STEPHEN PRICE,	BEFORE THE
Appellants	MARYLAND
v.	STATE BOARD
HOWARD COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 25-25

OPINION

INTRODUCTION

Appellant, Stephen Price, filed exceptions to the Administrative Law Judge's ("ALJ") Proposed Decision ("Proposed Decision") dated November 17, 2023 recommending that the State Board uphold the Howard County Board of Education's ("local board") decision to terminate Appellant from his teaching position for violations of §6-202(a) of the Education Article. The local board filed a response to the exceptions.

FACTUAL BACKGROUND

This matter has a long procedural history. In August of 2021, Appellant filed an appeal to the State Board of the local board decision affirming his termination from his teaching position for reasons stated under §6-202(a) of the Education Article. Appellant claimed in his appeal that the local board terminated him in violation of §6-202(a) of the Education Article and his rights for accommodation under the Americans with Disabilities Act ("ADA") of 1990. We transferred the case pursuant to COMAR 13A.01.05.07A(1)(b) to the Office of Administrative Hearings ("OAH") and ALJ Richard O'Connor issued a proposed decision on February 8, 2022. Upon review of the initial proposed decision, the State Board remanded this matter back to the local board for a full evidentiary hearing before a local hearing examiner on Appellant's termination. *Stephen Price v. Howard Cnty. Bd. of Educ.*, MSBE Op. No. 22-12 (2021).

Following remand, the local board convened a full evidentiary hearing on September 14, 22, and 29, 2022 before local board Hearing Examiner Roger C. Thomas ("Hearing Examiner"). The Hearing Examiner heard the testimony from five witnesses including one witness for Appellant and reviewed all exhibits submitted by the parties including 150 pages of exhibits submitted by Appellant. Despite the Hearing Examiner's noting the ability of the Appellant to testify approximately 30 times, Appellant chose not to testify. *See* Attachment #1 to the Local Board's Motion in Limine before OAH. On December 21, 2022, the Hearing Examiner issued his recommendation to the local board in which he recommended that the termination of Appellant's employment be affirmed on the grounds of insubordination, misconduct, willful neglect of duty and incompetence.

On March 27, 2023, the local board reviewed the Hearing Examiner's recommendation and adopted the recommendation to terminate Appellant on the grounds of insubordination and willful neglect of duty. The local board also found that Appellant failed to establish that the reasons for termination were discriminatory.

On April 25, 2023, Appellant again appealed the termination to the State Board, and we referred the matter to OAH for a hearing. On July 28, 2023, ALJ H. David Leibensperger granted the local board's motion to prevent the Appellant from presenting additional testimony or documentary evidence at the OAH hearing that was not presented as evidence before the Hearing Examiner. The hearing at OAH occurred on August 21, 2023. On November 17, 2023, ALJ Leibensperger issued his Proposed Decision to the State Board and recommended the State Board uphold the local board's decision to terminate Appellant. The ALJ concluded in his Proposed Decision that the record supported grounds for termination based on insubordination, misconduct in office, willful neglect of duty, and incompetence.

On December 5, 2023, Appellant filed exceptions to the ALJ's Proposed Decision. On December 14, 2023, the local board responded. On February 27, 2024, the State Board stayed this appeal because it learned that the federal district court had asserted its jurisdiction over the matter in *Price v. Board of Educ. of Howard Cnty.,* Civil Action No: MJM-22-541, which involved the same parties and issues related to those before the State Board. *Stephen Price v. Howard Cnty. Bd. of Educ.*, MSBE OR25-04 (2024).

On March 31, 2025, the United States District Court for the District of Maryland granted summary judgment in favor of the local board finding that Appellant had failed to establish a *prima facie* case of failure to accommodate under the ADA. *Price v. Board of Educ. of Howard Cnty*., Civil Action No: MJM-22-541, Memorandum (3/31/2025). Appellant has filed an appeal to the United States Court of Appeals for the Fourth Circuit on his ADA claims. *Stephen Price v. Board of Educ. of Howard Cnty,* Case No. 25-1487 (4th Cir. 5/1/2025).

On April 29, 2025, the State Board continued the stay of this matter until such time that all appeals stemming from the decision of the United States District Court for the District of Maryland are complete. *Stephen Price v. Howard Cnty. Bd. of Educ.*, MSBE OR25-08 (2025). Thereafter, both parties notified the State Board that the issues in the State Board appeal are separate and distinct from the allegations of discrimination in Appellant's pending federal lawsuit and requested that the State Board lift the stay and proceed on the termination matter under §6-202(a) of the Education Article given the unusual circumstances that this appeal has been pending since August 2021.

