the individual a copy of the charges against the individual and provide the individual 10 days within which to request a hearing before the local board. Md. Code Ann., Educ §6-202(a)(2)(i). The

statute further provides that the local board shall hold a hearing if the individual requests a hearing within the ten-day period. Md. Code Ann., Educ. §6-202(a)(3)(i). Local board Policy BLB.III.B.4 provides that the local board shall act upon the CEO's recommendation without a hearing if a request for a hearing under Education Article §6-202(a)(3) is not filed within the ten-day time period. The State Board has consistently held that deadlines will be strictly construed and not overlooked except in "extraordinary circumstances such as fraud or lack of notice." See, e.g. *Cathy G. v. Montgomery Co. Bd. of Educ.*, MSBE Order No. OR17-04 (2017).

We have reviewed the ALJ's analysis of the timeliness issue. While the ALJ references the correct law, we disagree with the ALJ's legal conclusion that there is no extraordinary circumstance to excuse Appellant's late filing of the request for a hearing. By its own admission, the local board erred and included the incorrect form with the Suspension Letter and Statement of Charges. At oral argument, the Appellant argued that the inclusion of the form which is used for cases under §4-205 of the Education Article that have a 30-day time frame to appeal, resulted in confusion regarding the filing deadline. We agree. The local board's inclusion of the form in this case reasonably created confusion about the deadline, which we deem an extraordinary circumstance here sufficient to pierce the appeal deadline.

*Exception to Findings of Fact 1, 5, and 7*

The Appellant contends that:

The ALJ erred in finding that it is an undisputed fact that Appellant engaged in misconduct during the 2020-2021 school year (Finding of Fact 1), and that Appellant failed to report in the 2021-2022 school year (Finding of Fact 5 and 7). The Appellant disputes all allegations of misconduct and has not had the opportunity to participate in an evidentiary hearing on these allegations. The Proposed Decision concerns a Motion for Summary Decision in which the sole issue was whether or not the Appellant's late submission of a Request for Hearing should be excused when she was provided the wrong form for requesting a hearing and given conflicting information about when the request was due. Only the facts regarding the process in this matter were before the ALJ, not the underlying facts of the dispute. It was error for the ALJ to find that the Appellant engaged in misconduct.

Because we are not adopting the ALJ's factual findings and have not included these findings in our factual background, this exception is moot.

CONCLUSION

For the reasons stated above, we do not adopt the ALJ's Proposed Order. We reverse the local board's decision and remand the matter to the local board to conduct a hearing in accordance with Education Article §6-202.



Clarence C. Crawford  
President



Susan J. Getty  
Vice-President



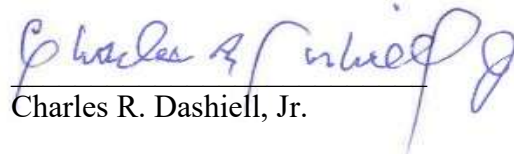
Shawn D. Bartley



Gail H. Bates



Chuen-Chin Bianca Chang



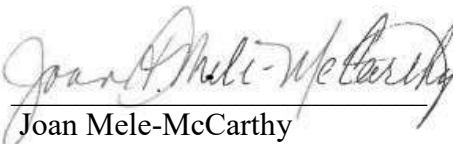
Charles R. Dashiell, Jr.



Jean Halle



Rachel McCusker



Joan Mele-McCarthy



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Warner I. Sumpter

**Absent:**

Vermelle D. Greene

Lori Morrow

Holly Wilcox

Voted: August 23, 2022

Issued: September 27, 2022

**MAMIE BENJAMIN**

**v.**

**BALTIMORE CITY BOARD OF  
SCHOOL COMMISSIONERS**

**\* BEFORE DEBORAH S. RICHARDSON,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: MSDE-BE-01-22-00864**

\* \* \* \* \*

**PROPOSED ORDER ON MOTION  
FOR SUMMARY DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
STATEMENT OF UNDISPUTED FACTS  
DISCUSSION  
CONCLUSION OF LAW  
PROPOSED ORDER

**STATEMENT OF THE CASE**

On or about November 9, 2021, the Chief Executive Officer of the Baltimore City Public Schools (BCPS) notified the Appellant, a teacher in the BCPS, that she was recommending the Appellant's termination for failure to report to work, insubordination, misconduct, and willful neglect of duty. Md. Code Ann., Educ. § 6-202(a)(1) (Supp. 2021). On December 7, 2021, the Appellant requested a hearing before the Baltimore City Board of School Commissioners (Local Board). On December 9, 2021, the Local Board informed the Appellant that it had determined her appeal was filed late and that her request for a hearing had been dismissed as untimely. On December 17, 2021, the Local Board informed the Appellant that on December 14, 2021, the Local Board voted to accept the recommendation for the Appellant's termination.

