STACEY HARTWELL,	BEFORE THE
Appellants	MARYLAND
v.	STATE BOARD
CALVERT COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 25-16

OPINION

INTRODUCTION

Stacey Hartwell ("Appellant"), a non-certificated employee, appeals the decision of the Calvert County Board of Education ("local board") which left in place the decision of the local superintendent to terminate Appellant for her abusive, vulgar and profane use of work-based Microsoft Teams Chat with her co-workers in violation of local board policy. The local board filed a response to the appeal maintaining that its decision is not arbitrary, unreasonable, or illegal and should be upheld. Appellant responded, and the local board replied.

FACTUAL BACKGROUND

Appellant appeals her termination from Calvert County Public Schools ("CCPS") by Dr. Andraé Townsel, Superintendent, pursuant to §4-205 of the Education Article. Appellant, along with several of her coworkers, was terminated for participating in work-based Microsoft Teams Chats ("Microsoft Teams Chat" or "chat") which included many vulgar, profane, unprofessional, and demeaning communications amongst the group that took place throughout the workday on a work-provided tool which contributed to a toxic work environment.[1] CCPS HR personnel used a group chat to communicate various issues during the work day. Appellant argues that her termination was arbitrary, unreasonable, and illegal because she alleges it was based upon a "sham" investigation orchestrated by the Director of Human Resources, Zachery Seawell, to terminate her due to her whistleblowing activities. (Appellant's Response, p.12). The other individuals participating in the offensive chats were not part of this appeal.

Appellant began her employment with CCPS in August 2008 as a Guidance Secretary assigned to Windy Hill Middle School. In 2019, she was hired in the Human Resources ("HR") Department, and worked as a Position Control, Staffing and Vacancy Specialist. Appellant reported directly to Mr. Seawell, and she did not supervise any employees. Appellant received a letter of counseling from Mr. Seawell dated October 4, 2021 regarding her unprofessional behavior in the workplace and she was counseled that her behavior and conduct in the office should remain professional at all times. (R. 193). Other than the counseling letter, Appellant had

[1] One of the employees who participated in the chat group resigned.

a favorable employment record and prior to her termination, Appellant received a positive evaluation. (R. 1809-1810, 2196).

To perform her job responsibilities, Appellant looked for data errors in reports and information provided by other employees in the department. When Appellant discovered data entry errors, she normally discussed the errors with the employee who made the mistake. If an error was not corrected and continued to appear, Appellant brought the issue to the supervisors' attention. Appellant sent out weekly email updates to the HR staff including the two HR supervisors. (R. 2194-2195). Appellant frequently discovered work errors made by two of her coworkers Employee A and Employee B[2]. Appellant wanted a supervisor to acknowledge that these two employees needed help and additional training. (R. 2196).

As part of her job responsibilities, throughout her employment in HR, Appellant brought serious issues to her supervisors' attention that involved reporting of practices that violated a law, rule, or regulation. Appellant first notified supervisors of the various statutory and regulatory violations starting in September 2021, she continued to inform them of ongoing issues in 2022 and 2023, with her final communication with Mr. Seawell on September 12, 2023. Appellant reported issues, including but not limited to, CCPS coaches failing to complete the required fingerprinting or SafeSchools process before working with students; hiring of a substitute building services worker who had failed to disclose a felony arrest record; alleged violations of record retention and disposition schedules; improper use of grant pay to a building service worker; incorrect data included in a National Board Data Report for MSDE; audits of teacher certification renewals that revealed lack of fingerprinting data in TEACH; and hiring of staff who did not complete SafeSchools training. Appellant acknowledged that she was not privy to communications the supervisors may have had with individual HR staff and Central Office staff to address and remedy the issues. (R. 2224)

Supervisor 1 was a supervisor in the HR department from September 2021 through June 2023. She was aware of a divisive culture within the department, and she spent a significant amount of time mediating and mitigating conflict among the team throughout her tenure in HR. She reported that the environment felt toxic because of several incidents that occurred before her arrival. At some point in 2021, Mr. Seawell asked for input from all the staff and based on the responses, he developed a list of HR professional responsibilities that addressed the expectations about professionalism and confidentiality so that the expectations for everyone in the department were clear. (R. 856).