On May 29, 2025, given the mutual requests by the parties and the length of time this matter has been pending before the State Board, we lifted the stay of the appeal. *Stephen Price v. Howard Cnty. Bd. of Educ.*, MSBE OR25-13 (2025). Pursuant to COMAR 13A.01.05.07F, the filings before the State Board were complete as of December 14, 2023. The parties were instructed that they were not entitled to file any additional filings with the State Board and that the State Board will not consider Appellant's numerous communications with the State Board that he submitted after his exceptions were filed.

The State Board will hear oral argument on the exceptions on June 24, 2025.

STANDARD OF REVIEW

Because this appeal involves the termination of a certificated employee pursuant to §6-202 of the Education Article, the State Board exercises its independent judgment on the record before it in determining whether to sustain the termination. COMAR 13A.01.05.06F. The State Board transferred this case to OAH for an evidentiary hearing and the ALJ issued proposed findings of fact and conclusions of law. In such cases, the State Board may affirm, reverse, modify or remand the ALJ's Proposed Decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications or amendments to the Proposed Decision. *See* Md. Code Ann., State Gov't §10-216(b).

LEGAL ANAYLSIS

Per our Order issued on May 29, 2025, the only filings relevant to this appeal pursuant to COMAR 13A.01.05.07F are the exceptions filed by the Appellant and the Response filed by the local board. *Stephen Price v. Howard Cnty. Bd. of Educ.*, MSBE OR25-13 (2025). We will not consider the numerous communications sent to the State Board by Appellant after he submitted his exceptions. Nor will we consider any exhibits Appellant did not submit to the local board Hearing Examiner.

Appellant filed exceptions to the Proposed Decision. His exceptions are not numbered, and many arguments are repeated under the various exceptions. For clarity, we have divided his arguments into five exceptions.

Exception 1.

The ALJ's Proposed Decision recommends we affirm the termination of Appellant on the grounds of insubordination, misconduct in office, willful neglect of duty, and incompetence. Appellant excepts to the Proposed Decision to the extent the ALJ relied upon the grounds of incompetence and misconduct as these grounds were not included in the local board decision he is appealing. Both the Superintendent and the principal charged Appellant with termination on the grounds of insubordination, misconduct in office, willful neglect of duty, and incompetence. He was provided with a full evidentiary hearing on all four grounds. However, the local board affirmed the termination decision on only two grounds - insubordination and willful neglect of duty. However, the ALJ concluded based on his independent review of the record that Appellant should be terminated based on all four grounds for which he was charged as fully explained in the Proposed Decision.

Section 6-202 of the Education Article governs teacher termination cases and requires the local board to send a copy of the charges against the individual and give the individual a hearing before the local board on those charges. *See Board of School Com'rs. of Baltimore City v. James*, 96 Md. App. 401, 432 (1993). The record before us demonstrates that Appellant was issued charges and had a hearing before the local board Hearing Officer on all four grounds for termination including insubordination, misconduct in office, willful neglect of duty, and incompetence. Accordingly, we conclude that the statutory notice and hearing requirements were satisfied.

Our regulations provide *de novo* review of a certificated employee's dismissal under §6-202 of the Education Article. COMAR 13A.01.05.06F(1). Our regulations further provide that

the State Board shall exercise its independent judgment on the record before it in determining whether to sustain the dismissal of a certificated employee and that the State Board may in its discretion modify a penalty. COMAR 13A.01.05.06F(2) & (3). Because we are reviewing this matter *de novo*, we are not bound to the local board's legal conclusions it reached regarding the grounds for termination. *See Meyers v. Anne Arundel Cnty. Board of Educ*., MSBE Op. No. 16-50 (2016)(*de novo* review "means that the State Board gives no deference to the factual or legal conclusions reached by the local board.").

Following his independent review of the record, the ALJ issued a Proposed Decision which carefully articulates the legal and factual basis for Appellant's termination based upon all four grounds. We agree that the record demonstrates that Appellant engaged in insubordination, misconduct in office, willful neglect of duty, and incompetence. Accordingly, we reject this exception.

Exception #2.