The Appellant appealed to the Maryland State Board of Education (MSDE) on January 5, 2022. Md. Code Ann., Educ. § 6-202(a)(4). On January 14, 2022, the MSDE referred the matter to the Office of Administrative Hearings (OAH) for further proceedings.

On February 4, 2022, the Local Board filed a Memorandum in Response to Appeal. Code of Maryland Regulations (COMAR) 13A.01.05.03C. On March 9, 2022, I conducted a pre-hearing conference by video. Heather Heilman, Esquire, represented the Appellant, who was also present. Nakisha Small, Esquire, represented the Local Board. At the pre-hearing conference, I informed the parties that given the substantive issues raised in the Local Board's Memorandum in Response to Appeal, that I would consider it as a Motion for Summary Decision (Motion) pursuant to COMAR 28.02.01.12D; *see also* COMAR 13A.01.05.03(c)(4) ("The State Board may decide the appeal on the merits based on the filings."). I informed the parties I would consider the exhibits submitted with the January 5, 2022 appeal and the parties' pre-hearing statements, and I set a briefing schedule for responses to the Motion. The Appellant filed her Opposition to Motion for Summary Decision (Opposition) with accompanying exhibits on March 21, 2022 and on March 31, 2022, the Local Board filed its Response to Appellant's Motion in Opposition to Summary Decision (Reply). The parties did not request that I hold a hearing on the Motion.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the MSDE, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 13A.01.05; COMAR 28.02.01.

### **ISSUE**

Is the Local Board entitled to summary decision as a matter of law?



## SUMMARY OF THE EVIDENCE

The following exhibits were attached to the Appellant's January 5, 2022 Appeal:

- Ex. A - Letter from Jeremy Grant-Skinner to the Appellant, November 9, 2021; Statement of Charges, undated; BLA Form 1
- Ex. B - Procedures in Appeals and Hearings Under Section 4-205 of the Education Article, undated
- Ex. C - Email from Tenesha Moore to Ms. Heilman, December 8, 2021
- Ex. D - Letter from Christian Gant to Ms. Heilman, December 9, 2021

The following exhibits were attached to the Local Board's Motion:

- Ex. 1 - Statement of Charges, undated
- Ex. 2 - Notice of Termination of Employment, December 21, 2021; Letter from the Local Board to the Appellant, December 17, 2021; Human Capital Change Form, November 5, 2021; Letter from the Office of Employee Relations to the Appellant, October 12, 2021; Notice of Probable Cause of Termination of Employment, September 23, 2021; Reprimand, April 14, 2021; email exchange amongst school employees and the Appellant, dates ranging from January 19, 2021 to May 24, 2021
- Ex. 3 - Letter from Mr. Grant-Skinner to the Appellant, November 9, 2021
- Ex. 4 - BLB, Policy, Baltimore City Board of School Commissioners, Procedures in Hearings Requested Under § 6-202 of the Education Article (Certificated Personnel)
- Ex. 5 - Affidavit of Ms. Moore, January 19, 2022
- Ex. 6 - Email from Ms. Moore to Health Heilman and Mr. Gant, December 8, 2021
- Ex. 7 - Email from Ms. Moore to Ms. Moore, December 8, 2021
- Ex. 8 - Order Affirming Recommendation of the CEO to Dismiss the Appellant, December 14, 2021

The Appellant submitted the following exhibit with her Opposition:

- Ex. 1 - Affidavit of Mamie Benjamin, March 21, 2022

The Local Board submitted the following exhibits with its Reply:

Ex. 1 - Affidavit of Gerry Grant, March 29, 2022

Ex. 2 - Email from Kim Williams to the Appellant, September 3, 2021

**STATEMENT OF UNDISPUTED FACTS**

The following facts are undisputed:

