

DEBORAH WILSON,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 24-19

OPINION

INTRODUCTION

Deborah Wilson (“Appellant”) filed an appeal of the decision of the Montgomery County Board of Education (“local board”) denying her complaint of retaliation and bullying she filed against her principal for actions occurring in the Spring of 2023. The local board filed a response, maintaining that its decision was not arbitrary, unreasonable, or illegal. The Appellant filed a response, and the local board replied.

FACTUAL BACKGROUND

Montgomery County Public Schools (“MCPS”) hired the Appellant as a teacher on July 1, 2004. On August 16, 2017, she was assigned as a resource teacher in the mathematics department at Northwest High School (“HS”). Prior to the Spring of 2023, the Appellant had an exemplary employment record. In this appeal to the State Board, Appellant alleges that her principal, Scott Smith (“Principal”), retaliated and bullied her after she filed an administrative complaint on February 14, 2023 challenging the post observation conference report she received as part of the teacher evaluation process. Because the Principal’s alleged conduct after Appellant filed the administrative complaint triggered the retaliation and bullying complaint, both complaints are discussed below. However, only the local board’s retaliation and bullying complaint decision is before us.

February 14, 2023, Administrative Complaint

On February 14, 2023, the Appellant filed an administrative complaint in accordance with MCPS Regulation GKA-RA – Administrative Complaint. (“Regulation GKA-RA”), which alleged specific procedural violations and challenged the accuracy of the information contained in the post observation conference report. (R. 67- 75). Regulation GKA-RA establishes procedures to process and obtain prompt resolution and equitable solutions to employee complaints concerning the interpretation or implementation of MCPS policies and regulations. (Section I). Regulation GKA-RA provides that the administrative complaint process is not to be used for reporting discrimination, bullying, harassment, including sexual harassment, intimidation, or retaliation for having reported such conduct. (Section IV.A.2). Regulation GKA-RA also provides an antiretaliation provision that, “[T]here will be no adverse action taken

against any individual because that individual, in good faith, makes or participates in making a complaint or cooperates with the investigation of a complaint.” (Section III.B). In her administrative complaint, the Appellant requested that the observation which was conducted by Assistant Principal Tara Henry (“AP”) be removed from her personnel file and redone by a different assistant principal. (R. 67). She also sought protection from retaliation from the Principal. *Id.*

Simultaneously, as part of the Peer Assistance and Review (“PAR”) Program, the Appellant was notified on May 25, 2023, that PAR panel co-chairs decided that the Appellant’s “below standards” evaluation would be changed to “meet standards” and the Appellant would remain in her math resource teacher position. (R. 412).

MCPS denied the Appellant’s administrative complaint at levels I, II, and III of the review process. On appeal to the local board, by Decision and Order dated January 11, 2024, the local board noted that there was a two-and-a-half-month delay between the Appellant’s appeal of the Level II decision and the Level III hearing in violation of local board policy. The local board stated, “[T]he Board has previously noted that these delays are unacceptable and that the administration must do more to avoid unnecessary and procedurally improper delays.” (R. 623). The local board reversed in part and affirmed in part the appeal of the Appellant’s administrative complaint stating as follows:

The Board directs that the January 23, 2023, observation, and all references to it in any evaluation, be removed from [Appellant’s] personnel file. If the observation is going to be re-done, it must be done by a different administrator. The Board affirms the denial of [Appellant’s] requests to have a different administrator supervise the mathematics department and her generalized request to be free from retaliation. The Board found no evidence of any retaliation. The Board also offers no opinion on the substance of the January 23, 2023, observation. The reversal is based on procedural grounds.

(R. 624).

May 19, 2023, Retaliation and Bullying Complaint

On May 19, 2023, the Appellant submitted a discrimination, harassment, and workplace bully complaint (“retaliation and bullying complaint”) alleging the Principal had engaged in a series of improper actions in an effort to sabotage her ability to succeed in her job so that he could remove her as a resource teacher and to retaliate against her when she challenged those actions by filing the administrative complaint. (R. 56-57). The Appellant filed the retaliation and bullying complaint in accordance with MCPS Regulation ACH-RA – Workplace Bullying. (“Regulation ACH-RA”).

