

JAMES D. MEYERS,

Appellant

v.

ANNE ARUNDEL COUNTY  
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-50

## OPINION

### INTRODUCTION

James D. Meyers, (Appellant) appeals the decision of the Anne Arundel County Board of Education (local board) upholding his suspension from his teaching position for three days without pay based on misconduct. We referred this case to the Office of Administrative Hearings (OAH) as required by COMAR 13A.01.05.07A(2).

On July 7, 2016, the Administrative Law Judge (ALJ) issued a proposed decision recommending that the State Board uphold the local board's suspension decision. The Appellant filed exceptions to the proposed decision and the local board responded. Oral argument before the State Board was held on December 5, 2016.

### FACTUAL BACKGROUND

Appellant is a certified and tenured teacher for Anne Arundel County Public Schools (AACPS). At the time of the incident at issue, he was teaching English, media production, and journalism at Arundel High School (Arundel). He had taught full-time with AACPS for ten years, preceded by two years of part-time teaching. (T.154).

On August 19, 2014, the Appellant entered the classroom of another teacher, Erin K. Lange, to access an adjacent control room where supplies were stored. Ms. Lange was in her classroom preparing for the upcoming school year where she was talking to Ms. Melanie Page, a new teacher assigned to Arundel. When the Appellant exited the control room, he approached Ms. Lange and Ms. Page and used profanity while speaking to them. Several days later, Ms. Lange mentioned the interaction with the Appellant to Lindsay Morgan, a Right Start Advisor. Ms. Morgan later relayed the information to the assistant principal, who in turn reported it to the principal, Sharon Stratton. Ms. Stratton ordered the Appellant to leave the building and initiated an investigation of the incident.

Ms. Stratton directed the assistant principal to get written statements regarding the incident from Ms. Lange and Ms. Page. In her written statement, Ms. Lange recounted the interaction as follows:

After letting himself into the control room he came into my classroom fully and asked if I had found my theater textbooks housed there. I told him I had but hadn't yet moved them out of

the control room and asked if they were in his way, to which he said yes and to “get [my] shit out.” He then started moving the boxes of books himself. He then interrupted us again to talk to me (I can’t recall what about) and looked at Melanie. She held out her hand and introduced herself to which Mr. Meyers said “what the f\*\*\* are you doing here?” Melanie told him she worked here and he said “No, what the f\*\*\* are you doing working here? Don’t you know you should only teach when you’re old like me, as a community service. She [indicating me] is stuck here but doesn’t even know she’s here because she’s f\*\*\*ing high. She’s so f\*\*\*ing high all the time, it’s the only way she gets by, she’s f\*\*\*ing stoned off her ass.” He continued to tell both Melanie and I why we shouldn’t be teachers and how only fools teach unless Melanie could find some “poor dumb rich f\*\*\*” to marry her. He then went into the control room . . . .

Ms. Lang’s statement also contained information about the Appellant’s use of profanity in other instances. Ms. Page explained the interaction in her written statement as follows:

Denny Meyers came into the room to talk about the theater class and give [Ms. Lange] textbooks. He looked at me and asked “who the f\*\*\* are you?” I introduced myself. He asked “What the \*\*\* are you doing here? How old are you?” I responded with 24. He told me I was crazy and I needed to go live my life and go out and party. He pointed to Erin and I don’t recall the exact words but mentioned she was so high she doesn’t even know where she is.

The case was forwarded to the AACPS Office of Investigations where Shelly L. Powell, an investigator, conducted the investigation. Ms. Powell interviewed four teachers, which included Ms. Lange, Ms. Page, Ms. Morgan, and Appellant’s co-teacher, Ms. Thorne; the Appellant; the principal; the assistant principal and two students. Ms. Powell had the written statements of Ms. Lange and Ms. Page. Ms. Powell concluded that the Appellant used inappropriate language and made defamatory comments about his peers, thereby creating an uncomfortable environment. Ms. Powell did not find sufficient evidence that the Appellant did or said anything to the students to make them uncomfortable. (Investigation Report).

By letter dated November 7, 2014, the Deputy Superintendent advised the Appellant of a pre-discipline conference to be held with Alex Szachnowicz, Chief Operating Officer acting as the Superintendent’s Designee, and Janice Haberlein, Acting Director of School Performance. The letter stated the following:

The purpose of this conference is to review the results of the investigation regarding allegations that you use inappropriate language in general conversation with co-workers, to include the word “f\*\*\*,” on a regular basis. You are also accused of making defamatory and improper remarks to your peers. Furthermore, your lack of physical boundaries and frequent touching with co-workers makes others uncomfortable.

(Liverman Letter). The pre-discipline conference took place on November 19, 2014.

By letter dated December 9, 2014, the Superintendent notified the Appellant that he was recommending a three day suspension without pay for misconduct in office. The Superintendent stated that Appellant had “used inappropriate language and made defamatory comments to [his] peers, creating an uncomfortable environment for them.” He stated that Appellant’s conduct was “inconsistent with, and contrary to, the standards set for Anne Arundel County Public Schools employees as established in the Employee Ethics section of the Anne Arundel County Public Schools Handbook.” (Arlotto Letter).

The Superintendent also noted the following admonishments that are contained in the Appellant’s employment record:

- September 2005 counseling letter for using inappropriate and/or offensive language when addressing students;
- May 2006 counseling letter for leaving class unattended and for failing to report to assigned duty daily and on time;
- November 2006 counseling letter for improper fundraising activities, lack of rigorous instructional techniques; and failure to maintain professionalism in the performance of duties, including conversations in the main office;
- April 2007 counseling letter for not abiding by special education documentation guidelines;
- May 2007 warning letter for failure to timely report to mandatory faculty training session and for lack of attention once there;
- August 2007 warning letter for improper communications with students and parents;
- April 2008 warning letter for failure to follow prescribed procedures for reporting an accident which caused a student physical harm;
- August 2008 warning letter for failure to report to work;
- April 2013 formal reprimand for making racially insensitive remarks to a student and for regularly speaking inappropriately and offensively to students. The reprimand directed the appellant to complete a cultural sensitivity training;
- October 2013 counseling letter for use of profane language in the presence of students; and
- March 2014 counseling letter for providing students with keys to unauthorized location within the school.

*Id.* Appellant’s employment history also includes an August 2012 summary of expectations, which included the expectation that the Appellant “use appropriate and culturally proficient language at all times.”<sup>1</sup> (Personnel Record).