Appellant argues that because the ALJ granted the local board's motion to prevent him from testifying before the OAH, he was denied due process under the *de novo* standard of review of his appeal. The local board filed the motion to prevent the Appellant from testifying at OAH because he chose not to testify before the local board Hearing Examiner. COMAR 13A.01.05.07C(1) provides that additional testimony or evidence may be introduced by either party if the ALJ finds that the evidence is relevant and material and there were good reasons for the failure to offer evidence in the proceedings before the local board. The record demonstrates that the local board Hearing Office repeatedly (over 30 times) advised Appellant of his ability to testify during the three-day evidentiary hearing. *See* Attachment #1 to the Local Board's Motion in Limine before OAH. Furthermore, Appellant responded to the Motion in Limine by arguing that the local board could not compel him to testify against his Fifth Amendment right against self-incrimination before the ALJ. *See* ALJ's Ruling on Motion in Limine, July 28, 2023.

After we remanded this matter back to the local board following Appellant's initial appeal, Appellant was afforded his due process rights including a full evidentiary hearing before the Hearing Examiner and *de novo* review before the State Board. We find no due process violations in this matter. Appellant was offered the opportunity to testify at the local board hearing, but he chose not to testify. In addition, he has failed to offer any reason as to why he should have been able to testify before the ALJ when he chose not to testify at his local board hearing. We find that the ALJ correctly ruled that the Appellant failed to set forth any good reason to permit him to testify before OAH as required by our regulations and precedent. *Young v. Montgomery Cnty. Bd. of Educ*., MSBE Op. No. 16-41 (2016) (State Board regulations do not allow additional evidence at hearing before OAH, unless the party offering the evidence establishes good reason for their failure to present the evidence at the hearing before the local board). Accordingly, we reject this exception.

Exception #3.

Appellant's third exception pertains to his claims of discrimination and retaliation under the ADA. As noted in our previous Orders, the United States District Court for the District of Maryland exercised jurisdiction over these issues and recently granted summary judgment in favor of the local board finding that Appellant had failed to establish a *prima facie* case of failure

to accommodate under the ADA. *Price v. Board of Educ. of Howard Cnty*., Civil Action No: MJM-22-541, Memorandum (3/31/2025). Appellant has filed an appeal to the United States Court of Appeals for the Fourth Circuit. *Stephen Price v. Board of Educ. of Howard Cnty,* Case No. 25-1487 (4th Cir. 5/1/2025). Because we limit our jurisdiction to Appellant's claims under §6-202 of the Education Article as requested by the parties, *Stephen Price v. Howard Cnty. Bd. of Educ.*, MSBE OR25-13 (2025), we decline to address this exception over issues which are on appeal in federal court.

Exception #4

Appellant seems to argue in his fourth exception that as a teacher he had academic freedom to say what he wanted in the classroom and his placement on an action plan was a violation of local board policy because he was never rated as ineffective, thus it was arbitrary and unreasonable for HCPSS to place him on an action plan and it was unlawful discipline under the Negotiated Agreement between HCPSS and the Teachers' Union. As determined by the ALJ, local board practice provides that teachers may be placed on an action plan even if their overall job performance is satisfactory. The ALJ properly concluded that Appellant was placed on the non-disciplinary action plan to support Appellant to improve his teaching of controversial issues – an area in which Appellant was clearly struggling.

Likewise, Appellant's argument that his placement on the action plan violated the Negotiated Agreement because he had complete "academic freedom" to say what he wanted in the classroom also fails. The Negotiated Agreement provides that the teacher's selection of appropriate materials is subject to curriculum guidelines and appropriate supervision by the teacher's evaluator. We agree with the ALJ's factual and legal conclusions that the action plan was non-disciplinary and reasonable and conclude Appellant's placement on the action plan was consistent with local board practice and not a violation of local board policies and the Negotiated Agreement. Accordingly, we reject this exception.

Exception #5

Appellant also argues that the ALJ should have cited and relied upon additional testimony and documentary evidence that was part of the record. He argues that the ALJ failed to take into account the evidence that Appellant, like all staff, experienced technical issues and these issues prevented him from performing some of his required duties. He also argues that the ALJ failed to consider evidence that he was playing "devil's advocate" when he used certain racial and homophobic slurs and that these slurs could be attributed to prominent political figures. He also argues that the ALJ ignored the evidence that the violent videos the Appellant showed were never a problem in previous years.