1. The Appellant has been employed by the BCPS since 2006.
2. The Appellant engaged in misconduct during the 2020-2021 school year, wherein Appellant stopped engaging online and participating in virtual classes during the period of virtual instruction, failed to report back to the building for in-person instruction when directed on March 14, 2021, and failed to take regular attendance or regularly grade students.
3. For the 2021-2022 school year the Appellant was assigned to Montebello Elementary/Middle and Woodhome Elementary School as a Teacher Secondary – Technology.
4. Prior to the start of the 2021-2022 school year, the BCPS' Office of Human Capital (Human Capital) notified the Appellant by email of her assignments. The Appellant was given the contact information for the principals at those two schools and was informed that her report date was September 13, 2021.
5. The Appellant failed to report on that date and afterwards.
6. On September 23, 2021, due to her failure to report, the BCPS issued a Notice of Probable Cause of Termination of Employment by way of email and USPS to advise her that she had three days to either report to work or provide the appropriate documentation to substantiate her absences.
7. The Appellant failed to report to work or provide documentation.

8. On October 26, 2021, Mr. Grant, Labor Relations Specialist for the BCPS held a *Loudermill*<sup>1</sup> hearing (a pre-deprivation hearing) regarding the Appellant's dismissal from her employment as a teacher in the BCPS. The Appellant was represented by Cindy Sjoquist, her Field Representative from the Baltimore Teacher's Union (BTU). The hearing addressed the Appellant's alleged professional misconduct throughout the 2020-2021 and 2021-2022 school years. Kim Williams, Manager, School Staffing Solutions, represented Human Capital.

9. At the hearing, Ms. Williams explained that the Appellant had failed to report to Montebello and Woodhome and provided email correspondence to show the Appellant had not timely submitted grades during the 2021-2022 school year and to show concerns with the Appellant's performance and attendance during the 2020-2021 school year at National Academy Foundation School of Baltimore, where she was then-assigned.

10. At the hearing, the Appellant failed to provide any medical or other documentation that could substantiate the reason for having failed to report to her assigned school. She also demonstrated no inclination to report for work at that point.

11. After the hearing, the Appellant began investigating whether she would be able to retire with full benefits.

12. On November 9, 2021, Mr. Grant, acting as the designee of the Chief Executive Officer of the BCPS, sent the Appellant a letter indicting that Human Capital was recommending the Appellant's termination to the Local Board (the Suspension Letter).

13. The Suspension Letter indicated the Appellant had been suspended without pay on November 5, 2021, pending the Local Board's decision.

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<sup>1</sup> *Cleveland Bd. Of Educ. V. Loudermill*, 470 U.S. 532 (1985).

14. The Suspension Letter informed the Appellant of her right to request a hearing, pursuant to section 6-202 of the Education Article of the Maryland Code and stated that a request for a hearing must be submitted in ten days of the date of the letter.

15. The Suspension Letter informed the Appellant if she did not request a hearing, that the matter would be submitted to the Local Board for action at its next regularly scheduled meeting.

16. The Suspension Letter attached a Statement of Charges which detailed the basis for Human Capital's recommendation for termination and stated that the termination was being made pursuant to section 6-202 of the Education Article of the Maryland Code.

17. The Suspension Letter attached a copy of a BLA Form 1, an appeals form used by the BCPS for the request of an appeal pursuant to section 4-205 of the Education Article of the Maryland Code. The BLA Form 1 was not applicable to the Appellant in her situation and was included in error.

18. BLA Form 1 asks an Appellant to fill out basic identifying information, date and nature of the action being appealed, what evidence will be presented, the remedy requested, whether an appellant will be represented by counsel, whether there is a request for oral argument and/or an evidentiary hearing, and a signature page.

19. BLA Form 1 does not reference section 4-205 of the Education Article of the Maryland Code or mention a thirty-day submission deadline.

20. The Suspension Letter did not reference BLA Form 1, include instructions for the BLA Form 1, or reference a Policy for BLA Form 1.

21. The Policy document entitled "Procedures in Appeals and Hearings Under Section 4-205 of the Education Article," which can be found online, indicates that an appeal must be filed within thirty days, in accordance with section 4-205(c)(3) of the Education Article

of the Maryland Code, which provides that “A decision of a county superintendent may be appealed to the county board in writing within 30 day after the decision of the county superintendent.”