Appellant requested a hearing before the local board pursuant to §6-202 of the Education Article. (Wright Letter, 12/9/14). The matter was assigned to Hearing Examiner Barbara Taylor, Esq. Hearing Examiner Taylor conducted an evidentiary hearing on April 30, 2015. At the hearing, Ms. Stratton, Ms. Powell, and Mr. Szachnowicz testified on behalf of the

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<sup>1</sup> We note here that the school system conceded that counseling letters are not disciplinary in nature and are used by the school system only to advise employees of expectations. (T. 9). This is in contrast to warning letters and reprimands which are part of the progressive discipline process.

Superintendent. Appellant was represented by counsel and testified on his own behalf. No other witnesses were called.

On July 17, 2015, Ms. Taylor issued her Report and Recommendation, in which she granted in part and denied in part the Appellant's appeal. She recommended that (1) the Superintendent's finding of misconduct based on defamatory comments be reversed; (2) that the Superintendent's finding of misconduct for inappropriate language be affirmed; and (3) that in the scheme of progressive discipline, the Superintendent reconsider the penalty to be imposed.

The local board heard oral argument on November 4, 2015. On November 18, 2015, the local board adopted Hearing Examiner Taylor's recommendations as to the misconduct and upheld only a finding that the Appellant had engaged in misconduct for use of inappropriate language. The local board found the three day suspension without pay to be fair and reasonable, and supported by the record.

The Appellant timely appealed to the State Board, which referred the matter to the Office of Administrative Hearings. On April 11, 2016, the ALJ denied the local board's motion for summary affirmance. On April 12, 2016, the ALJ conducted a hearing during which the parties relied on the testimony of the witnesses and documentary evidence presented at the evidentiary hearing before Hearing Examiner Taylor.

On July 7, 2016, the ALJ issued a proposed decision recommending that the State Board uphold the local board's suspension decision based on misconduct. The ALJ concluded that (1) the written statements of Ms. Lange and Ms. Page were competent, reliable and probative, and, thus, admissible as evidence in the case despite the hearsay nature of statements; (2) Appellant's use of the word "f\*\*\*" twice when addressing Ms. Page on August 19, 2014 constituted misconduct; and (3) concepts of progressive discipline were considered and a three day suspension without pay was an appropriate sanction.

Appellant filed exceptions to the proposed decision and the local board responded. Oral argument was held on December 5, 2016.

### STANDARD OF REVIEW

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

The State Board referred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify or remand the ALJ's proposed decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications, or amendments to the proposed decision. *See* Md. Code Ann., State Gov't §10-216.

## LEGAL ANALYSIS

Appellant raises several exceptions to the ALJ's proposed decision which we shall address in turn.

### *De Novo Standard of Review*

This is an appeal of a teacher suspension decision of the local board which the State Board reviews *de novo*. COMAR 13A.01.05.05F(1). It is not entirely clear from the exceptions what issue the Appellant seeks to raise, if any, regarding the standard of review. (Exceptions ¶¶ 1 & 2). Nonetheless, we will address *de novo* review generally as it pertains to this type of case. As we explained in *Sullivan v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-51 (2014), *de novo* review in an appeal before the State Board does not mean that an entirely new record must be created before the ALJ. Rather, it means that the State Board gives no deference to the factual or legal conclusions reached by the local board. *Id.* Instead, the Board exercises its independent judgment on the record before it in determining whether to sustain the suspension. COMAR 13A.01.05.05F(3).

In this case, the ALJ correctly stated the *de novo* nature of the appeal and the standard of review as follows:

The standard of review for certificated employee suspension actions is a *de novo* review by the State Board. COMAR 13A.01.05.05F(1). The Local Board has the burden of production and persuasion in this case; the standard of proof is by a preponderance of the evidence. COMAR 13A.01.05.05F(3). The State Board shall exercise its independent judgment on the record before it in determining whether to sustain the suspension and may, in its discretion, modify a penalty imposed. COMAR 13A.01.05.05F(2) & (4).

### *Reliance on Hearsay*

The Superintendent did not call Ms. Lange or Ms. Page as witnesses at the local board hearing and they did not testify about the incident with the Appellant. Rather, the Superintendent introduced the teachers' written statements as evidence of Appellant's conduct. The ALJ relied upon these statements in reaching his recommendation in the Proposed Decision. The Appellant maintains that the ALJ's reliance on the written statements was improper because the statements are hearsay, meaning that they are statements made outside of the hearing that were introduced as evidence to prove the truth of the matters asserted therein.

It is well settled that the rules of evidence are generally relaxed in administrative proceedings. *Travers v. Baltimore Police Dep't*, 115 Md. App. 395, 408 (1996). Thus, evidence, including hearsay, that may be inadmissible in a judicial proceeding, is not per se inadmissible in an administrative one. *Id.* See also Md. Code Ann., State Gov't §10-213 and COMAR 28.02.01 ("Evidence may not be excluded solely on the basis that it is hearsay."). The State Board has followed this approach. See, e.g. *Crosier v. Prince George's County Bd. of Educ.*, MSBE Op. No 01-01 (2001); *Farver v. Carroll County Bd. of Educ.*, MSBE Op. No. 99-42 (1999). To be admissible, however, the hearsay must be credible and probative. *Travers* at 412. If the hearsay is found to be credible and of sufficient probative force, it may even form the

sole basis for the agency's decision. *Redding v. Bd. of County Comm'rs for Prince George's County*, 263 Md. 94, 110-111 (1971).

The Appellant likens this case to *Kade v. Charles H. Hickey School*, 80 Md. App. 721 (1989), for the notion that the ALJ's assessment about the admissibility of the evidence demonstrated a failure to "observe the basic rules of fundamental fairness as to parties appearing before [him]." In *Kade*, a State agency employee was suspended based upon the written statements of his co-workers and students at the school. The hearing officer admitted the statements of two State agency employees who witnessed the appellant yell and use profanity. The appellant testified that one of the witnesses was the first aggressor, that he did not use profane language, and that the second witness was not within earshot of the conversation and, thus, could not have knowledge of the incident.

The *Kade* Court found that there was no indication that the hearsay evidence was reliable, credible or competent. It noted that the employee statements were not under oath and did not reflect how they were obtained. It further noted that the student statements were not sworn or dated, did not give any indication of the circumstances under which they were given, and that there was no evidence of the age of the students or that they were competent witnesses to the incident. *Id.* at 727-728.

