BRIAN CURTIS,	BEFORE THE
Appellants	MARYLAND
v.	STATE BOARD
CAROLINE COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 25-13

OPINION

INTRODUCTION

Appellant appeals the decision of the Caroline County Board of Education ("local board") upholding his Ineffective Evaluation for the 2023-2024 school year. The local board has filed a motion to dismiss the appeal for untimeliness and, alternatively, maintains that its decision is not arbitrary, unreasonable, or illegal and should be upheld. The Appellant filed a response, and the local board filed a reply.

FACTUAL BACKGROUND

Appellant began serving as the Assistant Principal at Federalsburg Elementary School ("FES") on July 11, 2022. (R. 27). This appeal concerns Appellant's year end evaluation rating while performing in the Assistant Principal capacity during the 2023-2024 school year. The performance evaluation for administrators working for Caroline County Public Schools ("CCPS") is based 50 percent on the development and implementation of Student Learning Objectives ("SLO") and 50 percent on performance in ten Professional Standards for Educational Leadership ("PSEL"). (R. 15, 78). Appellant received an Ineffective Evaluation because he received zero points for his failure to participate in the SLO process.

SLOs are measurable academic goals that the individual administrators and teachers identify and implement over the course of a year. (R. 15). CCPS provides its administrators with multiple opportunities to understand the SLO process and to develop and implement their individual goals and benchmarks. *Id*. In August 2023, Appellant and other CCPS administrators participated in an administrator's retreat during which the Superintendent, Derek Simmons, explained the SLO requirements and the SLO completion process. *Id*

At some point in the beginning of the 2023-2024 school year, FES Principal, Stephanie Brohawn, engaged in discussion with Appellant about the SLOs and explained that her personal SLO benchmarks were derived from FES's school improvement plan. (R. 20). Principal Brohawn advised Appellant that given the connection with the school improvement plan, it would be appropriate for both administrators to work on the same goals. *Id*. Appellant, however, did not complete his self-assessment or develop SLOs, and did not enter any data into the CCPS Perform software ("Perform") system.

Beginning on October 22, 2023, the Perform system began generating multiple messages reminding Appellant to complete his self-assessment and SLOs. (R. 32-34). On January 7, 2024, Perform reminded Appellant that his self-assessment and SLOs were overdue. (R. 35-42). Principal Brohawn also provided multiple reminders about the obligation to complete the self-assessment and the SLOs in weekly administrator planners. (R. 43-47). Principal Brohawn attempted to schedule Appellant's beginning of year conference for October 31, 2023, but Appellant was absent from school that day. (R. 16, 45). The administrator planner dated November 27, 2023, reflects that Appellant received notice that his SLOs were overdue, and that Principal Brohawn attempted to meet with Appellant to discuss his SLOs. (R. 47). Thereafter, Appellant and Principal Brohawn did not meet to discuss the SLOs because Appellant indicated that he could not meet with Principal Brohawn without first participating in a meeting with the "district" concerning his employment. (R. 16, 113).

Meanwhile, on October 3 and 6, 2023, Appellant sent emails to the Superintendent, Derek Simmons, and the Supervisor of Human Resources, Robert Willoughby, asking to discuss his employment because, as one of the only African American male professionals working in the school system, Appellant felt "devalued, unseen, and less than by the leadership of CCPS" and did not feel "safe or secure" in his employment (R. 91-95). The emails appear to reflect Appellant's concerns stemming from CCPS' communication (or lack thereof) with Appellant over his son's interview for a teaching position and the decision not to hire him, and concerns about CCPS recruitment efforts for minority candidates. *Id*. It seems that the Appellant was unhappy with the Superintendent's lack of response after Appellant sought clarification and explanation after his son's interview. *Id*. In response to the emails, the Superintendent advised Appellant that a meeting would be scheduled to discuss the concerns. (R. 91).

On December 5, 2023, Appellant submitted a request for FMLA leave for approximately one month, and the request was granted. (R. 16, 48-49). No meeting regarding the concerns raised by Appellant in his emails took place prior to the start of Appellant's FMLA leave.