Supervisor 1 stated tensions rose during the winter of 2022 and spring of 2023 when Appellant sent several emails to all HR staff highlighting errors of other employees, especially Employee A. It was also apparent to Supervisor 1 that Appellant was discussing Employee A's work issues with other employees as they were bringing up problems with Employee A's work even though it did not impact their desks. Supervisor 1 spoke with Appellant and asked her to speak with Employee A directly as a professional courtesy before escalating matters. The problems continued and Employee A reported that Appellant, Employee X, Employee Y, and Employee Z were mistreating her and Supervisor 1 encouraged Employee A to file a bullying

[2] To protect the privacy of employees who are not parties to this appeal, we used letter and number designations instead of employee names throughout this opinion.

and harassment complaint, but Employee A was afraid this would make matters worse. Supervisor 1 stated:

> There are no words that can fully express how disappointing and exhausting the efforts to improve HR department morale have been over the past two years. The individual level of follow up and support provided, and the time dedicated to improving this environment has resulted in ongoing and inappropriate and unprofessional treatment of [Employee A] and reportedly alleged new maltreatment of [Employee B].

(R. 48). Prior to her leaving the department in June 2023, Supervisor 1 discussed these issues with Mr. Seawell. (R. 47).

In May 2023, Appellant emailed Supervisor 1 about problems with Employee A's processing of a substitute teacher and expressed concerns over Employee A's competencies, and she stated that she did not have the time to audit Employee A's work over the past year and a half. (R. 1888). Supervisor 1 responded to Appellant and thanked her for bringing the issue to her attention. Supervisor 1 informed Appellant that the administration team had appropriately addressed her concern regarding compliance and processing and Supervisor 1 confirmed that no one was asking Appellant to audit Employee A's desk stating, "[e]veryone's work impacts everyone's work; thus it is not unique that we have all made mistakes that show up as others are completing their portion of an employee's process. Any data error impacts my work in Perform…This is why teamwork is essential to our department." (R. 1887). Supervisor 1 also stated that she would follow up with an audit of past substitute processing as an attempt to minimize its impact on everyone else. *Id.*

In July 2023, Appellant spoke to Mr. Seawell about Employee B's struggles with her work and Mr. Seawell told Appellant that Employee B had come to him crying because people were being mean to her. (R. 2196). Appellant and others in the group chats were frustrated with what they perceived as a lack of leadership and a lack of training for new employees. Appellant met again with Mr. Seawell on September 12, 2023, and shared her concerns that Employee B could not perform her duties. Mr. Seawell stated that he could not share the details but that administrators were aware of the issues. (R. 1882). They also discussed the issues of coaches who were allowed on the field with students, without being fingerprinted, without doing their SafeSchools and without their I-9's. (R. 642, 2201).

The two supervisors in the department at the time of Appellant's termination included Supervisor 2 and Supervisor 3. The HR office had a high rate of staff turnover, and the results of a 2023 HR staff climate survey indicated that there were problems in the HR office. For example, some staff completing the survey used the term "mean girls" to describe other employees. (R. 2213). Early in the summer of 2023, Employee D, HR Associate, reported to Supervisor 3 that she was aware of group chats that did not include all HR staff members and that during a meeting she was in with Employee X with other members from HR and the finance department a group chat popped up on the display screen, and Employee X attempted to close the chat to prevent others from reading them. (R. 45). The chat feature has a certain "ding" and when it would go off it was noticeable that the others in the group would respond. In August

2023, Employee C, HR Associate, notified Supervisor 3 that Employee W, Employee X, Employee Y, Employee Z, and Appellant were bullying others in the HR department. She also reported that she had heard this group was participating in chats that included inappropriate comments about other employees in the HR office, including the Director. *Id.* Management also noticed the chats. While Supervisor 2 was working with Employee Y, she noticed a chat pop-up on the computer screen that she quickly took down. Other chat pop-ups continued to appear. When Mr. Seawell was assisting Employee Z with open enrollment, he also observed chat pop ups on her screen that she immediately pulled down. (R. 46).

When Supervisor 3 began working in HR in July 2023, he noticed a lack of collaborative atmosphere and a lack of direct communication between workers in the office. Supervisor 3 supervised Employee A, Employee B, and two other HR employees. He held monthly HR department meetings. In August 2023, Employee C and Employee D reported to him that Appellant was mistreating other staff members, and that they were aware of a group chat that was being improperly used. (R. 45). During the September 1, 2023 monthly meeting, Supervisor 3 discussed the results of the HR staff survey. He also discussed issues of professionalism and confidentiality in the office because of the reports of staff being mistreated. (R. 2210, 2218). Appellant was not in attendance at that meeting, but Mr. Seawell met with her on September 12, 2023 to discuss the staff meeting and the results of the survey in addition to other issues. (R. 863).