Regulation ACH-RA provides that workplace bullying is unacceptable and is inconsistent with the *Culture of Respect Compact* and diverts organizational energy from the core values of the local board. (Section II). Regulation ACH-RA provides:

Workplace bullying means repeated, deliberate, hurtful mistreatment, either direct or indirect, whether verbal, physical, or otherwise, conducted by one or more employees against another employee or employees, and that is otherwise, conducted by one or more employees against another employee or employees, and that is

1. motivated by any individual's actual or perceived personal characteristics, as defined in in Board of Education Policy ACA, *Nondiscrimination Equity, and Cultural Proficiency*; or
2. threatening or intimidating; and that occurs at the workplace or in the course of employment; and
3. sufficiently severe or pervasive so as to alter the conditions of the individual's working environment....

Examples of workplace bullying may include acts of humiliation, intimidation, or sabotage of work performance. Workplace bullying may adversely impact an individual's physical or psychological well-being or work performance and advancement opportunities.

(Section III.C). Regulation ACH-RA further provides that no adverse action will be taken against any individual because the individual, in good faith, makes or participates in making a report of workplace bullying. (Section IV.B.4).

In support of her retaliation and bullying complaint the Appellant submitted numerous allegations with supporting documentation for each allegation. The most relevant allegations are summarized as follows:

- Observation reports of observations conducted on January 23, 2023 and February 22, 2023 contain inaccurate information that conflicts with the notes taken at those meetings and do not reflect either what occurred during the observed event or what was discussed in the conferences. (R. 7 & 9).
- Email dated February 24, 2023 from the Principal to the Appellant questioning the Appellant why she needed a union representative at her post observation meeting. (R. 11).
- Email dated February 27, 2023 from the Principal to the Appellant notifying her that he was denying her request to have union representation for any future meetings unless the meeting is disciplinary in nature. (R. 11).
- Treated unfairly during the March 15, 2023 department meeting because despite receiving prior approval, Appellant was told she was not permitted to implement training that differed from all other departments. (R. 7).
- On March 22, 2023, the Principal placed the Appellant on a growth plan based on the previous negative observations that were based on false information and the growth plan used false data. (R. 13).
- Email dated March 24, 2023 from the Principal to the Appellant reminding the Appellant of her professional responsibility to

respond to emails within 24 to hours even though the Appellant had 10 days to respond to the email requesting the Appellant to sign the post observation conference report. (R. 11).

- Email dated March 27, 2023 from AP to the Appellant requesting the Appellant to submit Standards V and VI for her evaluation by March 28, 2023 even though the Appellant was initially told she would have until April 14, 2023 to submit the information. (R. 11).
- Treated unfairly during the April 24, 2023 department meeting because when all departments were scheduled to perform the same coordinated training, the Appellant was not permitted to conduct the same coordinated training as other departments. (R. 7).
- Six biweekly meetings between the AP and the Appellant cancelled making it harder for the Appellant to understand and address administrative questions and concerns. (R. 12).
- Growth plan requires bi-weekly growth plan meetings where progress can be reviewed. Only two growth plan meetings occurred since the growth plan was implemented. (R. 12 & 13).
- At the May 10, 2023 growth plan meeting, the Principal used the full time to address two concerns. The first concern was that the Appellant did not trust him or the AP. The second concern was that the Principal falsely accused the Appellant of sharing her growth plan with the math department members because the department members had expressed concerns regarding the additional requirements placed on them due to the growth plan. (R. 13).

MCPS investigated the Appellant's workplace retaliation and bullying complaint. On or about May 25, 2023, Mr. Khalid Walker, an investigator for MCPS' Department of Compliance and Investigations ("DCI"), spoke to the Appellant by phone about the complaint. (R. 608-609). On September 29, 2023, the Appellant spoke with Danielle Miller, the Acting Director of DCI, to discuss the status of the complaint. By letter dated October 7, 2023, Ms. Miller informed the Appellant of the results of the DCI investigation of her retaliation and bullying complaint and stated as follows:

This letter serves as the written determination of your complaint. The investigation found that there is insufficient evidence to substantiate the allegation that [Principal] engaged in retaliation in violation of MCPS policies and regulations. There is no evidence that [Principal] took a material adverse action against you that impacted your employment as related to your filing of an administrative complaint. This is supported by the fact that you have retained your resource teacher position. Your request to have a change in assistant principal is denied.