We have long held that "[H]earing officers are not required to give equal weight to all the evidence." *Hoover v. Montgomery Cnty. Bd of Educ*., MSBE Op. No. 19-03 (2019) (*citing Karp v. Baltimore City Bd of School Comm'rs,* MSBE Op. No. 15-39 (2015)). As the fact finder, it is the ALJ's job to sort through the evidence and reach factual conclusions based on the weight the ALJ assigns to that evidence. It is also not necessary for the ALJ to cite to every piece of evidence or testimony given in a case. *Id.*

The conclusions reached by the ALJ are well supported by the evidence in the record before us and it was not necessary for the ALJ to cite to every piece of evidence presented. We find no error in the ALJ's crediting the testimony and no error in the ALJ's factual and legal conclusions. Accordingly, we reject this exception.

CONCLUSION

We find the ALJ correctly determined Appellant committed insubordination, misconduct in office, willful neglect of duty, and incompetence warranting termination. We adopt the ALJ's Proposed Decision in its entirety, and uphold Appellant's termination for insubordination, misconduct in office, willful neglect of duty, and incompetence.

Joshua L. Michael
President

Monica Goldson
Vice-President

Chuen-Chin Bianca Chang

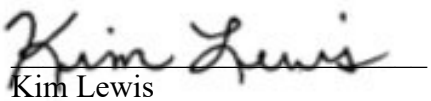
Chet Chesterfield

Kenny Clash

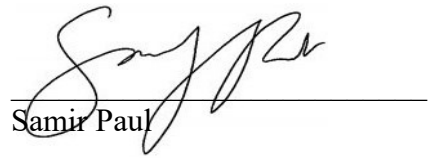
Clarence Crawford

Nick Greer

Irma Johnson



Kim Lewis



Samir Paul

Absent:
Joan Mele-McCarthy
Xiomara Medina

Voted on: June 24, 2025

Issued: June 27, 2025

STEPHEN PRICE,	*	**BEFORE H. DAVID LEIBENSPERGER,**
APPELLANT	*	**AN ADMINISTRATIVE LAW JUDGE,**
v.	*	**OF THE MARYLAND OFFICE OF**
BOARD OF EDUCATION	*	**ADMINISTRATIVE HEARINGS**
OF HOWARD COUNTY	*	**OAH No.: MSDE-BE-01-23-11965**

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On February 10, 2021, the Superintendent of the Howard County Public School System (HCPSS) notified Stephen Price (Appellant), a teacher at Long Reach High School, that he was recommending the Appellant's termination for insubordination, misconduct in office, willful neglect of duty, and incompetence. Md. Code Ann., Educ. § 6-202(a)(1) (2022). On February 17, 2021, the Appellant requested an appeal to the Howard County Board of Education (County Board). The Appellant then requested the matter be referred to arbitration, which the County Board denied as untimely. By letter dated June 7, 2021, the County Board requested that the Appellant reconfirm his request for a hearing before the County Board. The Appellant did not contact the County Board in response to the June 7, 2021 letter, and the County Board did not schedule a hearing. On August 3, 2021, the County Board issued a written decision terminating the Appellant's employment.

On August 9, 2021, the Appellant appealed to the Maryland State Board of Education (State Board), which referred this matter to the Office of Administrative Hearings (OAH) for a

hearing. Md. Code Ann., Educ. § 6-202(a)(4) (2022); Code of Maryland Regulations (COMAR) 13A.01.05.07A.

After a five-day hearing before the OAH, resulting in a Proposed Decision that was transmitted to the State Board for action, the State Board issued a decision on May 25, 2022, finding that the County Board had erred in failing to schedule Appellant's case for a hearing after his request for arbitration was denied, and so the case was remanded to the County Board for a hearing.

The County Board then held a three-day hearing on September 14, 22, and 29, 2022, in which the Appellant attended and participated. The County Board took testimony from five witnesses, including one witness for the Appellant; the County Board also accepted documentary evidence from both the HCPSS and the Appellant. The Appellant chose not to testify.

On March 27, 2023, the County Board accepted the HCPSS Superintendent's recommendation to terminate the Appellant for insubordination and willful neglect of duty. On April 25, 2023, the Appellant again appealed to the State Board, which again referred this matter to OAH for a hearing. Md. Code Ann., Educ. § 6-202(a)(4) (2022); COMAR 13A.01.05.07A.