22. The Suspension Letter directed the Appellant to contact the Office of Labor Relations & Negotiations with any questions.

23. On November 13, 2021, the Appellant received the Suspension Letter with the attached Statement of Charges and BLA Form 1 via U.S. Mail.

24. The Appellant never contacted the Office of Labor Relations & Negotiations.

25. On November 13, 2021, the Appellant forwarded a copy of the Statement of Charges and BLA Form 1 to Ms. Sjoquist, her BTU Field Representative.

26. On November 23, 2021, Julie Richardson at BTU contacted the Appellant to inform her that the BCPS had enclosed the wrong form with the Statement of Charges and emailed the correct form to the Appellant.

27. On December 3, 2021, the Appellant learned she was not eligible to immediately retire with full benefits.

28. On December 7, 2021, the Appellant retained counsel.

29. On December 7, 2021, at 3:10 p.m., counsel for the Appellant, Ms. Heilman, submitted an appeal request via email, stating she believed the Appellant had already requested a hearing, but stated she was attaching a copy of Appellant’s request for hearing.

30. On December 8, 2021, at 3:41 p.m., Ms. Moore, an Executive Assistant at the Local Board, accidentally responded on behalf of the Local Board to state it had received the Appellant’s appeal, and asked if the Appellant would like an in-person or remote hearing. Ms. Moore had intended to save the email as a draft but accidentally hit “send” instead. Ms. Moore recalled this email at 3:43 p.m.

31. On December 9, 2021, Mr. Gant sent a letter to the Appellant on behalf of the Local Board informing her that her request for hearing had been dismissed as untimely as it had not been received within ten days of the charges pursuant to section 6-202(a)(3) of the Education Article of the Maryland Code.

32. On December 14, 2021, the Local Board terminated the Appellant.

## DISCUSSION

### Scope of Appeal

The Appellant received the November 9, 2021 Suspension Letter on November 13, 2021. The Appellant attempted to request a hearing to contest the proposed termination on December 7, 2021. The Local Board rejected that request as untimely and terminated the Appellant on December 14, 2021, without a hearing. In her January 5, 2022 Appeal, the Appellant “appeals the dismissal of her request for a hearing in regard to her dismissal from employment.” The Appellant requested relief as follows: “that the State Board exercise its independent judgment and remand this matter to the [Local Board] ordering that it schedule [the Appellant’s] appeal for a hearing on the merits.” In the Local Board’s Memorandum in Response to Appeal, which I have construed as the Motion, the Local Board opposes the Appellant’s request for a remand to the Local Board for a hearing. The Local Board also stated, “to the extent that the State Board construes Appellant’s appeal on the merits, the decision of BCPS should be affirmed.” The Appellant was very specific in her appeal that she was appealing the denial of her request for a hearing. I do not consider her appeal to be one on the merits, and I will therefore not address that issue. Therefore, the only issue before me is whether the Local Board is entitled to Summary Decision as a matter of law regarding the timeliness of the Appellant’s hearing request to the Local Board.

Legal Standard

The MSDE referred this case to the OAH for a hearing in accordance with Section 6-202 of the Education Article of the Maryland Code. Section 6-202 provides that on the recommendation of the county superintendent, a teacher may be dismissed for insubordination and misconduct in office. In a case transferred by the MSDE to the OAH, hearing procedures are in accordance with the Administrative Procedure Act and the OAH's Rules of Procedure, except as otherwise provided by the MSDE regulations. COMAR 13A.01.05.07D. The MSDE regulations do not contain procedures for motions; accordingly, the OAH Rules of Procedure apply. OAH Rules of Procedure provide for consideration of a motion for summary decision under COMAR 28.02.01.12D. That regulation provides as follows:

D. Motion for Summary Decision.

(1) A party may file a motion for summary decision on all or part of an action on the ground that there is no genuine dispute as to any material fact and the party is entitled to judgment as a matter of law.

(2) A motion for summary decision shall be supported by one or more of the following:

- (a) An affidavit;
- (b) Testimony given under oath;
- (c) A self-authenticating document; or
- (d) A document authenticated by affidavit.

(3) A response to a motion for summary decision:

- (a) Shall identify the material facts that are disputed; and
- (b) May be supported by an affidavit.