On January 11, 2024, prior to Appellant's return from FMLA leave, he emailed the Superintendent to follow up on scheduling a "restorative meeting" to address his prior concerns. (R. 96-97). In his email, Appellant also mentioned an incident that occurred on December 1, 2023, prior to his FMLA leave, about the way Assistant Superintendent Downes addressed him during a meeting. *Id*. Appellant stated that Dr. Downes spoke to him in an "aggressive manner and tone" when she stood up and leaned into the table stating loudly "I heard you told Mrs. Brohawn that I am not your boss, I speak on behalf of the superintendent and if I tell you to do something, then I expect you to do it whether your principal tells you or not!" *Id*. Appellant reiterated his concerns about the work environment and requested a restorative practices meeting. *Id*.

Appellant returned from his FMLA leave on January 16, 2024. Upon his return, Principal Brohawn and Dr. Willoughby met with Appellant to provide him with a Performance Improvement Plan ("PIP") for various work performance issues that had come to light before and during Appellant's leave. (R. 16, 50). Those issues included failure to timely hold 504 meetings and complete 504 tracking sheets; failure to complete staff observations and conference reports in a timely manner; attendance issues; failure to properly assign substitute teachers; and failure to complete trainings. (R.16, 52). Appellant participated in check-point meetings to address his PIP

progress. (R. 16). On February 6, 2024, Appellant filed a charge with the Equal Employment Opportunity Commission ("EEOC"). (Appeal; R. 17).

On June 25, 2024, CCPS issued the Appellant's Ineffective Evaluation. (R. 59-79). Appellant's failure to complete the SLO requirement for which he earned zero points accounted for half of the evaluation score. (R. 78). The other half of the evaluation score concerned the assessment of ten Professional Standards for Educational Leadership ("PSEL"). Appellant received an overall Effective rating in each PSEL even though some of the PSEL subcategories had an Ineffective or Developing rating for the specific subcategory.[1] (R. 59-79). Because Appellant received an overall Effective rating for each PSEL, the PSEL ratings were not the cause of the Ineffective rating on the evaluation. *Id*. Rather, Appellant received an Ineffective rating because he did not develop or submit his SLOs. (R. 78).

On August 20, 2024, Appellant appealed his Ineffective Evaluation to the local board. (R. 10). He argued procedural irregularities including that he did not receive notice of any deficiencies and was not given the opportunity to correct them prior to the evaluation; substantive errors including that the evaluation did not accurately reflect his performance regarding several of the PSEL subcategories and that there was a SLO miscalculation; and concerns of potential retaliation related to an ongoing EEOC complaint. *Id*. The Superintendent filed an opposition to the appeal on September 10, 2024 which argued, among other things, that Appellant did not complete the SLO process, despite regular reminders, and that the failure to engage in the SLO process which accounted for fifty percent of the evaluation resulted in the Ineffective rating. (R. 14-83). Appellant replied to the opposition on September 25, 2204. (R. 84-115).

On October 28, 2024, the local board affirmed the Ineffective Evaluation finding that Appellant had failed to demonstrate that the rating was arbitrary, unreasonable, or illegal. (R. 116-124). Because the Superintendent reassigned Appellant to a teaching position following the issuance of the Ineffective Evaluation and Appellant sought reinstatement to his prior position as a remedy in the evaluation appeal, the local board also addressed the reinstatement request finding that the Superintendent acted within the scope of his authority when he reassigned Appellant. (R. 12, 121-123).

Appellant filed his appeal to the State Board on November 28, 2024.

STANDARD OF REVIEW

Teachers and principals may appeal an overall ineffective rating on an evaluation in accordance with Education Article §4-205(c)(3). COMAR 13A.07.09.08. The appellant has the burden of proof to show that the rating is arbitrary, unreasonable illegal, or not in compliance with the adopted evaluation system of the local school system. *Id*. Absent such a showing, the local board decision shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board. *See* COMAR 13A.01.05.06A; *Stephan v. Prince George's Cnty. Bd. of Educ*., MSBE Op. No. 20-26 (2020).

[1] The overall PSEL category rating is an average of the subcategory ratings. (R. 17).