I conducted a hearing on August 21, 2023 at OAH in Hunt Valley, Maryland. The Appellant was self-represented. Stephen J. Cowles, Esquire, represented the County Board.

Procedure in this matter is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board of Education, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 13A.01.05; COMAR 28.02.01.

ISSUE

Did the County Board properly terminate the Appellant?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Appellant:[1]

App. Ex. 1 - Americans with Disabilities Act (ADA) Medical Questionnaire Form, Therapist Teri Burns, October 25, 2019

App. Ex. 2 - HCPSS Family Medical Leave Act (FMLA) Approved Leave Letter, November 1, 2019

App. Ex. 3 - Therapist Teri Burns Letters, September 9, 2019 and October 23, 2019

App. Ex. 4 - HCPSS FMLA Leave Approval Letters, September 10, 2019 and October 8, 2019

App. Ex. 5 - Letter from Dr. Gary Prada, October 21, 2019

App. Ex. 6 - Letter from Natalie Simak, RN. L.Ac, August 27, 2019

App. Ex. 7 - Letter from Physical Therapist Jonathan Schiller, September 11, 2019

App. Ex. 9 - ADA Medical Questionnaire Form, Dr. Thomas Harries, October 30, 2019

App. Ex. 10 - HCPSS Letter from Camille Bell-Jones, November 20, 2019

App. Ex. 11 - Emails to and from Mark Blom, October 29, 2019

App. Ex. 13 - HCPSS Action Plan Process – Tenured, pp. 39-42, September 2018; Evaluation Summary and Evaluation Signature Form (On-Cycle), date submitted June 15, 2018

App. Ex. 15 - Letter from Dr. Thomas Harries January 16, 2020

App. Ex. 18 - Letter from Colleen Morris, Howard County Education Association, to William Barnes, HCPSS, September 20, 2020

App. Ex. 21 - Letter from Howard County Department of County Administration to the Appellant re: Office of Human Rights and Equity's Decision and Order, June 12, 2021

App. Ex. 22 - HCPSS Laptop Repair Ticket, report date August 25, 2020

App. Ex. 23 - Emails with Flight Itineraries, printed April 26, 2021

[1] Appellant's Exhibits 8, 14, 16, 17, 19, and 20 were not admitted into evidence. I have retained these documents with the file of this matter. The Appellant represented that his Exhibit 12 was the same as his Exhibit 2, which was admitted. However, there was no document labeled Exhibit 12 with his exhibit packet.

I admitted the following exhibits on behalf of the County Board:[2]

Board Ex. 1 - Maryland State Board of Education's Opinion No. 22-12, May 24, 2022

Board Ex. 2 - Letter to Appellant Regarding Scheduling of Hearing, June 15, 2022

Board Ex. 3 - Transcript of Day One Appeal Hearing before Hearing Examiner Roger Thomas, Esquire, September 14, 2022

Board Ex. 4 - Transcript of Day Two Appeal Hearing before Hearing Examiner Roger Thomas, Esquire, dated September 22, 20222

Board Ex. 5 - Transcript of Day Three Appeal Hearing before Hearing Examiner Roger Thomas, Esquire, dated September 29, 20223

Board Ex. 6 - Howard County Public Schools Superintendent's Exhibit Numbers #1-72 Admitted into Evidence during Appeal Hearing before Hearing Examiner Roger Thomas, Esquire, various dates

Board Ex. 7 - Appellant's Exhibits Admitted into Evidence during Appeal Hearing before Hearing Examiner Roger Thomas, Esquire, various dates

Board Ex. 8 - Findings of Fact, Conclusions of Law and Recommendations of Hearing Examiner, Roger Thomas, Esquire, dated December 21, 2022

Board Ex. 9 - Request for Oral Argument before the County Board, dated December 23, 2023

Board Ex. 10 - Notice of Oral Argument before the County Board, dated January 10, 2023 & Revised Notice of Oral Argument before the County Board, dated February 16, 2023

Board Ex. 11 - Opinion and Order of the County Board, March 27, 2023

Testimony

Both parties only presented their exhibits and argument; no testimony was presented at the hearing.

[2] The County Board submitted a Record Extract as its exhibits prior to the hearing. At the hearing, the County Board did not offer its Exhibit 12 into evidence. I retained a copy of this document with the file of this matter.