This case is distinguishable from *Kade*. As explained by the ALJ:

Here, the Appellant's reliance on *Kade* is misplaced. Ms. Powell testified at length before the Hearing Examiner as to how statements from Ms. Lange and Ms. Page were obtained, and she was subject to cross-examination. The Appellant challenged Ms. Lange's motives, but had no similar challenge to Ms. Page's motives as she was a newly-hired teacher whose statements were limited to the specific event of her first encounter with the Appellant. Her version and Ms. Lange's version of what the Appellant said and when he said it are consistent. The age, experience, and position of both Ms. Lange and Ms. Page are part of the record, and their handwritten statements are dated and signed. Importantly, the Appellant's version of events is not "diametrically opposed" to theirs, as was the case in *Kade*. Instead, the Appellant concedes that he may have said "f\*\*\*\*" but does not remember how many times, that he may have said it once or twice, but more than that would be an exaggeration.

(Proposed Decision at 11-12). The ALJ further explained that the statements are the type of evidence "that reasonable and prudent individuals commonly accept in the conduct of their affairs." *Id.* In addition, Hearing Examiner Taylor noted that no evidence was presented to suggest that Ms. Lange and Ms. Page were untrustworthy, and, unlike *Kade*, the evidence in the case also consisted of Ms. Powell's investigation report and findings, in which Ms. Powell found the verbal recounting of the events by Ms. Lange and Ms. Page to be essentially the same as their written statements. (Hearing Examiner Report at 12-13).

Although the Appellant disagrees with the ALJ's assessment of competency and reliability of the statements, we do not. The issue here is not whether or not the Superintendent could have called Ms. Page and Ms. Lange as witnesses. Rather, given that they did not testify,

are their statements competent and reliable. In our view, for the reasons stated by the ALJ, there was sufficient basis to rely on the statements.

### *Misconduct in Office*

Appellant maintains that the ALJ erred in finding that the Appellant engaged in misconduct by using profanity during his exchange with Ms. Page and Ms. Lange.

As the ALJ pointed out, what constitutes misconduct in office is not set forth in the Education Article or State Board regulation. In prior cases, we have looked to several court decisions to guide us in determining the parameters of misconduct. *See Gwin v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 12-19 (2012); *McSwain v. Howard County Bd. of Educ.*, MSBE Op. No. 09-07 (2009). We do so again here.

In *Resetar v. State Bd. of Educ.*, 284 Md. 537, 560-561 (1979), the Court of Appeals, interpreted the term “misconduct,” as used in the educational arena, as follows:

The word is sufficiently comprehensive to include misfeasance as well as malfeasance, and as applied to professional people it includes unprofessional acts even though such acts are not inherently wrongful. Whether a particular course of conduct will be regarded as misconduct is to be determined from the nature of the conduct and not from its consequences.

The Court also noted that the teacher’s conduct must bear on the teacher’s fitness to teach in order to constitute misconduct. *Resetar*, 284 Md. 561. *See also Kinsey v. Montgomery County Bd. of Educ.*, 5 Op. MSBE 287, 288 (1989) (To constitute “misconduct in office” a teacher must engage in unprofessional conduct “which bears upon a teacher’s fitness to teach” such that it “undermines his future classroom performance and overall impact on his students.”).

In *Public Service Commission v. Wilson*, 389 Md. 27 (2005), the Court of Appeals concluded that:

The term “misconduct,” . . . means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, or a course of wrongful conduct committed by an employee, within the scope of his employment relationship, during hours of employment, or on the employer’s premises.

*Id.* at 77, citing *Department of Labor, Licensing, and Regulations v. Hider*, 349 Md. 85 (1988). The Court also made clear that the person’s conduct need not be an intentional wrongdoing. *Id.*, 389 Md. at 76-77.

With this in mind, we turn to the record in this case to determine whether the ALJ properly concluded that the local board proved misconduct by a preponderance of the evidence.

There are various expectations for employees set by AACPS that are contained in the AACPS Employee Handbook (Handbook). The Employee Ethics section of the Handbook provides that “[a]ll employees will treat colleagues in a dignified manner and ensure equitable treatment for all employees.” (Handbook Excerpt). The Employee Responsibilities section of the Handbook provides, in relevant part, that “[p]roper and respectful language should be used in

the workplace at all times, and everyday conduct should convey messages of respect, honesty, courtesy, kindness, and consideration.” *Id.* Employees are expected to comply with the Handbook provisions.

The principal, Ms. Stratton, also set certain expectations of conduct and behavior. She testified that she spoke with the Appellant on many occasions about communicating properly with students and employees, and also that she spoke with him about maintaining professionalism at all times, including in his conversations. (T.19, 24). In addition, she had previously issued to the Appellant a November 2006 counseling letter about maintaining professionalism in the performance of his duties, including in conversations in the main office, and a written document in August 2012, advising him to “use appropriate and culturally proficient language at all times.” (Personnel Record).

The ALJ found that the Appellant used the word “f\*\*\*” twice when addressing Ms. Page on August 19, 2014. (Proposed Decision at 12). He further found that use of such language was a violation of the AACPS Employee Handbook and the standards expected of teachers. (*Id.* at 15). In concluding that the Appellant had committed misconduct, the ALJ stated,

The record suggests in ample supply that the Appellant’s supervisors tried repeatedly to stem the Appellant’s use of coarse language and to communicate to him that such language was unacceptable and unprofessional. His use of coarse language, despite repeated attempts to correct it, was a deliberate failure to abide by the standards of professionalism expected by his superiors.

(Proposed Decision at 14). Based on the totality of the evidence in the record, including the written statements of Ms. Page and Ms. Lange, we do not disagree with the ALJ’s conclusion that the Appellant committed misconduct. We note further that the Appellant’s use of profanity bears on his fitness to teach because it undermines the administration’s confidence that the Appellant has proper judgment to appropriately communicate with others in the school environment. The Appellant could potentially speak in this manner in the presence of students or be overheard by them without his knowledge.

Appellant maintains that school staff, including Ms. Lange, regularly spoke to him using profanity. He also claims that neither Ms. Lange nor Ms. Page were offended by his statements. Such claims do not persuade us that the Appellant did not engage in misconduct on August 19, 2014. It is the employer’s expectation of conduct that is at issue. The evidence shows that the expectation was that the Appellant use appropriate communications at all times and treat colleagues in a dignified manner.