(4) An affidavit supporting or opposing a motion for summary decision shall:

- (a) Conform to Regulation .02 of this chapter;
- (b) Set forth facts that would be admissible in evidence; and
- (c) Show affirmatively that the affiant is competent to testify to the matters

stated.

(5) The ALJ may issue a proposed or final decision in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

The Local Board supported its motion with authenticated documents and affidavits.

COMAR 28.02.01.12D(2). Accordingly, the motion is properly treated as one for summary decision. *See Davis v. DiPino*, 337 Md. 642, 648 (1995) (noting distinctions between a motion to

dismiss and a motion for summary judgment including that under the Maryland Rules a motion to dismiss is converted into a motion for summary judgment “when a trial court considers matters outside the pleadings in reaching its decision”). Deciding this case pursuant to a motion for summary decision also comports with the MSDE’s regulation, that provides that the “State Board may decide the appeal on the merits based on the filings.”). COMAR 13A.01.05.03(c)(4).

The requirements for summary decision under the OAH Rules of Procedure are similar to those for summary judgment under Maryland Rule 2-501. *Assateague Coastkeeper v. Md. Dep’t of Env’t*, 200 Md. App. 665, 698-99 (2011). Accordingly, I may look to the Maryland Rules and Maryland case law interpreting those rules to analyze a motion for summary decision.

On a motion for summary decision, the moving party bears the initial burden. COMAR 28.02.01.21K(3). I may grant a motion for summary decision and dismiss the hearing request in this case only if I find that there is “no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.” COMAR 28.02.01.12D(5); *see also Metro. Mortg. Fund, Inc. v. Basiliko*, 288 Md. 25, 28 (1980). Only a genuine dispute as to a material fact is relevant in opposition to a motion for summary decision. *Seaboard Sur. Co. v. Kline, Inc.*, 91 Md. App. 236, 242 (1992). A material fact is defined as one that will “somehow affect the outcome of the case.” *King v. Bankerd*, 303 Md. 98, 111 (1985) (quoting *Wash. Homes, Inc. v. Interstate Land Dev. Co., Inc.*, 281 Md. 712, 717 (1978)).

To prevail on a motion for summary decision, the moving party must identify the relevant legal cause of action or legal defense and then set forth sufficient, undisputed facts to satisfy the elements of the claim or defense or detail the absence of evidence in the record to support an opponent’s claim. *See Bond v. NIBCO, Inc.*, 96 Md. App. 127, 134-36 (1993). If the moving party meets this initial burden, the opposing party must come forward with admissible evidence that establishes a genuine dispute of material fact, after all reasonable inferences are drawn in the



opposing party's favor, *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737-39 (1993); *see also Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991) (stating that a judge must “draw all justifiable inferences in favor of the nonmoving party”).

The OAH procedural regulations do not require a party to support an answer to a motion for summary decision with an affidavit, but they do require a response to identify the material facts that are disputed. COMAR 28.02.02.12D(3). A general denial is not sufficient to establish a genuine dispute of material fact to defeat a motion for summary decision. *Alamo Trailer Sales, Inc. v. Howard Cty. Metro. Comm'n*, 243 Md. 666, 671 (1966). Only where the material facts are “conceded, undisputed, or uncontroverted” and the inferences to be drawn from those facts are “plain, definite, and undisputed” does their legal significance become a matter of law for summary determination. *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 139 (1970).

In considering a motion for summary decision, it is not my responsibility to decide any issue of fact or credibility but only to determine whether such issues exist. *See Eng'g Mgt. Servs., Inc. v. Md. State Highway Admin.*, 375 Md. 211, 226 (2003). Additionally, the purpose of the summary decision procedure is not to try the case or to decide the factual disputes, but to decide whether there is an issue of fact, which is sufficiently material to be tried. *See Goodwich v. Sinai Hosp. of Balt., Inc.*, 343 Md. 185, 205-06 (1996); *Coffey v. Derby Steel Co.*, 291 Md. 241, 247 (1981); *Berkey v. Delia*, 287 Md. 302, 304 (1980). As the Supreme Court observed, with respect to genuine disputes of *material* fact, “this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment . . .” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original).