STIPULATIONS OF FACT

At the outset of the hearing, the parties stipulated to the following facts:[3]

1. The Appellant was hired by the HCPSS on August 19, 2013, for the 2013-2014 school year.

2. The Appellant held, at the time of hire, Advanced Professional Certificate (APC) in Social Studies Grades 7-12, APC Special Education, and APC Reading Grade 6.

3. Mr. Joshua Wasilewski became Principal of Long Reach High School at the start of the 2016-2017 school year. He remained Principal of the school until his appointment to Guilford Park High School (previously known as High School #13) for the 2022-2023 school year.

4. The Appellant was a Social Studies teacher at Long Reach High School when Mr. Wasilewski was appointed Principal of the school.

5. During his tenure at the HCPSS, the Appellant received satisfactory evaluations.

6. By letter dated February 17, 2021, the Appellant notified the local Board of Education and the school system that he was requesting an appeal before the Board of Education of Howard County in accordance with section 6-202 of the Education Article.

7. On May 24, 2022, the State Board remanded the Appellant's termination to the County Board for the purpose of convening a hearing as required under section 6-202 of the Education Article.

FINDINGS OF FACT

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

1. On November 13, 2018, while teaching, the Appellant made comments to his students that suggested that homosexuality led to pedophilia and was akin to bestiality.

[3] On the written stipulations offered by County Board, these stipulations were numbered 1 through 5, 14, and 18, respectively.

2. On the same date, the Appellant also made comments that were disparaging of elderly, Asian, and Middle Eastern drivers.

3. On January 10, 2019, Mr. Wasilewski issued a Letter of Reprimand to the Appellant for violating HCPSS policies 1000 (Civility), 1010 (Anti-Discrimination), 1040 (Safe and Supportive Schools), and 8050 (Teaching of Controversial Issues), related to his inappropriate comments on November 13, 2018.

4. On January 17, 2019, the Appellant taught a lesson about police brutality and showed his class two videos: "Rob Hustle – Call the Cops" and "Police Officer Slams S.C. High School Student to the Ground." Both videos contained graphic scenes of violence, including images of police maiming and harming citizens, and lyrics and images comparing police officers to Nazis.

5. The videos were not part of the HCPSS curriculum. The Appellant did not follow HCPSS policy and did not request or obtain approval before playing the videos in class.

6. Mr. Wasilewski tried to meet with the Appellant about the video incident; however, the Appellant would cancel or not appear for scheduled meetings.

7. On March 12, 2019, Mr. Wasilewski recommended to the HCPSS superintendent that the Appellant be suspended without pay for one day for violating HCPSS policies 7030 (Employee Conduct and Discipline), 8050 (Teaching of Controversial Issues), 8040 (Selection of Instructional Procedures), and 1040 (Safe and Supportive Schools), related to the January 17, 2019 video incident.

8. The Appellant met with Mr. Wasilewski and Assistant Principal Richard Smart on April 10, 2019 regarding the video incident.

9. Instead of serving a one-day suspension, the Appellant received a Letter of Reprimand from Mr. Wasilewski on June 5, 2019 regarding the January 17, 2019 video incident.

10. The Appellant was on medical leave at the beginning of the 2019-2020 school year, and he returned to work in November 2019.

11. Upon the Appellant's return to work, he was provided with accommodations under the Americans with Disabilities Act (ADA) related to his medical condition that resulted in his medical leave.

12. On November 22, 2019, Mr. Smart informed the Appellant by email that the 2019-2020 school year would be a "full evaluation" year for the Appellant.

13. In a full evaluation year, teachers are required to submit student learning objectives (SLO) and teaching goals for the year to the administration for approval.

14. Mr. Smart's email also told the Appellant that, because of concerns about the Appellant's lack of compliance with the Teaching of Controversial Issues and Selection of Instructional Materials policies, the Appellant would be subject to a personal Plan of Action (referred to as an "action plan") to train and support the Appellant in those areas during the school year.

15. Mr. Smart directed the Appellant to meet with him, Mr. Wasilewski, and Christine Bos, the Coordinator of Secondary Social Studies, on December 4, 2019, at 12:40 p.m. to discuss the SLOs and the action plan.

16. The Appellant did not appear for the meeting on December 4, 2019, nor did he submit SLOs.

17. On December 5, 2019, Mr. Smart told the Appellant by email that the action plan would be implemented without the Appellant's input, and that Mr. Smart had chosen the Appellant's teaching goals for the year.