In September 2023, Mr. Seawell initiated an investigation of the HR office based on harassment and bullying complaints. (R. 2218). Mr. Seawell contacted the Director of IT and someone from security and requested that they retrieve the HR department Teams chats for a one-month period starting on the day prior to the chats first being reported. (R. 225). The Teams chats were obtained for the Appellant and the four other employees who were reported as participants in the Teams chats for the period of August 14, 2023 through September 14, 2023. (R. 225). When the chats were reviewed by Mr. Seawell, he noted that there were inappropriate communications that included undermining and ridiculing many HR staff members including himself. Mr. Seawell conferred with Anthony Navarro, Chief of Operations, and a decision was made to have Supervisor 2 and Supervisor 3 investigate the issue. (R. 2218).

Supervisor 2 and Supervisor 3 conducted an investigation which included reviewing the group chats and conducting interviews of the group chat participants as well other members of the staff. During their interview with Employee B, she reported that she felt mistreated by the Appellant and the other staff members in the group chat. She reported that they were very helpful to each other, but she felt as a newer employee, the group made fun of her because of her older age and set her up for failure. She reported that Appellant always addressed her in an intimidating manner and tried to make her feel stupid. She reported that the treatment by the group adversely affected her emotional wellbeing and her productivity, and she believed she was being treated differently because of her older age. (R. 51-52). Employee A reported similar concerns during her interview, stating that she felt targeted by the group and that the mistreatment interfered with her work. (R. 49 -50). On September 26, 2023, Supervisor 3 requested a statement from Supervisor 1 for the investigation and he also exchanged a text with Supervisor 2 stating that they "[n]eed to add a few more incidents in the summary of findings-a few more examples of chats. Kinda falls flat" and "[w]e need to make sure that sneaky is in the right statement." (R. 1713-1714, 1717-1718).

Supervisor 2 and Supervisor 3 prepared a summary of the group chats. During one chat, one of the members alerted the others in the group that she was going to make Employee A's face red by publicly confronting her with the data and another group member provided a play-by-play description of the interaction in the chat. (R. 54). Employee A reported that she felt humiliated by the group. *Id.* The chat was also used to report on phone conversations the group overheard, particularly Employee B's and Employee A's. The group, including Appellant, would give real time updates of the conversations that resulted in the group making statements about the conversations using vulgar, insulting, demeaning, profane, and sometimes even violent language. (R. 54, 55, 58).

The chat messages demonstrated that anytime a staff member in the chat group assisted Employee A or Employee B, the group chat would demean their efforts and undermine administration's directives to assist in vulgar and profane terms. (R. 55). Appellant consistently used the chat to mock the competency of Mr. Seawell, Supervisor 2, Supervisor 3, Employee A, Employee B and Employee D. (R. 55, 1362). On one occasion, Appellant alerted the group that she "intentionally did not update a spreadsheet for a staffing meeting and could not wait to see [X] humiliated by [X] for not updating or knowing the information." *Id.* She repeatedly called Mr. Seawell a moron and made derogatory statements about her coworkers. For example, when Appellant shared a screen shot to the group of an email from a coworker stating, "answering email from 8/8..with wrong answer" her statement elicited comments from the group such as "you can't fix stupid" and Appellant then stating, "I'm not sure I've ever seen two people so incompetent at their jobs." (R. 1181). In another chat, Appellant stated, "He attempts to supervise the ones who actually work thinking they will bend over and say ok. Nope we are done. You think he would have learned his lesson going up against me 2 years ago." (R. 1290). The chats were constant, for example, the chats on August 16, 2023 spanned nearly 6 hours and encompassed 17 pages of chat messages. (R. 56 – 62)(R. 1143 – 1647).

Supervisor 2 and Supervisor 3 finalized their report on October 2, 2023. (R. 44 – 94). They concluded that the five group chat members were all accountable for the mental health damage inflicted on the victims and the hostile/toxic workplace environment created and perpetuated via their participation in prolonged and consistent bullying, harassment, intimidation, humiliation, and ageism campaign as evidenced by the chats and the statements from the victims. Supervisor 2 and Supervisor 3 concluded in the report that permanent harm had occurred and was beyond repair and recommended that Appellant (as well as the four others) be terminated as their continued presence in the department would result in continued emotional harm and would affect the long-term productivity of the department. (R. 44).