#### *Progressive Discipline*

The Appellant argues that the penalty of a three day suspension was too harsh and was not consistent with progressive discipline. He suggests instead that a verbal warning, warning letter, or reprimand would have been more appropriate. The Appellant points out that the counseling letters contained in his personnel record are not disciplinary in nature, a fact conceded to by the school system. Hearing Examiner Taylor noted that Appellant’s disciplinary history contained no verbal warnings, warning letters, or reprimands regarding use of inappropriate and/or offensive language in interactions with colleagues, and recommended that

the local board reconsider the severity of the penalty. (Hearing Examiner Report at 13). The Appellant also points out that the superintendent's initial recommendation of a three day suspension was based on two charges (inappropriate language and defamatory comments), yet only one charge was sustained, therefore a lesser penalty should have been imposed.

The State Board's broad powers include the power to modify a penalty imposed on school system personnel by a local board. COMAR 13A.01.05.05F(4); *Board of Educ. of Howard County v. McCrumb*, 52 Ms. App. 507, 514 (1982). It is within this Board's discretion to decide the appropriate penalty to impose here for misconduct.

The record in this case is replete with instances in which the Appellant was put on notice that he engaged in inappropriate communications in the school setting, including use of profanity. Even though the counseling letters were not disciplinary in nature, they still placed the Appellant on notice of his improper behavior and counseled against it. The Appellant had also received one prior warning letter and a reprimand for related behavior, which are disciplinary in nature. Although the Appellant claims that the prior admonishments were for use of inappropriate language in front of students and not colleagues, it is all related to the manner in which the Appellant communicates with others in the school setting. Moreover, Ms. Stratton had previously advised the Appellant in writing to "use appropriate and culturally proficient language at all times" and to maintain professionalism in discharging his responsibilities, including in his conversations. (*See Personnel Record*). She also spoke to the Appellant on numerous occasions about his use of inappropriate language with both school personnel and students. (T. 19, 24).

As the ALJ stated:

The Appellant's suggestion that progressive discipline was not used here is absurd. He suggests that he was somehow unaware of the potential consequences of his conduct because no one told him not to use profanity in the presence of adults. Again he ignores that past, and the great many times his supervisors have communicated their expectations to him that he not use profanity.

(Proposed Decision at 15). Given this teacher's history and the facts in this case, we find that a three day suspension without pay was a minimal penalty and certainly not an unreasonable one.

## CONCLUSION

For all of the foregoing reasons, we adopt the ALJ's proposed decision. We find that the Appellant committed misconduct based on his use of inappropriate language with Ms. Lange and Ms. Page, and that a three day suspension without pay was not unreasonable.

Signatures on File:

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Andrew R. Smarick  
President

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Chester E. Finn, Jr.  
Vice President

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Michele Jenkins Guyton

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Laurie Halverson

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Stephanie R. Iszard

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Rose Maria Li

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Barbara J. Shreeve

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Madhu Sidhu

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Guffrie M. Smith, Jr.

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Laura Weeldreyer

Absent: Jannette O'Neill González

December 5, 2016

**ANNE ARUNDEL COUNTY  
BOARD OF EDUCATION**

**v.**

**JAMES D. MEYERS,  
APPELLANT**

**\* BEFORE MICHAEL R. OSBORN,  
\* ADMINISTRATIVE LAW JUDGE,  
\* THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH CASE NO.: MSDE-BE-01-15-41738**

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDATION  
RIGHT TO FILE EXCEPTIONS

**STATEMENT OF THE CASE**

On December 9, 2014, the Superintendent (Superintendent) of the Anne Arundel County Public Schools (AACPS) recommended to the Anne Arundel County Board of Education (Local Board) that James D. Meyers (Appellant) be suspended without pay, effective January 5, 2015 through January 7, 2015, for misconduct in office. The Superintendent advised the Appellant that the basis for his recommendation was: 1) that the Appellant had used inappropriate language and made defamatory comments to peers that created an uncomfortable work environment for them; and 2) that the Appellant's conduct was inconsistent with the standards set forth in the Employee Ethics Section of the AACPS' Employee Handbook.

On December 9, 2014, the Appellant requested a hearing before the Local Board. Md. Code Ann., Educ. § 6-202 (Supp. 2015).<sup>1</sup> Hearing Examiner Barbara Taylor, Esquire (Hearing

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<sup>1</sup> Section 6-202 of the Education Article in effect at the time the Appellant requested a hearing before the Board was the 2014 version, which is not different in relevant part than the version in the 2015 Supplement.

Examiner), conducted an evidentiary hearing on April 30, 2015. By letter dated July 17, 2015, the Hearing Examiner issued her Report and Recommendations, recommending: 1) that the Superintendent's finding of misconduct based on defamatory comments be reversed; 2) that the Superintendent's finding of misconduct for inappropriate language be affirmed; and, 3) that in the scheme of progressive discipline, the Superintendent reconsider the penalty to be imposed. On July 31, 2015, the Appellant requested oral argument before the Local Board.

On November 4, 2015, the Local Board heard oral arguments. On November 18, 2015, the Local Board adopted the recommendations of the Hearing Examiner as to the misconduct and upheld only a finding that the Appellant had engaged in misconduct for inappropriate language. The Local Board found a three-day suspension without pay fair and reasonable, and supported by the record. The Local Board ordered the decision of the Superintendent, as modified by the Hearing Examiner, upheld, and affirmed the disciplinary sanction of the Superintendent.

On December 9, 2015, the Appellant appealed to the Maryland State Board of Education (State Board). Md. Code Ann., Educ. § 6-202(a)(4). He asserted in his appeal that the Superintendent had failed to satisfy due process concerns because the Superintendent's case relied entirely on hearsay, and also asserted that the Local Board failed to employ standards of progressive discipline by imposing a three-day suspension.

On January 5, 2016, the State Board forwarded the appeal to the Office of Administrative Hearings (OAH) for the scheduling of a hearing.

On February 4, 2016, I conducted a telephone prehearing conference and, on February 4, 2016, I issued a Prehearing Conference Report and Order (Prehearing Order). The Prehearing Order provided, among other things, that the Local Board would file an anticipated Motion for Summary Affirmance (Motion) by March 7, 2016, and that the Appellant would file his Response by March 22, 2016. The parties timely filed their Motion and Response.