18. The Appellant received a letter of reprimand, dated January 10, 2020, from Mr. Wasilewski regarding insubordination due to the failure to attend the December 4, 2019 meeting with the administration.

19. The action plan was non-disciplinary. Action plans are intended to provide support to an employee in job performance areas that have been identified as needing improvement to improve teaching performance and student learning. Implementation of an action plan is not determined by whether a teacher's job performance is satisfactory or unsatisfactory, effective or ineffective. Teachers may receive an action plan even if their overall job performance is satisfactory.

20. The Appellant's action plan identified areas for the Appellant that required professional growth, such as teaching controversial issues.

21. The Appellant's action plan required him to receive controversial issues training. The Appellant eventually completed that training, on a date not specified in the record, during the 2020-2021 school year after the time for him to complete the training had expired and then been extended.

22. The Appellant's action plan required him to submit procedures for implementing the plan to Mr. Smart by December 20, 2019. The Appellant never met this requirement.

23. The Appellant's action plan required him to submit lesson plans for teaching controversial issues to Mr. Smart or Ms. Bos at least five days before the lesson would be presented. The Appellant never submitted any lesson plans.

24. The Appellant's action plan required him to meet monthly with Social Studies staff or Ms. Bos to receive support with controversial issues implementation. The Appellant never attended any of these meetings.

25. The Appellant informed Ms. Bos that technology issues prevented his attendance for some meetings. When he did so, Ms. Bos offered the Appellant other options for them to meet, but the Appellant still failed to meet with Ms. Bos.

26. The Appellant's action plan provided that Mr. Smart, Ms. Bos, or Instructional Facilitator Coffman would conduct at least one monthly walk-through of the Appellant's classes

to monitor compliance with the Teaching Controversial Issues policy. Ms. Bos conducted an announced in-person observation of the Appellant that was submitted on March 4, 2020. The Appellant decided to give students a test on the date of the observation. Ms. Bos was only able to observe minimal interaction between the Appellant and his students. Most of the time, the students were seated at desks taking exams. Ms. Bos rated the Appellant as "Basic" and "Unsatisfactory" in various areas for this observation. Ms. Bos conducted a second observation of the Appellant, which was submitted on January 13, 2021. The observation was conducted virtually. Ms. Bos noted that she observed no student engagement or assessment of learning connected to the curriculum. The instruction was not consistent with the Maryland State Department of Education's new assessment limits and revised American Government curriculum. The Appellant did not submit the lesson plan to Ms. Bos prior to the observation. The Appellant received ratings of "Basic" and "Unsatisfactory" in most of the assessment categories. The Appellant did not cooperate with Ms. Bos prior to either observation, and did not meet with Ms. Bos afterward to discuss her observations.

27. Mr. Smart conducted a mid-year review, which is a performance evaluation, of the Appellant on January 31, 2020. The Appellant received a rating of unacceptable, primarily because he had not submitted any SLOs or goals for the school year and had not complied with the action plan.

28. On February 21, 2020, Mr. Wasilewski issued a Letter of Reprimand to the Appellant for violating HCPSS policy 7030 (Employee Conduct and Discipline) for not attending the December 4, 2019 meeting, not submitting SLO/goals, and ignoring the action plan.

29. On June 26, 2020, Mr. Smart informed the Appellant that the action plan would continue into the 2020-2021 school year. The action plan was continued because the Appellant

had not completed the controversial issues component of the action plan (at that time), had not provided an implementation plan, and had not completed trainings.

30. The Appellant failed to complete required trainings at the beginning of the 2020-2021 school year, including curriculum trainings required by the Social Studies Department.

31. The Appellant did not attend virtual back-to-school-night on September 10, 2020 for the 2020-2021 school year, which was an important event but not mandatory for teachers. The Appellant failed to provide any materials for the event, advise that he would be unable to attend, or advise of any technological concerns.

32. On September 25, 2020, the Appellant did not attend an article discussion group meeting on issues of race, marginalization, and discrimination that he was required to attend.

33. On at least two occasions in the Fall of 2020, the Appellant failed to attend student sessions referred to as "lightning time," which is a student enrichment activity that required the Appellant to meet virtually with students to discuss school activities and assignments.

34. The Appellant failed to attend a required staff meeting in January 2021 regarding the events of January 6, 2021 at the United States Capitol.