(R. 65-66). Ms. Miller's determination letter also notified the Appellant that while DCI could not provide an assurance that she would not be subject to retaliation in the future, the Principal was reminded of the prohibition against retaliation and the Appellant was encouraged to report any alleged act of retaliation in the future so it could be addressed quickly. *Id.*

On October 15, 2023, the Appellant filed a timely appeal to the chief operating officer. Dina Brewer was appointed as the hearing officer to hear the appeal. Ms. Brewer communicated with Mr. Walker about DCI's decision to dismiss Appellant's workplace retaliation and bullying complaint. (R. 608-609). He stated that he agreed with Ms. Miller's conclusion that dismissing the complaint because the Appellant did not allege any adverse employment action required for a complaint of retaliation. As for the bullying complaint, he stated the following:

The concerns that [Appellant] reported that she considered to be workplace bullying were that [Principal] put her on a growth plan, he lied about his impressions during an observation, he cancelled or rescheduled meetings, he required her to change her presentation for meetings, and sent email correspondence which [Appellant] believed were rude, demeaning and insulting to her character. I do not believe that [Principal] putting [Appellant] on a growth plan, cancelling meetings and requiring [Appellant] to change a presentation constitute mistreatment nor were the actions sufficiently severe or pervasive so as to alter the conditions of her work environment....in reviewing the eleven emails submitted the emails are professional, I do not believe they are evidence of mistreatment and there is no evidence that the email correspondence were sufficiently severe and pervasive so as to alter the conditions of [Appellant's] work environment.

(R. 608-609). Mr. Walker also noted that the Appellant was permitted to submit a response correcting any incorrect statements from the Principal's observation and she did so on March 24, 2023. *Id.*

After reviewing DCI's investigation of the Appellant's workplace retaliation and bullying complaint, Ms. Brewer concluded in a February 8, 2024 memorandum that DCI appropriately applied Board Policy ACH and Regulation ACH-RA to the Appellant's workplace retaliation and bullying complaint and affirmed the denial of the complaint. (R. 85-88).

On April 2, 2024, the Appellant filed an appeal to the local board on her workplace retaliation and bullying complaint. In her appeal to the local board the Appellant requested the following remedies:

- A full investigation of her claim and appropriate action to correct the Principal's unprofessional conduct;
- A different assistant principal supervising math for the 2023-2024 school year because AP was complicit with the bullying;
- Removal of the 2/22/2023 observation from her personnel record, including the final evaluation; and
- Protection from future retaliation.

(R. 22). The Interim Superintendent of School's filed a response to the appeal requesting the local board to affirm the decision concluding that there was no retaliation because there is no evidence to support the claim that the Principal took a materially adverse action against the

Appellant, and this is supported by the fact that the Appellant has retained her position and class teaching schedule. (R. 597). The Interim Superintendent also stated that there is no evidence sufficient to establish bullying or harassing behavior. *Id.* The Appellant submitted a timely response and requested that the Interim Superintendent's response not be accepted because the response was submitted untimely. The local board considered this matter based on a review of the record in closed session on May 23, 2024.

By Decision and Order dated June 11, 2024, the local board affirmed the Interim Superintendent's and her designee's decision concluding that the board does not find allegations or evidence sufficient to establish bullying or harassing behavior under the definition contained in Board Policy ACH, Workplace Bullying, or the accompanying Board Regulation ACH-RA on the part of the Principal or anyone else at HS. The local board also concluded that there was no evidence that the Appellant suffered an adverse action with regard to her employment to sustain a claim of unlawful retaliation. (R. 133-135). In response to the Appellant's argument about the delay in the Interim Superintendent's response, the local board stated:

The Board agrees that the amount of time that it took for the administration to address this Complaint and appeal was unreasonable. However, the administration's response is simply a restatement of facts already contained in the record, so refusing to accept or consider it would be of no consequence. As a result, the Board has accepted it as part of the entire record on appeal. The Board apologizes to [Appellant] for the length of time that passed between her filing of the Complaint and this decision. It has directed the administration to work more diligently to comply with deadlines.

(R. 134).

Appellant thereafter filed this appeal to the State Board.

STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

LEGAL ANALYSIS

Retaliation

The Appellant argues that her 19-year employment record is exemplary and only after she notified the Principal that she was going to file an administrative complaint did he and others at his direction question her performance in retaliation for asserting her rights to challenge her evaluation. She asserts that the Principal engaged in a series of improper actions to sabotage her ability to succeed in her job so that he could remove her as a resource teacher. She asserts that the Principal and the AP included false information about her performance in the teacher

evaluation process resulting in the placement of the Appellant on a growth plan. However, the PAR Panel review process remediated any alleged attempts by the Principal to remove the Appellant from her resource teaching position.

The local board counsel in the briefing asserts that based on these facts, there can be no retaliation for two reasons. First, the local board counsel argues that the Appellant did not engage in a protected activity because she did not pursue a claim of unlawful discrimination. Second, local board counsel argues that the Appellant did not suffer any adverse employment action because she continues to remain in her position as a resource teacher. The local board decision in this matter did not address the issue of a protected activity in its decision.

To establish a claim of retaliation, the Appellant must show “that the school system took a materially adverse action against the [Appellant]; and a causal connection existed between the protected activity and the materially adverse action.” *Jones v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 15-33 at 8 (2015)(citing *Burlington N. & Santa Fe Ry. Co. v. White*, 584 U.S. 53, 68 (2006). Often temporal proximity between the protected activity and the adverse employment action is evidence supporting an inference that the protected activity was the proximate cause of the adverse employment action. *Jones*, MSBE Op. No. at 9, citing *Edgewood Management Corp. v. Jackson*, 212 Md. App. 177, 205 (1993).

On appeal before the State Board, local board counsel argues that the Appellant did not engage in a protected activity because the Appellant did not assert a claim of discrimination connected to a protected class under Title VII, 42 U.S.C. §2000e-3(a). This argument, that the protected activity must be related to Title VII, is contrary to the *Jones* State Board opinion cited by the local board as this opinion addresses alleged retaliation stemming from participation in protected union activity. *See* MSBE Op. No. 15-33 at 8-9); *see also Shulevitz v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 21-14 at 6 (2012)(there is no dispute that making a child abuse report under Maryland law is a protected activity). Furthermore, this argument is contrary to Local Board Regulation GKA-RA and Local Board Regulation ACH-RA as these regulations contain antiretaliation provisions for activities not related to Title VII. Regulation GKA-RA provides that, “[T]here will be no adverse action taken against an individual because that individual in good faith, makes or participates in making [an administrative] complaint.” Section III.B. Local Board Regulation ACH-RA provides that there will be no adverse action taken against any individual because the individual, in good faith, makes a report of bullying. Both activities are protected from illegal retaliation by local board policy. In addition, in the Appellant’s initial administrative complaint, she sought protection from retaliation under Local Board Regulation GKA-RA and this was addressed by the local board in its decision.

Furthermore, Ms. Miller the acting Director of DCI in her written determination letter addressing the retaliation and bullying complaint stated that DCI could not provide any assurance that the Appellant would not be subject to retaliation in the future, but the Principal was reminded of the prohibition against retaliation and the Appellant was encouraged to report any alleged act of retaliation in the future so that it could be addressed quickly. *See* R. 65-66. When the Appellant complained to Mr. Walker who was investigating her administrative complaint that she was being retaliated against for filing her administrative complaint, Mr. Walker advised her to file a bullying and retaliation complaint and then sent the Appellant MCPS Form 230-39 to report the events that occurred following the Appellant’s administrative

complaint. *See* R. 111. For all of these reasons, we disagree with the local board's argument that the Appellant did not engage in a protected activity.

However, finding that the Appellant engaged in protected activity does not end the analysis about whether the local board reasonably applied its retaliation regulation. We next look at whether Appellant suffered a materially adverse employment action. We agree with the local board's argument that the claim of retaliation fails because the Appellant has not demonstrated a materially adverse employment action. The Appellant argues that the alleged bullying events and particularly the implementation of the growth plan and the negative performance reports constitute materially adverse employment actions. However, this argument is not supported in the caselaw. The "antiretaliation provision protects an individual not from all retaliation, but from retaliation that produces an injury or harm." *Burlington N. & Santa Fe Ry. Co. v. White*, 584 U.S. 53, 67 (2006); *see also Admas v. Anne Arundle Cnty. Pub. Schs.*, 789 F.3d 422, 431 (4th Cir. 2015)(reprimands and poor performance evaluations occur with some frequency in the workplace.... they are much less likely to involve adverse employment actions than the transfers, discharges, or failures to promote whose impact on the terms and conditions of employment is immediate and apparent).