On April 11, 2016, I issued a ruling denying the Local Board's Motion.

On April 12, 2016, I conducted the hearing. B. Darren Burns, Esq., represented the Local Board. Kristy K. Anderson, Esq., represented the Appellant. Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act (APA), the procedural regulations for appeals to the State Board, and the OAH's Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); Code of Maryland Regulations (COMAR) 13A.01.05; and COMAR 28.02.01.

### **ISSUE**

Whether the Local Board's three-day suspension of the Appellant for misconduct in office for using inappropriate language was proper.

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

At the hearing before me, the parties relied on the documentary evidence presented before the Local Board, and neither party offered additional documents for admission as evidence.<sup>2</sup> The documentary evidence before the Local Board included:

- A. Superintendent, Anne Arundel County Public Schools letter to Appellant, December 9, 2014
- B. Keith Wright, Maryland State Education Association, letter to Stacy L. Korbelak, President, Anne Arundel County Public Schools, December 9, 2014
- C. Recommendation of Hearing Examiner, July 17, 2015, with attached Transcript of Proceedings before the Hearing Examiner, April 30, 2015. The Transcript of Proceedings before the Hearing Examiner included the following exhibits offered by the Local Board:
  - 1. Counseling letter, September 20, 2005
  - 2. Counseling letter, November 2, 2006
  - 3. Counseling letter, August 29, 2007

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<sup>2</sup> COMAR 13A.01.05.04 provides: "C. Additional Evidence. If an appellant asks to present additional evidence on the issues in an appeal, and it is shown to the satisfaction of the State Board that the additional evidence is material and there were good reasons for the failure to offer the evidence in the proceedings before the local board, the State Board may: (1) Remand the appeal to the local board for the limited purpose of receiving the additional evidence upon conditions the State Board considers proper; or (2) Receive the additional evidence."

4. Counseling letter, August 21, 2102
5. Counseling letter, October 29, 2013
6. Not admitted by the Hearing Examiner
7. Investigative Report of Shelley Powell, November 3, 2014, with the following attachments:
  - Statement of Lindsay Morgan, August 27, 2014
  - Statement of Erin K. Lange, August 27, 2014
  - Statement of Melanie Page, August 27, 2014
  - Excerpt from Anne Arundel School Employees Handbook
  - Deputy Superintendent, Anne Arundel County Public Schools letter to Appellant, November 7, 2014
  - Superintendent, Anne Arundel County Public Schools letter to Appellant, December 9, 2014
  - Appellant letter to file, November 23, 2006
8. Excerpts from Employee Handbook
9. Notice of pre-discipline conference, November 7, 2014
10. Notice of Suspension, December 9, 2014

The Transcript of Proceedings before the Hearing Examiner included one exhibit offered by the Appellant, as follows:

1. Appellant's letter to Supervisor of Investigations, November 23, 2006
- D. Kristy K. Anderson, Esq., letter to Local Board, July 31, 2015
- E. M.E. Connolly, Executive Assistant to Local Board, letter to Kristy K. Anderson, November 19, 2015
- F. Opinion and Order of Local Board, November 18, 2015
- G. Transcript of Proceedings before the Local Board, November 4, 2015, which consisted of arguments of counsel for the parties, only.

### Testimony

The Local Board did not call any witnesses at the hearing before the OAH, electing to submit on the record (including exhibits) as developed before the Hearing Examiner. Before the Hearing Examiner, the Local Board offered the testimony of: Sharon Stratton, Principal, Arundel High School; Shelley Powell, Investigator; and Alex Szachnowicz, Chief Operating Officer, AACPS.

The Appellant did not testify at the hearing before the OAH or offer the testimony of any other witnesses. He testified before the Hearing Examiner.

## PROPOSED FINDINGS OF FACT

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

1. The Appellant is a certificated teacher of the Local Board. In August 2014, he had been a full-time teacher with the AACPS for ten years, preceded by two years as a part-time teacher.

2. At all relevant times to this matter, the Appellant was a teacher at Arundel High School<sup>3</sup> where he taught English, media production, and journalism.

3. On August 19, 2014, Erin K. Lange, a teacher at Arundel High School, was in her classroom preparing for the upcoming academic year, which began the following week. Ms. Lange was speaking to Melanie Page, a new teacher hired by the AACPS and assigned to Arundel High School. Ms. Lange was offering suggestions to Ms. Page regarding Ms. Page's first year as a full-time teacher.

4. On August 19, 2014, the Appellant entered Ms. Lange's classroom in order to access a control room adjacent Ms. Lange's classroom, where supplies were stored. After leaving the control room the Appellant approached Ms. Lange and Ms. Page. The Appellant asked Ms. Page "who the fuck are you?" Ms. Page extended her hand in greeting, to which the Appellant responded "what the fuck are you doing here?"

5. On December 9, 2014, the Superintendent notified the Appellant of his recommendation that the Appellant be disciplined. The Superintendent advised the Appellant:

This letter is to inform you that in accordance with the provisions of Section 6-202 of the Education Article, you are hereby recommended to the Board of Education for Anne Arundel County for suspension without pay for a period of three (3) days effective January 5, 2015, through and including January 7, 2015, for misconduct in office.

The charge forming the basis of the suspension is your misconduct. Specifically, you used inappropriate language and defamatory comments to your peers, creating an uncomfortable environment for them. Your professional conduct is inconsistent with, and contrary to, the standards set for Anne Arundel County Public Schools

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<sup>3</sup> The Appellant now teaches at Southern High School.

employees as established in the Employee Ethics section of the Anne Arundel County Public Schools Handbook.

6. The Employee Ethics section of the AACPS Employee Handbook provides, in relevant part:

## II. Ethical Conduct toward Colleagues

All employees will treat colleagues in a dignified and just manner and will ensure equitable treatment of all employees.<sup>4</sup>

7. In September 2005, the Appellant was counseled in writing for using inappropriate and offensive language toward students. In August 2007, the Appellant was counseled for using inappropriate and offense language toward students. In each instance of written counseling, the Local Board warned the Appellant that repeated instances of inappropriate language could result in discipline.

8. In August 2012, the Appellant was counseled in writing to use appropriate and culturally proficient language at all times.

9. In October 2013, the Appellant was counseled in writing to avoid the use of profane language in the presence of students.