The Court of Special Appeals has discussed what constitutes a “material fact,” the method of proving such facts, and the weight a judge ruling upon such a motion should give the information presented:

A material fact is a fact the resolution of which will somehow affect the outcome of the case. A dispute as to a fact ‘relating to grounds upon which the decision is not rested is not a dispute with respect to a *material* fact and such dispute does not prevent the entry of summary judgment.’ We have further opined that in order for there to be disputed facts sufficient to render summary judgment inappropriate there must be evidence on which the jury could reasonably find for the plaintiff.

. . . The trial court, in accordance with Maryland Rule 2-501(e), shall render summary judgment forthwith if the motion and response show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. The purpose of the summary judgment procedure is not to try the case or to decide factual disputes, but to decide whether there is an issue of fact that is sufficiently material to be tried. Thus, once the moving party has provided the court with sufficient grounds for summary judgment, [i]t is . . . incumbent upon the other party to demonstrate that there is indeed a genuine dispute as to a material fact. He does this *by producing factual assertions, under oath*, based on the personal knowledge of the one swearing out an affidavit . . . . Bald, unsupported statements or conclusions of law are insufficient.

*Tri-Towns Shopping Ctr., Inc. v. First Fed. Sav. Bank of W. Md.*, 114 Md. App. 63, 65-66 (1997)

(citations and quotations omitted) (emphasis in original). For the reasons articulated below, I grant the motion.

#### Positions of the Parties

The Local Board argues it is entitled to summary decision because the Appellant acknowledged that she received the November 9, 2021 Suspension Letter and did not submit a request for hearing until December 7, 2021, twenty-eight days after the Suspension Letter. The Education Article of the Maryland Code provides that before terminating a teacher, the Local Board must “send the individual a copy of the charges against the individual and give the individual an opportunity within 10 days to request: . . . [a] hearing before the [Local Board].” Md. Code Ann., Educ. § 6-202(a)(2)(i). The statute further provides that the Local Board shall hold a hearing if the Appellant requests a hearing within the ten-day period. Md. Code Ann.,

Educ. § 6-202(a)(3)(i). Further, Board Policy BLB, section III.B.4 states that “If a request for a hearing under Code Section 6-202(a)(3) is not filed within the time period set forth in subparagraph III.B. of these procedures, the Board shall act upon the CEO’s recommendation without a hearing.” (Motion, Ex. 4). The Local Board provided State Board decisions in which the State Board has repeatedly ruled that time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice. *See e.g., Scott v. Board of Prince George’s County*, 3 Op. MSBE 139 (1983).

The Appellant acknowledges that she received the November 9, 2021 Suspension Letter on November 13, 2021, and agrees she did not submit a request for hearing until December 7, 2021. The Appellant noted that her December 7, 2021 hearing request was filed before thirty days had expired. She argues I should not follow the MSDE’s prior decisions on timeliness for two reasons: first, that the Local Board included BLA Form 1 with the statement of charges, giving her conflicting information about when her request for a hearing was due and second, that the Appellant reasonably understood that the termination process was on hold while she looked into the possibility of retiring rather than being terminated. Neither of these issues raises a genuine dispute about a material fact.

#### Analysis

As to the Appellant’s first argument, the Local Board inadvertently included BLA Form 1 with the Suspension Letter and statement of charges. The Suspension Letter informed the Appellant of her right to request a hearing, pursuant to section 6-202 of the Education Article of the Maryland Code and stated that a request for a hearing must be submitted in ten days. The Suspension Letter never mentioned section 4-205 of the Education Article, nor did it mention a thirty-day deadline. The Suspension Letter attached a Statement of Charges, which detailed the basis for that Appellant’s termination and also cited section 6-202 of the Education Article of the

Maryland Code. The Statement of Charges did not mention section 4-205 of the Education Article, nor did it mention a thirty-day deadline.

The BLA Form 1 itself, attached by mistake to the Suspension Letter, does not mention section 4-205 of the Education Article and does not mention a thirty-day deadline. The BLA Form 1 asks an Appellant to fill out basic identifying information, date and nature of the action being appealed, what evidence will be presented, the remedy requested, whether an appellant will be represented by counsel, whether there is a request for oral argument and/or an evidentiary hearing, and a signature page.