We conclude that although the Appellant has demonstrated that she engaged in a protected activity there can be no claim for retaliation because the Appellant has maintained her position as a math resource teacher. She has failed to carry her burden to demonstrate that she suffered an adverse employment action.

Bullying

The Appellant asserts that the inclusion of false information in post-observations reports; repeated last-minute or same day cancellations of meetings; multiple emails requesting immediate responses or questioning the need for union representation at meetings; and inequitable requirements for professional development planning all amounted to bullying behavior against her by the Principal. The Appellant does not allege that any of the behavior on the part of the Principal towards the Appellant was motivated by the Appellant's personal characteristics such as race or gender.

Local Board Regulation ACH-RA III.C defines bullying as workplace behavior that is threatening or intimidating and sufficiently severe or pervasive so as to alter the conditions of the individual's working environment. We have closely scrutinized the record in this matter, and we do not find that any of the Principal's behavior towards the Appellant was threatening or intimidating nor was it severe or pervasive so as to alter the conditions of Appellant's working environment. It is common for meetings and presentations to be cancelled at the last minute in the work environment. Furthermore, the emails in the record before us are professional in nature and pertain to the operations of the school system.

Investigation

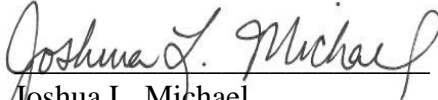
The Appellant also asserts that because DCI did not timely or thoroughly investigate her workplace retaliation and bullying complaint this is further evidence of retaliation. We do not agree with the Appellant's assertion that her claim was not fully investigated. The record before

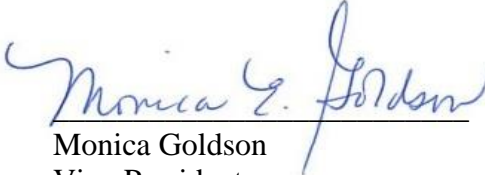
us demonstrates that the Appellant’s retaliation and bullying complaint was taken seriously and was fully investigated. There is no doubt that there was delay in the amount of time it took for MCPS administration to address the retaliation and bullying complaint and this appeal. However, the delay of the investigation is not evidence of retaliation. *See Fincher v. Depository Trust & Clearing Corp.*, 604 F.3d 712, 721 (2d Cir. 2010)(“an employer’s failure to investigate a complaint of discrimination cannot be considered an adverse employment action taken in retaliation for filing of the same discrimination complaint).

The local board addressed the delays in its decision and apologized to the Appellant for the length of time that passed between her filing of the complaint and the local board issuing its decision. *See R. 134*. The local board also directed MCPS administration to work more diligently to comply with deadlines. We also direct the MCPS administration to work more diligently to comply with local board policy deadlines. However, we do not find that the delays resulted in an arbitrary, unreasonable, or illegal local board decision.


CONCLUSION

For all of these reasons, we find that the decision of the local board was not arbitrary, unreasonable, or illegal, and we affirm.


Joshua L. Michael
President



Monica Goldson
Vice-President



Chuen-Chin Bianca Chang

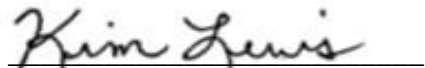

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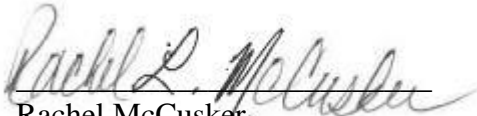

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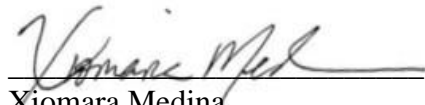

Susan J. Getty

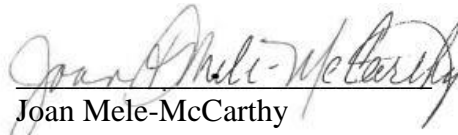

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September 24, 2024