Appellant was interviewed twice on October 2, 2023, by Supervisor 2 and Supervisor 3. She was told that they were investigating the HR working environment and she was asked about her role in the mistreatment of staff. (R. 1936 – 1946). Appellant admitted to the interviewers that the chats they identified were hers and were not appropriate communications for a professional work environment. (R. 1945). On October 5, 2023, Supervisor 2 sent an email to document that the interviews occurred because they were investigating concerns brought to their attention about the working environment in the HR department. Appellant responded to the email asking if she was the subject of the investigation and wanted to know the specific allegations and policies and procedure at issue. (R. 612). Supervisor 2 responded that Appellant was included in the interview process to help determine her involvement and that she could not share any more

information regarding the ongoing investigation at that time but that she would be in touch with Appellant once the investigation was completed. She also indicated that Appellant could but was not required to submit a written statement. (R. 1720-1721).

By letter dated October 10, 2023, Appellant received notice that the Superintendent was considering suspension or termination of Appellant's employment based on misconduct in office and insubordination. The letter stated that the Superintendent was informed that Appellant contributed to the creation of a toxic work environment within the HR department based upon Appellant's inappropriate and unprofessional behavior within the department, and her participation in profane and abusive work-based Microsoft Teams Chat conversations. Appellant was notified of a *Loudermill* hearing scheduled for Friday October 13, 2023. (R. 95).

On October 11, 2023, Appellant requested personal leave for the rest of the week via email. She stated in her email that "it seems after today's meeting that I need to polish my resume and start applying for jobs just in case things don't go well with Dr. Townsel. Considering all the things you listed in our meeting today (and that you plan on repeating to him) I can't imagine that he would want to retain an employee such as myself." (R. 96). She also requested leave for the following week due to a family member's health issues. *Id.* The *Loudermill* hearing was postponed until October 17th.

On or about October 12, 2023, Appellant submitted a complaint to the Office of the Inspector General for Education ("OIG"). (R. 1710). By letter dated March 6, 2024, the OIG advised Dr. Townsel that the OIG review identified an employee of CCPS with an undivulged Probation Before Judgment ("PBJ") for battery who had access to students and advised CCPS to revise its applicable employee background checks to include a precise definition of "conviction" and to require disclosure instances of PBJs. (R. 1700-1701).

On or about October 16, 2023, Rob Connerton, UniServ Director, filed a grievance on behalf of Appellant alleging violations of Article 7.2 and 8.5 of the collective bargaining agreement between Calvert Association of Educational Support Staff and the Calvert County Board of Education ("CBA"). Article 7.5 provides in relevant part:

> No permanent employee shall be subject to suspension or termination without being informed of the reason(s) and afforded an opportunity to give an oral response. Following the completion of an investigation and prior to any disciplinary meeting, CCPS will provide the employee with the nature of allegations against the employee as permitted by law.

(R. 1915). Article 8.5 pertains to complaints brought by a person not employed by CCPS and is not relevant to this appeal. *Id.*

On October 17, 2023, the *Loudermill* meeting was held with Dr. Townsel, Mr. Seawell, Supervisor 3, Supervisor 2, Stacy Tayman, President of Calvert County Association of Education Support Staff, Rob Connerton, UniServe Director, and Appellant.

During the *Loudermill* meeting, Mr. Seawell discussed the HR Department concerns that were brought to his attention and discussed the reasons for the investigation. (R. 100-101). Mr.

Seawell also shared a summary of the findings of the HR investigation which revealed that Appellant engaged in misconduct and insubordination and detailed the specific instances of Appellant's conduct. (R.39). The summary indicated that Appellant had engaged in misconduct in office and insubordination in violation of department directives and local board policies. The local board policies identified included:

- Policy 2718 *Appropriate Use of Technology* – Staff are to use CCPS computer systems in a responsible, ethical manner consistent with their professional responsibilities;
- Policy 1118 – *Discrimination* and Administrative Procedures 1118.3 – *Harassment, Intimidation, and Bullying* – Bullying, harassment, or intimidation of any person on school property or at school sponsored functions or by the use of electronic technology at a public school is prohibited in all Maryland schools….; and
- Policy 1740 *Ethics* and Administrative Procedures 1740.6 – *Confidentiality and Privacy*.

The summary stated in part:

> [Appellant] consistently used the Microsoft Teams Chat with four other employees to question/challenge the competency of, and direct derogatory comments towards, HR administration and staff, as well as other CCPS staff. The communications contributed to a toxic environment in the department of Human Resources which caused emotional and physical distress to employees.

(R. 97-99).

At the *Loudermill* meeting, Appellant was given a chance to respond. Appellant's response suggested that the school system created the environment for bullying and Appellant did not express any remorse or accountability on her part. (R. 2216).

At the *Loudermill* meeting, Appellant submitted a Whistleblower letter. This was the first time Appellant submitted a Whistleblower letter to the Superintendent's attention. (R. 2215).