The Suspension Letter did not reference BLA Form 1, include instructions for the BLA Form 1, or reference a Policy for BLA Form 1. The Appellant submitted as an exhibit a Policy document entitled "Procedures in Appeals and Hearings Under Section 4-205 of the Education Article," which can be found online. This Policy document indicates that an appeal must be filed within thirty days, in accordance with section 4-205(c)(3) of the Education Article of the Maryland Code. While this document was attached to the Appellant's Opposition, there is no evidence in the record to suggest the Appellant ever had this document before her. Instead, she states in her affidavit that she was advised by a BTU Field Representative that the BLA Form 1 was due to be returned within thirty days. She did not submit an affidavit from Ms. Sjoquist that she in fact gave this advice to the Appellant. But in any event, the Appellant does not argue that the Local Board gave her bad advice or misinformed her about the filing deadline; instead this advice came from her own representative. She argues only that that advice was caused by the Local Board's inadvertent inclusion of the BLA Form 1 with the Suspension Letter and statement of charges. Given the overwhelming evidence, detailed above, about the information provided to the Appellant about the ten-day deadline, the inadvertent inclusion of the BLA Form

1, which never provides a statutory citation or contrary deadline, does not raise a genuine dispute of a material fact with respect to this case.

The Appellant's second argument is that she reasonably understood that the termination process was on hold while she looked into the possibility of retiring rather than being terminated. To that end, the Appellant included in her affidavit that after her *Loudermill* hearing, Ms. Sjoquist informed the Appellant that the BCPS would consider allowing her to retire rather be terminated. The Appellant stated that after that hearing, she attempted to contact her retirement coordinator, but did not immediately receive a reply. The Appellant then stated that after she received the Suspension Letter, she told Ms. Sjoquist that she was interested in retiring but still needed information about her eligibility to do so. The Appellant stated that Ms. Sjoquist said she would speak to Mr. Grant. The Appellant asserts that based on this conversation with Ms. Sjoquist, the Appellant understood that the termination process was on hold.

There is nothing about this recitation of events that would lead a reasonable person to determine the termination process was on hold. The Appellant had appeared at a *Loudermill* hearing. Based on this hearing, the BCPS issued a Suspension Letter and informed the Appellant it was recommending termination to the Local Board. The Suspension Letter informed the Appellant she could contact the Office of Labor Relations & Negotiations with any questions. Yet the Appellant never contacted the Office of Labor Relations & Negotiations. There was nothing in writing to contradict that the termination was in the works. Again, the Appellant has failed to raise a genuine dispute of material fact.

The MSDE strictly construes its deadlines, which will not be overlooked except in "extraordinary circumstances such as fraud or lack of notice." *Cathy G. v. Montgomery County Board of Education*, MSDE Order 17-04 (2017). The Appellant cites *Wingfield v. Prince George's County Board of Education*, MSBE Op. No. 21-46 (2021), in which the MSDE found

that the time to file an appeal began to run when the appellant had actual knowledge of the actions that were the basis for the appeal. While that is an accurate recitation of the *Wingfield* holding, the facts of *Wingfield* are more enlightening – the appellant in *Wingfield* was appealing several actions taken by the Prince George’s County Board of Education in an emergency meeting held in a closed session. She was required to file her appeal within thirty days. The acts she complained of occurred at a December 16, 2020 meeting but she did not file her appeal until March 10, 2021, more than thirty days later. Before the MSDE, Wingfield explained that notice of the December 16, 2020 meeting was made only minutes before the meeting occurred, the actions were not publicly reported at the next local board meeting, and Wingfield only received minutes of the December 16, 2020 meeting on February 24, 2021. She filed her appeal within fifteen days of receiving those minutes. Under those circumstances, the MSDE considered February 24, 2021 the date Wingfield received actual notice.

Nothing in the Appellant’s exhibits or affidavits change the actual notice received by her in this case. She received the November 9, 2021 Suspension Letter on November 13, 2021. Even if a finder of fact were to find that her own representative provided her with bad advice, that does not create a genuine issue of material fact given the multiple sources of proper advice provided by the Suspension Letter, the Statement of Charges, and the availability of guidance within the BCPS that the Appellant did not avail herself of.

In *Luty v. Caroline County Board of Education*, 5 Op. MSBE 222 (1989), the MSDE determined that when a Board Chair recommended that the appellant request a rehearing before the Board, and she subsequently did so in writing, after her time to appeal had already expired, that the Board Chair’s recommendation reset the time within which the appeal had to appeal. Likewise, the Appellant argues that her own discovery that she would not be able to retire with full benefits should be considered to have reset the clock in the present case to request a hearing. But in *Luty* the

recommendation to request a rehearing came from the Board itself. Here, the action the Appellant alleges would reset the clock is her own discovery that she was ineligible to retire. That presupposes that her investigation into retiring somehow stayed the termination process. There is no evidence that her retirement investigation stayed the termination process and there is no genuine dispute that a reasonable person would have believed it was stayed.