10. The Principal and Assistant Principal at Arundel High School have conducted numerous informal counseling sessions with the Appellant over a course of years regarding his use of profanity and have, in each informal counseling session, instructed the Appellant to refrain from the use of such language at any time.

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<sup>4</sup> The Employee Ethics section of the AACPS Employee Handbook is not the only reference to the standard of comportment expected of an AACPS teacher. The Employee Responsibilities section of the AACPS Employee Handbook provides, in relevant part:

Be Courteous. . . Proper and respectful language should be used in the workplace at all times, and everyday conduct should convey messages of respect, honesty, courtesy, kindness, and consideration. Likewise, employee behavior should reflect a commitment to the Board's adopted credo for human relations which calls or individuals to "speak to each other, listen to each other, hear each other, value each other's right to form opinions, and respect each other regardless of disability or socioeconomic background."

See <http://www.aacps.org/humanresources/handbook.pdf> (last revised in 2016). This provision clearly instructs all AACPS employees to use proper language when addressing either students or other adults.

## DISCUSSION

### Authority to Impose Discipline and Appeal Rights

On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher. Md. Code. Ann., Educ. § 6-202(a)(1). If the superintendent makes such a recommendation, 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. Md. Code Ann., Educ.

§ 6-202(a)(3)(ii). The individual may appeal the decision of the county board to the State Board. Md. Code Ann., Educ. § 6-202(a)(4).

The Local Board imposed the suspension for misconduct in office under section 6-202(a) of the Education Article which provides, in full:

(a)(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;<sup>5</sup> or
- (v) Willful neglect of duty.

Md. Code Ann., Educ. § 6-202(a)(i)-(v).

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<sup>5</sup> In *Board of Education of Charles County v. Crawford*, 284 Md. 245, 259 (1979), the Court of Appeals, in an effort to define teacher incompetence, applied existing employment contract law, and said: "Implicit in any employment contract is an implied promise on the part of an employee to perform his duties in a workmanlike manner. In the case of a teacher this must mean in accordance with established professional standards." In *Board of School Commissioners of Baltimore City v. James*, 96 Md. App. 401, 438-9 (1993), the Court acknowledged that determining teacher incompetence was "necessarily qualitative in nature" and, quoting *Clark v. Whiting*, 607 F. 2d 634, 639 (4<sup>th</sup> Cir. 1979) stated, "a teacher's competence and qualifications . . . are by their very nature matters calling for highly subjective determinations, determinations which do not lend themselves to precise qualifications and are not susceptible to mechanical measurement or the use of standardized tests."

### Standard of Review

The standard of review for certificated employee suspension actions is a *de novo* review by the State Board.<sup>6</sup> COMAR 13A.01.05.05F(1). The Local Board has the burdens of production and persuasion in this case; the standard of proof is by a preponderance of the evidence. COMAR 13A.01.05.05F(3). The State Board shall exercise its independent judgment on the record before it in determining whether to sustain the suspension and may, in its discretion, modify a penalty imposed. COMAR 13A.01.05.05F(2) and (4).

### Use of Hearsay Evidence to Support Factual Findings

The Appellant allegedly used unprofessional language on August 19, 2014, in the presence of Erin Lange, a returning teacher, and Melanie Page, a new teacher. Neither Ms. Lange nor Ms. Page reported the Appellant's language to anyone.

Several days later, Ms. Lange conversed with Lindsay Morgan, a Right Start advisor, during which Ms. Lange told Ms. Morgan what the Appellant said. Ms. Morgan later told April Rischert, Assistant Principal, what Ms. Lange told her about what the Appellant said. Ms. Rischert then relayed the story to Sharon Stratton, Principal, regarding the Appellant's statements to Ms. Lange and Ms. Page. Ms. Stratton immediately ordered the Appellant from the building and ordered an investigation. She also instructed Ms. Rischert to obtain written statements from Ms. Lange and Ms. Page.

Shelley L. Powell, Investigator, conducted an investigation, including interviews with Ms. Lange, Ms. Page, and the Appellant. In her report, she included the written statements from Ms. Lange and Ms. Page. Ms. Lange's statement was quite lengthy and included allegations beyond the specifics of the incident of August 19, 2014, which included her observations that the

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<sup>6</sup> I addressed the meaning of *de novo* review at length in my ruling denying the Local Board's Motion for Summary Affirmance, and will not repeat that discussion here.

Appellant lacked respect for personal space, both hers and of other teachers. She also complained of inappropriate touching, and how the Appellant made her feel uncomfortable. Ms. Page, on the other hand, submitted a brief statement that described in specific detail the language the Appellant used when he addressed her on August 19, 2014. This handwritten statement was consistent with that of Ms. Lange as to the specific language used by the Appellant. When interviewed, the Appellant could not recall what specific language he used on August 19, 2014.

The Superintendent relied on Ms. Powell's investigation, and the handwritten statements of Ms. Lange and Ms. Page, in determining that the Appellant should be disciplined. When the Appellant appealed, the Local Board directed a hearing before the Hearing Examiner. Before the Hearing Examiner, the Local Board did not call either Ms. Lange or Ms. Page as witnesses. The Appellant did not call them as witnesses either and did not request the OAH to issue subpoenas for the attendance of Ms. Lange or Ms. Page at the April 12, 2016 hearing.<sup>7</sup> At the OAH hearing, the Appellant correctly pointed out that the burden of proof is on the Local Board, not him.

The Appellant challenged the use of the interviews and written statements of Ms. Lange and Ms. Page before the Hearing Examiner and before the OAH as a violation of his right to due process, and challenged the statements of Local Board's witnesses as unreliable. He cites *Kade v. Charles H. Hickey School*, 80 Md. App. 721 (1989) in support of his position.

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<sup>7</sup> COMAR 13A.01.05.07 provides:

C. Additional Testimony.

(1) Additional testimony or documentary evidence may be introduced by either party but evidence that is unduly repetitious of that already contained in the record may be excluded by an administrative law judge.

(2) Notwithstanding §C(1) of this regulation, the administrative law judge may permit repetitious testimony if credibility is an issue.

Section 10-213 of the APA governs admission of evidence in administrative proceedings.

It provides, in relevant part:

(a)(1) Each party in a contested case shall offer all of the evidence that the party wishes to have made part of the record.

(2) If the agency has any evidence that the agency wishes to use in adjudicating the contested case, the agency shall make the evidence part of the record.