The Whistleblower letter notified the Superintendent that Appellant was invoking her rights and privileges afforded to her under local board policy #1741 and §§ 6-901 – 6-905 of the Education Article. The letter stated that Appellant has witnessed and reported violations of Federal Laws, State Laws, CCPS Policy and Procedures and negotiated agreements in accordance with her duties as Position Control, Staffing and Vacancy Specialist. She listed the violations as including but not limited to:

1. Failure to conduct and maintain a cleared criminal history record check under CCPS Policy 6032, Mayland Family Law Article 5-560-5-569, Education Article 6-113.2, COMAR 12.15.02.01 and COMAR 13A.06.03.04(8).
2. Failure to have a Records Retention and Disposition Schedule as required by COMAR 14.18.02 and a letter from the State Superintendent in November of 2018.

3. Failure to pay wages as required by the Maryland Department of Labor and the CAESS Negotiated Agreement.
4. Failure to maintain eligible coaches per COMAR 13A.06.03.04(B), MPSSA Guidelines, CCPS Policy 6125 Extra Pay for Extra Duties and CEA Negotiated Agreement Article 21.
5. Failure to complete I-9 as required by Federal Statute – The Immigration Reform and Control Act of 1986.

(R. 1934). The letter also stated this served as official notice that Appellant was filing an administrative complaint under Education Article, §6-902, a request for administrative leave, and a written request for the list of allegations against her. *Id.* The letter was turned over to Chief of Operations, Anthony Navarro, to address. After an investigation, Mr. Navarro recommended corrective actions in the areas in which CCPS was struggling. (R. 2215).[3]

By letter dated October 23, 2023, the Superintendent notified Appellant of her termination effective immediately on the grounds of misconduct in office and insubordination as a result of Appellant's abusive use of Microsoft Teams Chat with co-workers during her duty time in a manner contrary to Policy 2718 – *Appropriate us of Technology*; Administrative Procedure 1118.3 – *Harassment, Intimidation, and Bullying* and Administrative Procedure 1740.6 – *Confidentiality and Privacy*. (R. 228).[4]

By letter dated November 14, 2023, Mr. Navarro denied the October 16th grievance concluding that all due process requirements were followed in accordance with the CBA. He also explained that the investigation was conducted and completed by multiple supervisors regarding the reported harassment in accordance with Local Board Policy #1118 (Administration) – *Investigation and Resolution of Complaints* and concluded that Appellant consistently used Microsoft Teams Chat with four other employees during duty time and for non-work-related gossip which contributed to a toxic environment in the HR department which caused emotional and physical distress to employees. (R. 1915 – 1920).

On December 6, 2023, Appellant filed an appeal with the local board. The local board appointed Hearing Examiner, Roger C. Thomas, Esq., to hold an evidentiary hearing. The parties submitted pre- and post- hearing briefs. Mr. Thomas held an evidentiary hearing on February 29, 2024 and April 23-24, 2024, during which he considered the testimony of ten witnesses and numerous exhibits. Included in Appellant's exhibits was Appellant's Exhibit 65 which contains over 500 pages of Microsoft Teams Chats which the Appellant admitted were her chats. (R. 1143 – 1647).[5] She also introduced text messages not covered by Policy 2718 shared between Appellant, Supervisor 2and others. (R. 1738 – 1808).

[3] Mr. Seawell, Supervisor 2, and Supervisor 3 all testified at the post-termination evidentiary hearing about actions they took to attempt to resolve the issues Appellant brought to their attention. (R. 2224).
[4] Local Board Policy 2718 defines "electronic communications to include "any media used to communicate electronically, including computers, the Internet, and software."
[5] Appellant received the chat messages in response to a Public Information Act request, she filed on October 25, 2023. (R. 1715).

At the evidentiary hearing, Appellant testified that on multiple occasions, she used the chat to vent to the group, reported on conversations among other HR staff that she overheard, and shared screenshots of emails between her and other employees to point out the employees' errors. (R. 745-748).

Supervisor 2 testified that she was "sad and shocked" at reviewing the chats and that the chats manifested actionable conduct that she observed in the office, including eavesdropping on conversations and providing "play by play" of staff interactions in the office. (R. 823-825). Supervisor 3 testified that he understood that Appellant was frustrated with the work performance of some staff members, but it did not give anybody the right to humiliate, ridicule and make people feel the way they felt in the office. (R. 799). Supervisor 3 testified that the chats confirmed for him that the mistreatment reported to them was occurring. (R. 799).