LEGAL ANAYLSIS

Preliminary Issues

Timeliness of Appeal

The local board filed a motion to dismiss the State Board appeal for untimeliness. COMAR 13A.01.05.02B(1) provides that an appeal to the State Board "shall be filed within 30 calendar days of the decision of the local board" and that the "30 days shall run from the later of the date of the order or the opinion reflecting the decision." An appeal is deemed transmitted within the limitations period if, before the expiration of the time, it has been delivered to the State Board, deposited in the United States mail as registered, certified or Express, deposited with a delivery service that provides verifiable tracking from the point of origin, or submitted electronically. COMAR 13A.01.05.02B(3). Time limitations are generally mandatory and the State Board may not extend the filing deadline except in the case of fraud, lack of notice of the decision, or other extraordinary circumstances. COMAR 13A.01.05.04B(3). *See also Scott v. Board of Educ. of Prince George's Cnty*., 3 Op. MSBE 139 (1983). The State Board has consistently applied this rule of law, dismissing appeals that have been filed one day late for untimeliness. *See Cathy G. v. Montgomery Cnty. Bd. of Educ*., MSBE Order No. OR17-04 (2017) (listing cases).

The local board issued its decision affirming the Ineffective rating on Appellant's Final Evaluation on October 28, 2024. The decision and the accompanying cover letter contained notice advising the Appellant of the 30-day filing deadline. The Appellant, however, filed his appeal by submitting it electronically to the State Board on November 28, 2024, one day late.

Appellant requests that the State Board excuse his late filing of the appeal based on extraordinary circumstances that he faced during the 30-day appeal time frame. During the appeal window, Appellant learned that his wife's long-term illness had become terminal, and that hospice care would be necessary. (Response). He states that his time became focused on fulfilling her wishes to connect with loved ones in her final days, a deeply emotional and time-intensive process, and that these events led to his miscalculation of the filing deadline. *Id*. Based on the specific facts of this case, we find that Appellant has met his burden demonstrating an extraordinary circumstance that justifies an extension of the 30-day appeal deadline. We find, therefore, that the appeal is timely filed.

New Evidence

The local board requests that the State Board exclude evidence submitted by Appellant in the State Board appeal that was not a part of the record of local proceedings. The State Board may consider the additional evidence or remand the appeal to the local board for consideration of the additional evidence if the evidence is material to the case and the appellant offers good reason for failing to present the information to the local board. COMAR 13A.01.05.04C. To be material, the evidence must be "of such a nature that knowledge of the item would affect a person's decision-making." *Shervon D. v. Howard Cnty. Bd. of Educ.,* MSBE Op. No. 17-10 (2017). None of the new evidence satisfies this standard. Even if some of the evidence were material, Appellant offers no good reason for his failure to present it to the local board.

Merits of Case

This case is similar to *Stephan v. Prince George's Cnty. Bd. of Educ*., MSBE Op. No. 20-26 (2020), in which the State Board upheld a teacher's Ineffective rating on a year-end evaluation for failure to timely complete the entry of SLO data. In *Stephan*, we recognized the import of the SLO process as a component of the evaluation system and we noted that the appellant was responsible for providing SLO data as part of his job requirements. We also noted that the procedure requires submission of the pre-assessment data by a communicated deadline and does not allow for the retroactive input of baseline data for their SLOs to protect the integrity of the process. *Id*. As we stated:

> It was the Appellant's responsibility as a teacher to provide the SLO data that was to be used in his evaluation. Given that the SLO data comprised a significant component of the Appellant's evaluation, the responsibility to complete the task was not a matter to be taken lightly. Although the Appellant would like to classify the issue as a simple data entry mistake, he failed to complete one of the requirements of his job by not ensuring that his SLO data was submitted within the given time frame….PGCPS notified the Appellant on November 7, 2018, several days after he had accessed the MyPPS, that his SLO 2 development activities were incomplete and that he needed to input the data into the system by November 12. Appellant, however, did not timely rectify the situation to ensure that his data was submitted by the November 12 deadline. Instead, he waited several months, until March 2019, to address the issue, which was simply too late.

Stephan at 2. Like *Stephan*, this is not a case in which the Appellant lacked notice of the SLO requirements or deadlines. The record makes clear that the Appellant received numerous reminders and was aware of his responsibilities yet chose not to complete them. Despite his claims to the contrary, there is no evidence that Appellant's failure to comply with his obligations was the fault of anyone other than himself. The local board was justified in its decision and to find otherwise would undermine the concept of a standardized evaluation process.