(b) The presiding officer may admit probative evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs and give probative effect to that evidence.

(c) Evidence may not be excluded solely on the basis that it is hearsay.

(d) The presiding officer may exclude evidence that is:

- (1) incompetent;
- (2) irrelevant;
- (3) immaterial; or
- (4) unduly repetitious.

Md. Code Ann., State Gov't § 10-213 (2014).

In *Kade*, the Court addressed the propriety of the use of written statements by two employees and several students at a Juvenile Services Administration facility that led to the Appellant's three-day suspension, and addressed whether the evidence met the substantial evidence test. The *Kade* Court noted that none of the statements were sworn and none reflected the circumstances under which they were prepared. None of the students' statements were dated, and none provided any information about the age of the student providing the statement. 80 Md. App. at 724. The *Kade* Court recognized that hearsay is admissible in an administrative proceeding and, if found to be credible and probative, it may be the sole basis for a decision of an administrative body. *Id.* at 725, citing *Redding v. Bd. of County Comm'rs*, 263 Md. 94, 110-11, *cert. denied* 406 U.S. 923 (1972). The hearsay must be competent and have probative force. *Id.* Hearsay evidence may be used as the basis of an administrative decision as long as evidentiary rules are not applied in an arbitrary or oppressive manner that deprives a party of his

right to a fair hearing. Basic rules of fairness must be observed. *Id.* In *Kade*, the court observed that:

[c]redibility was critical in making a determination of whether the appellant was guilty of misconduct on the evening of July 23, 1987. Appellant's version of what occurred that evening was diametrically opposed to the version set forth in the written statements upon which DOP<sup>8</sup> based its decision. Appellant testified that McCluney became aloud and belligerent with him, that Redd was not within earshot, and that the students were asleep.

*Id.* at 727.

In addition to addressing the specific evidence used by the DOP in Mr. Kade's case, the Court compared the evidence in his case to other cases in which hearsay evidence was found to be sufficient to warrant a conclusion an agency decision was based on substantial evidence. The Court noted that corroboration of the information contained in an out-of-court statement may be one significant key in determining the hearsay's value, as well as whether there was someone who could be examined as to when, where, and how the hearsay statements were made. *Id.* at 728. Given the lack of internal corroboration contained in the hearsay statements, the *Kade* Court concluded that the hearing officer had no basis by which to assess the credibility of the witnesses who made the out-of-court statements and that, as a result, the disciplinary decision was not supported by substantial evidence. *Id.* at 728.

Here, the Appellant's reliance on *Kade* is misplaced. Ms. Powell testified at length before the Hearing Examiner as to how statements from Ms. Lange and Ms. Page were obtained, and she was subject to cross-examination. The Appellant challenged Ms. Lange's motives, but had no similar challenge to Ms. Page's motives as she was a newly-hired teacher whose statements were limited to the specific event of her first encounter with the Appellant. Her version and Ms. Lange's version of what the Appellant said and when he said it are consistent.

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<sup>8</sup> In 1989, the Department of Personnel.

The age, experience, and position of both Ms. Lange and Ms. Page are part of the record, and their handwritten statements are dated and signed. Importantly, the Appellant's version of events is not "diametrically opposed" to theirs, as was the case in *Kade*. Instead, the Appellant concedes he may have said "fuck" but does not remember how many times, that he may have said it once or twice, but more than that would be an exaggeration. See Hearing Examiner transcript, at p. 189.

I find the statements of Ms. Lange and Ms. Page to be competent and reliable, and that they are the type of evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs and I give probative effect to that evidence. Their age and qualifications were known to the Superintendent and the Local Board, and the person who interviewed them, Ms. Powell, was subject to examination as to when and how their statements were obtained. The Appellant's version of events was not diametrically opposed to theirs. Accordingly, it is upon the written statements of Ms. Lange and Ms. Page, and the statements they made to Ms. Powell during her investigation that I find that the Appellant used the word "fuck" twice when addressing Ms. Page on August 19, 2014.

#### Misconduct in Office

Neither the Education Article nor regulations in COMAR Title 13A define "misconduct in office." Thus, I will turn to decisions of Maryland appellate courts for guidance.

In *Duncan v. State*, 282 Md. 385 (1978), the Court of Appeals addressed the issue of whether prosecution of a police officer for misconduct in office for possession of stolen goods was barred by the applicable one-year statute of limitations. In addressing the definition of "misconduct in office," the Court observed, *citing* Perkins on Criminal Law 485 (2d ed. 1969), that "misconduct in office is a common law misdemeanor. It is corrupt behavior by a public officer in the exercise of the duties of his office or while acting under color of his office."

*Duncan*, 282 Md. at 387. The corrupt behavior may be: (1) the doing of an act which is wrongful in itself malfeasance, or, (2) the doing of an act otherwise lawful in a wrongful manner misfeasance; or, (3) the omitting to do an act which is required by the duties of the office nonfeasance. *Id.* See also *Leopold v. State*, 216 Md. App. 586 (2014), which, quoting *Duncan*, held that actions by County Executive in demanding acts of personal service from employees coupled with threats of discharge amounted to misconduct in office. 216 Md. App. at 604.

Thus, in a criminal prosecution, conviction for “misconduct in office” requires proof of an act or acts of corruption.

In *Resetar v. State Board of Education*, 284 Md. 537, cert. denied 444 U.S. 838 (1979), the Court addressed issues of whether Resetar’s use of the derogatory term “jungle bunnies” to refer to certain junior high school students amounted to misconduct in office and whether discharge from his teaching position was proper as a result. Resetar had been intemperate in his use of language on at least two other occasions, and on the occasion in question used the derogatory term in response to misbehavior by part of the group to which the remark was addressed. *Id.* at 543. The hearing examiner concluded that none of the instances, standing alone, warranted discharge but that the pattern of behavior warranted the sanction. The hearing examiner noted that the prior official warnings had been issued to Resetar relating to his language, and noted numerous informal reminders. The County Board of Education ordered Resetar discharged for misconduct, and the State Board affirmed the discharge and reason. *Id.* at 544. On appeal, Resetar asserted, *inter alia*, that his language was not an act of misconduct. The Court noted: “[w]e have found no prior Maryland case which has addressed the question of whether certain conduct on the part of a teacher might or might not be misconduct in office.” *Id.* at 556. The Court examined numerous decisions from other states relating to teacher misconduct and discipline, and also looked to the definitions of misconduct in office found in the *Corpus*