The Superintendent testified that he concluded that Appellant engaged in bullying, harassing, and disrespectful behaviors that resulted in misconduct and insubordination and that Appellant's actions created a lack of trust and served as the basis of his decision. (R. 843, 2216). He testified that he did not consider the Appellant's Whistleblower letter as a factor in determining disciplinary action. *Id*. He testified that the concern he had was that Appellant failed to acknowledge the harm that was caused in the department by her conduct and there was no remorse and "there was no accountability in any way shape, or form…and I felt [Appellant] was blaming [CCPS] for her role in the individuals that were bullying others." (R. 841). He continued:

> Well, my determination was that I wasn't sure how the harm could be restored. I always come from a progressive discipline mindset and I also look to restore any harm that was done, and the concern that I had was without any acknowledgment of the harm that was caused within the Department, I was unsure of how it could be restored, which gave me the ultimate decision-making of termination to give the Department an opportunity for a fresh start, especially when you talk about human resources, which should be the flagship of relationship and how you get along.

(R. 842).

On October 23, 2024, the Hearing Examiner issued a 49-page Findings of Fact, Conclusions of Law and Recommendation recommending that the local board uphold the termination of the Appellant's employment for misconduct in office. (R. 2185 – 2233). The Hearing Examiner stated that one of the supervisors involved in the investigation should have recused herself because she had texted Appellant about employees in the HR office and made comments that were not necessarily appropriate, i.e. such as implying that she herself, was now considered a "mean girl." (R. 2231). However, the Hearing Examiner did not find that this flaw in the investigation was material because the investigation included summaries and the actual chats were introduced into evidence at the hearing. *Id.* The Hearing Examiner made several conclusions in reaching his recommendation:

(1) Although Appellant met the statutory requirements for a whistleblower, he concluded that her termination did not violate the Act or local board policy because there was no causal connection between the protected activity and the termination. The Hearing Examiner concluded that the Superintendent presented sufficient evidence to demonstrate that the decision to terminate Appellant was based on grounds other than any whistleblower activities and therefore, the Appellant did not establish that those activities were the "but for" reason for her termination. (R. 2228).
(2) The Hearing Examiner found that the evidence presented at the Hearing was insufficient to demonstrate that the Appellant engaged in any direct conduct of insubordination, and therefore, he concluded that Appellant's termination based on insubordination was not supported and was not reasonable. (R. 2230).
(3) The Hearing Examiner found that the evidence presented at the Hearing was sufficient to demonstrate that Appellant engaged in acts of misconduct, regarding her inappropriate conduct use of Teams Chat and therefore, he concluded that the Superintendent's decision to terminate Appellant's employment based on misconduct was not arbitrary or unreasonable. (R. 2231).

On December 4, 2024, the local board heard oral argument from the parties and then issued its written decision on December 6, 2024. (R. 223-2254).[6] The local board failed to reach a majority vote of three members necessary to either affirm or reverse the Superintendent's decision. Therefore, as a matter of law, the Superintendent's decision to terminate the employment of Appellant remains in effect. *Fields v. Baltimore Cnty. Bd. of Educ*., MSBE Op. No. 16-05 (2016).

On January 2, 2025, Appellant filed this appeal with the State Board.

STANDARD OF REVIEW

In *Venter v. Howard Cnty. Bd. of Educ.*, MSBE Op. No. 05-22 (2005), *aff'd* 185 Md. App. 648, *cert. denied,* 410 Md. 561 (2009), the State Board held that a non-certificated employee is entitled to an administrative appeal of a termination pursuant to §4-205(c)(3) of the Education Article. The standard of review that the State Board applies to such a termination is that the local board's decision is considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

LEGAL ANAYLSIS

Appellant asserts that her termination was based on illegal reasons because it was the result of unlawful retaliation due to her whistleblowing activities. She also argues that her termination was unreasonable and arbitrary.

[6] Appellant presented a second and more comprehensive whistleblower letter to the local board. (R. 1742).

Retaliation Claim Wrongful Discharge.

The State Board has recognized retaliation as an illegal reason for terminating an employee if it is done in response to an employee engaging in the protected activity of reporting illegal activity. *See Dorsey v. Carroll Cnty. Bd. of Educ.*, Op. No. 19-35 (2019), citing *Young v. Prince George's Cnty. Bd. of Educ.*, MSBE Op. No. 17-39 (2017). In order to establish a *prima facie* case of retaliation, an appellant must show that (1) she engaged in a protected activity; (2) that the school system took a materially adverse action against her; 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) (citing *Burling N. & Santa Fe. Ry. Co. v. White*, 584 U.S. 53, 68 (2006)). The school system may then rebut the *prima facie* case by showing that there was a legitimate non-discriminatory reason for the adverse action. The burden then shifts back to the Appellant to show that the reasons given by the school system are pretextual. *Id.*

Appellant satisfies the first two elements of her claim of unlawful retaliation. Appellant engaged in a protected activity because as part of her job responsibilities many of the matters she brought to the attention of her supervisors involved reporting of practices that violated a law, rule, or regulation. She also suffered an adverse employment action as she was terminated. The analysis then turns to whether she has satisfied her burden to establish a causal connection between her protected activities and her termination. The record is devoid of any direct evidence that the termination was due to Appellant's protected activities. Rather, the Appellant relies on temporal proximity to establish a causal connection.