I am bound by prior decisions by the MSDE on the issue of timeliness to the same extent the MSDE is bound by such decisions. *See* Md. Code Ann., State Gov't. § 10-214(b) (2021). As such, I must dismiss the Appellant's appeal as untimely.

### **CONCLUSION OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Appellant failed to timely request a hearing pursuant to the November 9, 2021 Suspension Letter and the Local Board properly rejected the Appellant's December 7, 2021 request for hearing as untimely. Md. Code. Ann., Educ. §6-202 (Supp. 2021); COMAR 28.02.01.12D.

### **PROPOSED ORDER**

I **ORDER** that the Local Board's Motion for Summary Decision is **GRANTED**;

I further **ORDER** that the Local Board's decision to reject the Appellant's hearing request as untimely be **AFFIRMED**; and

I further **ORDER** that the merits hearing currently scheduled for May 23, 2022 be **CANCELLED**.

May 2, 2022  
Date Order Mailed

*Deborah S. Richardson*

\_\_\_\_\_  
Deborah S. Richardson  
Administrative Law Judge

DSR/at  
#197894

## **NOTICE OF RIGHT TO FILE EXCEPTIONS**

A party adversely affected by this Proposed Decision has the right to file written exceptions within fifteen (15) days of the Proposed Decision; written responses to the exceptions may be filed within fifteen (15) days of the filing of exceptions. COMAR 13A.01.05.07F. Exceptions and responses shall be filed with the Maryland State Department of Education, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. The Office of Administrative Hearings is not a party to any review process.

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**MAMIE BENJAMIN**

**v.**

**BALTIMORE CITY BOARD OF  
SCHOOL COMMISSIONERS**

**\* BEFORE DEBORAH S. RICHARDSON,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: MSDE-BE-01-22-00864**

\* \* \* \* \*

**FILE EXHIBIT LIST**

The following exhibits were attached to the Appellant's January 5, 2022 Appeal:

- Ex. A - Letter from Jeremy Grant-Skinner to the Appellant, November 9, 2021; Statement of Charges, undated; BLA Form 1
- Ex. B - Procedures in Appeals and Hearings Under Section 4-205 of the Education Article, undated
- Ex. C - Email from Tenesha Moore to Ms. Heilman, December 8, 2021
- Ex. D - Letter from Christian Gant to Ms. Heilman, December 9, 2021

The following exhibits were attached to the Local Board's Motion:

- Ex. 1 - Statement of Charges, undated
- Ex. 2 - Notice of Termination of Employment, December 21, 2021; Letter from the Local Board to the Appellant, December 17, 2021; Human Capital Change Form, November 5, 2021; Letter from the Office of Employee Relations to the Appellant, October 12, 2021; Notice of Probable Cause of Termination of Employment, September 23, 2021; Reprimand, April 14, 2021; email exchange amongst school employees and the Appellant, dates ranging from January 19, 2021 to May 24, 2021
- Ex. 3 - Letter from Mr. Grant-Skinner to the Appellant, November 9, 2021
- Ex. 4 - BLB, Policy, Baltimore City Board of School Commissioners, Procedures in Hearings Requested Under § 6-202 of the Education Article (Certificated Personnel)
- Ex. 5 - Affidavit of Ms. Moore, January 19, 2022
- Ex. 6 - Email from Ms. Moore to Health Heilman and Mr. Gant, December 8, 2021

Ex. 7 - Email from Ms. Moore to Ms. Moore, December 8, 2021

Ex. 8 - Order Affirming Recommendation of the CEO to Dismiss the Appellant,  
December 14, 2021

The Appellant submitted the following exhibit with her Opposition:

Ex. 1 - Affidavit of Mamie Benjamin, March 21, 2022

The Local Board submitted the following exhibits with its Reply:

Ex. 1 - Affidavit of Gerry Grant, March 29, 2022

Ex. 2 - Email from Kim Williams to the Appellant, September 3, 2021