Hostile Work Environment Claim

Appellant maintains that CCPS's inaction in addressing his hostile workplace environment concerns undermined the SLO process which requires mutual agreement and collaboration between an employee and their supervisor in developing and completing a SLO and prevented him from participating in the process in a meaningful way.

To establish a *prima facie* hostile work environment claim, Appellant must show that he was subjected to an intimidating, hostile, or offensive work environment; (2) that the conduct was based on his protected status; and (3) that the conduct was sufficiently severe or pervasive to alter the terms of employment. *Okoli v. City of Balt*., 648 F. 3d. 216, 220 (4th Cir.). The Appellant has not met this burden. Although the Appellant's appeal and response cite to various emails, the emails do not contain any real explanation of the hostile work environment claim, especially as to the communication or lack thereof regarding Appellant's son's job interview.

Nor is there any explanation as to how the alleged conduct impacted the work environment to an extent that Appellant was unable to engage in the SLO process or otherwise function. Rather Appellant simply alleges that this is the case. *See Weeks v. Carroll Cnty. Bd. of Educ*., MSBE Op. No. 13-44 (2013) (Allegations alone are insufficient to support a claim of discrimination.). Even if we surmise from the emails that Appellant found the conduct of CCPS personnel to be intimidating, hostile, or offensive and based on Appellant's race, the conduct was not sufficiently severe or pervasive to alter the terms of employment to establish a hostile work environment claim. *See Hagerty v. Carroll Cnty. Bd. of Educ*., MSBE Op. No. 20-16 (2020). We find that the Appellant has failed to establish a claim for hostile work environment.

Retaliation Claim

Appellant also asserts that he was subject to unlawful retaliation. To establish a *prima facie* case of retaliation, Appellant must show that (1) he engaged in a protected activity; (2) that the school system took a materially adverse action against him; and (3) that a causal connection existed between the protected activity and the materially adverse action. *Young v. Prince George's Cnty Bd. of Educ*., MSBE Op. No. 17-39 (2017). The school system may then rebut the *prima facie* case by showing that there was a legitimate nondiscriminatory reason for the adverse action. *Id*. The burden then shifts back to the appellant to show that the proffered reasons by the school system are pretextual. *Id*.

The Appellant filed an EEOC complaint in February 2024. The temporal proximity of the filing to the June 26, 2024 evaluation is too long a time period to establish a causal connection for a *prima facie* case. *See Clark Cnty. Sch. Dist. v. Breedon*, 532 U.S. 268 (2001) (Temporal proximity between the protected activity and the adverse action must be very close, citing cases with insufficient temporal proximity at three and four months). However, even if Appellant could make out a *prima facie* case of retaliation, he cannot overcome the local board's showing of a legitimate non-discriminatory reason for the Ineffective Evaluation based on the Appellant's refusal and failure to develop and complete the SLO process. *See Brady v. Office of Sergeant at Arms*, 520 F. 3d 490, 493 (D.C. Cir. 2008) (stating that once an employer has asserted a legitimate, non-discriminatory reason for the adverse action, the question of whether an employee has made out a *prima facie* case is no longer relevant.). Appellant has presented no evidence that the reasons proffered for the issuance of the Ineffective Evaluation are pretextual. He has not identified any similarly situated comparators who refused to engage in the SLO process and did not receive an Ineffective Evaluation.[2]

Appellant's argument that his placement on a PIP in January 2024 was in retaliation for raising workplace concerns, which somehow imputes a retaliatory basis for the Ineffective Evaluation is completely misplaced. The Appellant's PIP had no import on the Appellant's Ineffective rating which was a direct result of his failure to complete the SLO process. Any work performance issues that were part of the PIP are irrelevant to the appeal. We find that the Appellant has failed to establish a claim of retaliation.

[2] Although Appellant compares his circumstances to Principal Brohawn asserting that she did not meet her SLO requirements during the evaluation year yet, this fails as comparator evidence as there is a material difference between receiving a zero score on the evaluation for failure to engage in the SLO process versus completing the process but not fully attaining the SLO goals.