*Juris Secundum* and in *Black's Law Dictionary*. The Court examined cases relating to “misconduct in office” by corrupt public officials, and looked to its own decision in *Employment Security Board. v. LeCates*, 218 Md. 202, 208 (1958), in which the Court held that “willful misconduct” is “deliberate violations or disregard of standards of behavior which the employer has a right to expect of his employee.” *Resetar*, 284 Md. at 561. The Court, deferring in part to the authority of the State Board, concluded that it found no error in the State Board’s conclusion that use of the term “jungle bunnies” constituted misconduct in office. *Id.*

Thus, “misconduct in office,” as found in section 6-202(a)(1)(ii) of the Education Article, is not limited to the common law definition of “misconduct in office” as applied to criminal cases. That is, no act of corruption is required to support a conclusion that a teacher has committed misconduct in office. An act that is a deliberate or willful disregard of the standard of behavior that an employer has a right to expect is sufficient to warrant a conclusion of misconduct in office.

The record suggests in ample supply that the Appellant’s supervisors tried repeatedly to stem the Appellant’s use of coarse language and to communicate to him that such language was unacceptable and unprofessional. His use of coarse language, despite repeated attempts to correct it, was a deliberate failure to abide by the standards of professionalism expected by his superiors.

#### Progressive Discipline

The Appellant argued that concepts of progressive discipline were not employed here. He does not point to any specific statute, regulation, or other written policy on the topic, or allege that any statute, regulation or written was violated. The Hearing Examiner recommended that the Superintendent reconsider his proposed suspension “in the scheme of progressive discipline.” The

Appellant does not point to any evidence the Local Board failed to consider when it adopted the Hearing Examiner's recommendation.

The Appellant has been counseled numerous times for using profanity. He suggests that past counseling was for the use of such language in the presence of students, not adults. The Appellant ignores that Ms. Stratton has repeatedly instructed him not to use foul language under any circumstances. As Principal, it is her job to set a standard for the conduct of the teachers under her charge. The AACPS Employee Handbook similarly makes clear that the AACPS expects all employees to adhere to a high standard of proper language.

The Appellant's suggestion that progressive discipline was not used here is absurd. He suggests that he was somehow unaware of the potential consequences of his conduct because no one told him not to use profanity in the presence of adults. Again, he ignores the past, and the great many number of times his supervisors have communicated their expectations to him that he not use profanity.

The Appellant willfully failed to conform his behavior to the expectations of his supervisors as well as the standard set by the AACPS. Thus, he committed misconduct in office, for which a sanction is warranted.

A three-day suspension without pay is the appropriate sanction, and is warranted by the evidence. Any argument by the Appellant that concepts of progressive discipline were not considered is without merit.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude as a matter of law that a three-day suspension without pay is proper for the Appellant's use of profane language on August 19, 2014, because his language constituted a deliberate violation and clear disregard of standards of behavior which the Principal, Arundel High School and the AACPS have a right to expect. I conclude as a matter of law that the

Appellant committed misconduct in office. Md. Code Ann., Educ. § 6-202(a)(ii) (Supp. 2015); *Resetar v. State Bd. of Educ.*, 284 Md. 537, cert. denied 444 U.S. 838 (1979).

**RECOMMENDATION**

I **RECOMMEND** that the Maryland State Board of Education **UPHOLD** the Anne Arundel County Board of Education’s decision to suspend the Appellant, without pay, for three days due to misconduct in office.

July 7, 2016  
Date Decision Issued

\_\_\_\_\_  
Michael R. Osborn  
Administrative Law Judge

MRO/sm  
#163068

**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.

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**ANNE ARUNDEL COUNTY**

**\* BEFORE MICHAEL R. OSBORN,**

**BOARD OF EDUCATION**

**\* ADMINISTRATIVE LAW JUDGE,**

**v.**

**\* THE MARYLAND OFFICE OF**

**JAMES D. MEYERS,**

**\* ADMINISTRATIVE HEARINGS**

**APPELLANT**

**\* OAH CASE NO.: MSDE-BE-01-15-41738**

\* \* \* \* \*

**FILE EXHIBIT LIST**

At the hearing before me, the parties relied on the documentary evidence presented before the Local Board, and neither party offered additional documents for admission as evidence. The documentary evidence before the Local Board included:

- A. Superintendent, Anne Arundel County Public Schools letter to Appellant, December 9, 2014
- B. Keith Wright, Maryland State Education Association, letter to Stacy L. Korbek, President, Anne Arundel County Public Schools, December 9, 2014
- C. Recommendation of Hearing Examiner, July 17, 2015, with attached Transcript of Proceedings before the Hearing Examiner, April 30, 2015. The Transcript of Proceedings before the Hearing Examiner included the following exhibits offered by the Local Board:
  - 1. Counseling letter, September 20, 2005
  - 2. Counseling letter, November 2, 2006
  - 3. Counseling letter, August 29, 2007
  - 4. Counseling letter, August 21, 2102
  - 5. Counseling letter, October 29, 2013
  - 6. Not admitted by the Hearing Examiner
  - 7. Investigative Report of Shelley Powell, November 3, 2014, with the following attachments:
    - Statement of Lindsay Morgan, August 27, 2014
    - Statement of Erin K. Lange, August 27, 2014
    - Statement of Melanie Page, August 27, 2014
    - Excerpt from Anne Arundel School Employees Handbook
    - Deputy Superintendent, Anne Arundel County Public Schools letter to Appellant, November 7, 2014
    - Superintendent, Anne Arundel County Public Schools letter to Appellant, December 9, 2014
    - Appellant letter to file, November 23, 2006
  - 8. Excerpts from Employee Handbook

9. Notice of pre-discipline conference, November 7, 2014
10. Notice of Suspension, December 9, 2014

The Transcript of Proceedings before the Hearing Examiner included one exhibit offered by the Appellant, as follows:

1. Appellant's letter to Supervisor of Investigations, November 23, 2006
- D. Kristy K. Anderson, Esq., letter to Local Board, July 31, 2015
  - E. M.E. Connolly, Executive Assistant to Local Board, letter to Kristy K. Anderson, November 19, 2015
  - F. Opinion and Order of Local Board, November 18, 2015
  - G. Transcript of Proceedings before the Local Board, November 4, 2015, which consisted of arguments of counsel for the parties, only.