Ordinarily, there must be "some degree of temporal proximity to suggest a causal connection." *Constantine v. Rectors & Visitors of George Mason Univ.,* 411 F.3d 474, 501 (4th Cir. 2005)(Internal citations and quotation remarks omitted). For the case at bar, when temporal proximity is the sole basis to establish causation, the "proximity must be very close." *Lewis v. Baltimore City Bd. of Sch. Comm'rs*, 187 F.Supp. 3d 588, 597 (D.Md. 2016).

Appellant first notified the supervisors of the various statutory and regulatory violations starting in September 2021, she continued to inform them of ongoing issues in 2022 and 2023, with her final communication with Mr. Seawell on September 12, 2023, approximately one month prior to her termination. Appellant's reporting of the violations occurred over a period of several years, and we agree with the Hearing Examiner's conclusion that this prolonged period negates a finding of causal connection between the protected activity and the termination based upon the temporal proximity analysis.

Even assuming *arguendo* Appellant met her burden to establish a *prima facie* case of retaliation, the local board has more than satisfied the burden to articulate a legitimate, non-retaliatory reason for the termination. The Hearing Examiner found the Superintendent's testimony credible that he based his decision to terminate the Appellant for misconduct due to her consistent use of the Microsoft Teams Chat with four other employees to challenge the competency of, and direct derogatory comments towards, HR administration and staff, as well as other CCPS staff. The disruptive and continuous chat communications contributed to a toxic environment in the HR department which caused emotional and physical distress to employees

The burden then shifts back to the Appellant to prove the reasons are pretextual. *Foster v. Univ. of Maryland-Eastern Shore,* 787 F.3d 243, 252 (4th Cir. 2015). She must prove that retaliation was the real reason for the termination, and it is the functional equivalent of proving but-for-causation, i.e. that the termination would not have happened but for the employer's retaliatory animus. *Id*. It is her burden to produce factual assertions, under oath, based on personal knowledge; unsupported statements or conclusions are insufficient. *See Greenan v. Worcester Cnty. Bd. of Educ.,* MSBE Op. No. 10-51 (2010); *Etefia v. Montgomery Cnty. Bd. of Educ.,* MSBE Op. No. 03-03 (2003).

Appellant offers no facts upon which we could reasonably find that her alleged whistleblowing activities were the *actual* reason for her termination and the reasons given for termination were pretextual. There was no discipline related to Appellant's reporting of violations. There is no evidence that anyone in the department requested that Appellant stop performing her duties and stop reporting the issues she discovered. In May of 2023, Supervisor 1 thanked Appellant for bringing the violations to her attention and stated she would follow up with an audit, but she also reminded Appellant that teamwork is essential to the department. Appellant speculates that because the investigation started around the time she last met with Mr. Seawell in mid-September and because the investigation was limited in time and scope to only those employees identified as mistreating staff members that the investigation was not started to investigate the climate of the HR but was instigated so that Mr. Seawell could terminate her. This argument is not supported by the record.

The record demonstrates that the HR Department had a serious issue with a deeply divided staff, staff who were struggling to perform their duties, and staff who reported that the Appellant and others in the group chat were mistreating them. The problems had been brewing for years requiring exhausting efforts from management to improve HR department morale. As many as five employees expressed concerns about the continuous Teams chats which were occurring, and it was reported and documented that Appellant was involved in the chats and was mistreating staff members. The record clearly establishes a valid basis for the investigation and termination. Appellant has not met her burden to demonstrate that the reasons for the investigation which ultimately led to her termination were pretextual. We conclude that Appellant has failed to establish a claim for wrongful termination based upon her whistleblowing activities.

Arbitrary, Illegal, and Unreasonable

Appellant claims that her termination based on misconduct in office is arbitrary, illegal, and unreasonable. The State Board has recognized the term "misconduct in office" includes an act contrary to express and implied rules of conduct for employees. *See Resetar v. State Board of Educ.*, 284 Md. 537, *cert. denied*, 444 US 838 (1979). She claims that the investigation was flawed for various reasons and claims that the investigators were biased. However, these claims are immaterial because Appellant admits to her participation in the Teams chats which served as the basis for Appellant's termination.