FMLA Protected Absences and PSEL Subcategories

The Appellant also argues that CCPS considered his FMLA protected absences and his performance issues on some of the PSEL subcategories which contributed to his Ineffective Evaluation. (R. 31). There is no evidence to support the Appellant's assertion. The only mention of Appellant's attendance in the evaluation is in the comments to PSEL Standard II and those comments refer to dates occurring either before or after Appellant's FMLA leave. (R. 62, 48-49). Moreover, Appellant received overall ratings of Effective in all PSEL categories, thus the PSEL section and its associated comments did not contribute in any way to Appellant's Ineffective rating. The Ineffective Evaluation was a result of the zero rating for failing to complete the SLOs and had no relation to any other portion of the evaluation.

Miscellaneous Claims

Appellant maintains that there were procedural failures in the evaluation process itself because Appellant's supervisor failed to conduct an evaluation the prior year, which deprived Appellant of critical feedback and guidance leading to a disadvantage during the subsequent evaluation period. This case does not involve mistakes or confusion in Appellant's creation or implementation of his SLO goals that could have been remedied by experience with past evaluations. It involved Appellant's complete disregard for the process and his failure to complete the SLO requirements. The Appellant received information about the SLO process during the administrator's retreat and multiple separate notifications. There was no lack of notice of his responsibilities.

Appellant also claims the there was confusion on behalf of Principal Brohawn who expressed a desire to consult with Human Resources to determine the next steps after Appellant completed the PIP, and that this undermines the rating. Again, the issues on the PIP and its completion have nothing to do with the SLOs which formed the basis for the Ineffective Evaluation. Principal Brohawn's desire to consult with Human Resources following the PIP completion fails to support the Appellant's claim.

Commendations

Appellant calls into question the validity of the Ineffective Evaluation claiming that it is unreasonable to conclude that an individual who has received the same accolades that he has, including a commendation from the Maryland State Senate and the House of Delegates for his positive impact as an educator and community leader at the start of the 2023-2024 school year, could be the subject of an Ineffective Evaluation. (R. 132). We reiterate once again that the Ineffective Evaluation is directly related to Appellant's failure to develop and complete his SLOs as required. Whether the Appellant received accolades for his overall work in the education field has nothing to do with whether he performed a mandatory job requirement that accounted for half of his evaluation rating. The SLO process is an important component of the evaluation system. To make an exception under the facts presented in this case would undermine the integrity of the evaluation process. *See Stephan v. Prince George's Cnty. Bd. of Educ*., MSBE Op. 20-26 (2020).

Reassignment

Finally, we address the Appellant's request that he be reinstated to an administrative leadership position as a remedy in this appeal. Given the facts and our decision to affirm the Ineffective Evaluation, there is no basis for such a remedy here. Further, in his response filed in the State Board appeal, Appellant for the first time raises a series of arguments maintaining that his reassignment to a teaching position was improper, none of which were raised in his appeal to the local board. The State Board has long held that arguments not raised before the local board will not be considered on appeal by the State Board. *See Steiner v. Anne Arundel Cnty. Bd. of Educ*., MSBE Op. No. 23-15 (2023). Thus, Appellant has waived these arguments.

CONCLUSION

For all of the reasons stated above, we find that the local board's decision is not arbitrary, unreasonable, or illegal. Accordingly, we affirm.

Joshua L. Michael
President

Monica Goldson
Vice-President

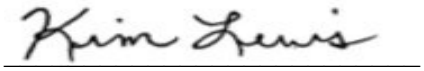
Chuen-Chin Bianca Chang

Chet Chesterfield

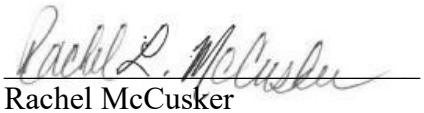
Kenny Clash

Clarence C. Crawford

Nick Greer



Kim Lewis



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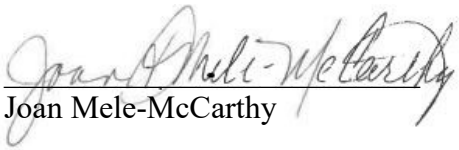
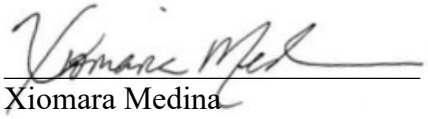


Joan Mele-McCarthy



Xiomara Medina

Samir Paul

Absent:
Irma Johnson

March 25, 2025