The record contains a wealth of evidence establishing that the Appellant used the Microsoft Teams Chat in violation of Policy 2718 *Appropriate Use of Technology* which requires staff to use CCPS computer systems in a responsible, ethical manner consistent with

their professional responsibilities. Many of the chats attributed to Appellant included vulgar, profane, unprofessional, and demeaning statements about Appellant's co-workers including the Director. Under our precedent, this misconduct is grounds for termination. *See Messick and Moses (I) v. Wicomico Cnty. Bd. of Educ.*, MSBE Op. No. 13-50 (2013) (where the State Board affirmed the dismissal of two high level central office administrators who engaged in communications insinuating that the superintendent and board president were having an affair and claiming that it would be in everyone's best interests if the Superintendent were not renewed); *see also Kukucka v. Harford Cnty. Bd. of Educ.*, MSBE Op. No. 03-32, at 8 (2003) (affirming the decision of the local board to terminate a noncertificated employee who "[a]mong other things . . . failed to follow the established chain of command, failed to follow the reasonable directives of his supervisor, failed to support management, and created a hostile atmosphere through his unprofessional interactions with others.").

The offensive chat communications were severe and pervasive and caused disruption to the work of the department and caused emotional harm to individuals in the department. During her *Loudermill* meeting, Appellant failed to acknowledge the harm that was caused and failed to take any accountability and blamed CCPS for the toxic environment. The Superintendent determined that termination was the appropriate discipline to restore the harm and to give the department a fresh start. We find that the Superintendent's decision was reasonable and well supported by the record.

Appellant also argues that she has introduced comparator evidence to demonstrate that the decision was arbitrary because she was treated differently than other employees. Comparator evidence refers to evidence where "a 'similarly situated' individual with 'sufficient commonalities on the key variables between the plaintiff and the would-be comparator [presents evidence] to allow the type of comparison that, taken together with the other *prima facie* evidence, [allows] a jury to reach an inference of discrimination. *Curtis v. Prince George's Cnty. Bd. of Educ*., MSBE Op. No. 17-23 (2017)(case citations omitted). The record before us does not contain sufficient evidence to establish that any other employee with sufficient commonalities on the key variables was treated differently than Appellant. Appellant has failed to meet her burden.

Finally, Appellant argues that the termination decision was unreasonable and illegal because she alleges her due process rights were violated. We find this argument lacks any merit. At every stage of the review process, the Appellant was given notice of the charges against her and ample opportunity to be heard as required. *Phelps v. Anne Arundle Cnty. Bd. of Educ*., Op. No. 21-44 (2021). Furthermore, Appellant was afforded a full evidentiary hearing before the Hearing Examiner, and the State Board has long held that the opportunity for a full evidentiary hearing serves to cure any deficiencies that may have occurred in prior administrative proceedings. *In Re: Wayne Foote,* MSBE Op. No. 19-37 (2019).

We find Appellant has failed to demonstrate that the Superintendent's decision was arbitrary, unreasonable, or illegal.

CONCLUSION

For the reasons stated above, we find that Appellant has failed to show by a preponderance of the evidence that the decision of the local board was arbitrary, unreasonable, or illegal. Accordingly, we affirm the decision to terminate Appellant from her position with CCPS.

Joshua L. Michael
President

Monica Goldson
Vice-President

Chuen-Chin Bianca Chang

Chet Chesterfield

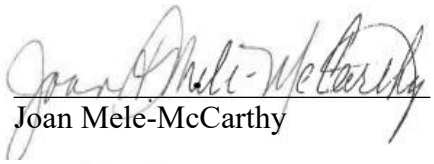
Kenny Clash

Nick Greer

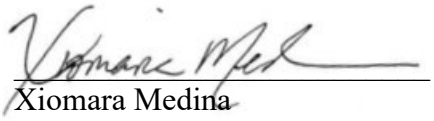
Irma Johnson

Kim Lewis

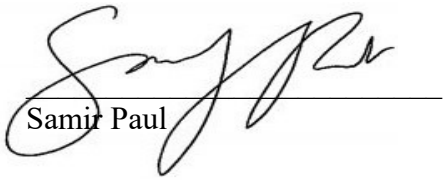
Rachel McCusker



Joan Mele-McCarthy



Xiomara Medina



Samir Paul

Absent:
Clarence Crawford

April 29, 2025