35. The Appellant never complied with the provisions of his action plan, except for completing the controversial issues training late, and permitting observations in which he did not cooperate.

DISCUSSION

Burden of Proof

Under the applicable MSDE procedural regulation, "[t]he local board has the burden of proof by a preponderance of the evidence." COMAR 13A.01.05.06F(3). Accordingly, the County Board bears the burden of proof in this case, and must show that the charges are more

likely true than untrue when all the evidence is considered. *See Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

Analysis

The County Board terminated the Appellant pursuant to section 6-202 of the Education Article, which provides, in pertinent part:

> (a)(1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:...
> (ii) Misconduct in office...
> (iii) Insubordination;
> (iv) Incompetency; or
> (v) Willful neglect of duty.

Md. Code Ann., Educ. § 6-202(a)(1) (2018). The County Board argues that the Appellant's termination should be upheld due to insubordination, misconduct in office, willful neglect of duty, and incompetence.

Insubordination

HCPSS Policy 7030, Employee Conduct and Discipline, defines insubordination as, "[f]ailure to follow a valid directive from a person in a position of authority," and provides examples: "a. Failure to perform all work and duties assigned by a supervisor/administrator in charge b. Failure to follow the written or verbal instruction of a supervisor/administrator." Here, it is clear that the Appellant was insubordinate. He failed to follow multiple valid directives from persons in positions of authority. Following the Appellant's violation of policy by showing his class inappropriate videos depicting police brutality, his school's administration developed an action plan for the Appellant. On November 22, 2019, Mr. Smart informed the Appellant that he had been placed on an action plan because of concerns about the Teaching of Controversial Issues and Selection of Instructional Materials policies. Mr. Smart, by email, scheduled a meeting with the Appellant for December 4, 2019 to discuss the action plan and the Appellant's SLOs and goals for the school year. The Appellant failed to attend the meeting.

The following day, Mr. Smart informed the Appellant that he was insubordinate for missing the meeting and the Appellant responded:

> I do not feel comfortable meeting under the terms in which you presented. I have no issue meeting with you personally, to discuss my SLO goals, but as I mentioned to you yesterday morning in person, I need time to verify the validity of this unexpected Action Plan as it relates to my contractual protections. I will keep you posted when I hear back from my representation.

(Board Ex. 6, p. 87.)

The Appellant's response clearly conveys his deliberate decision not to attend the meeting with Mr. Smart and his resistance to the action plan. The meeting of December 4, 2019 was not optional; the school administration required it to begin implementation of the action plan. The Appellant had no authority to simply not attend the meeting because he did not agree with the action plan, and he was ultimately reprimanded for this instance of insubordination.

The Appellant's action plan required his attendance at trainings, monthly meetings with Ms. Bos, submitting lesson plans for review, and the Appellant was to provide an implementation plan for the action plan to his school's administrators. The Appellant refused to cooperate with the action plan in almost every respect, except that he did attend a training on controversial issues and submitted to observation (though he was uncooperative). The Appellant attempted to excuse his failures to meet with Ms. Bos by arguing he had technological issues. But the Appellant failed to present sufficient evidence that any technological issues prevented him from meeting with Ms. Bos, particularly given that she offered him other avenues to meet with her. For example, the Appellant introduced what he described as a "laptop work ticket," but this document does not actually indicate that the Appellant did not have his computer; it does not indicate any timeframe when the Appellant did not have his computer; and the priority for the work is listed as "low," which is inconsistent with an alleged prolonged inability for a teacher to access their only computer.

The Appellant also argued that he had medical conditions that prevented him from performing his job duties. The Appellant was on medical leave in the early part of the 2019-2020 school year. Appellant was released to return to work on November 11, 2019. In her October 23, 2019, report and ADA Medical Questionnaire, Ms. Burns, the Appellant's treating therapist, opined that the Appellant was diagnosed with Major Depressive Disorder and Generalized Anxiety Disorder and required accommodations to return to work, including extra time to complete tasks and breaks. The Appellant was also treated by Dr. Thomas Harries, an orthopedic surgeon, in October 2019, for a rupture of his right quadricep tendon. In his October 30, 2019, ADA Medical Questionnaire Dr. Harries stated that the Appellant required access to an elevator, should not stand for more than fifteen minutes, and that he needed to sit while teaching. In her testimony before the County Board, Ms. Burns opined that based on the Appellant's medical and psychological conditions, it would have been difficult for him to perform his job effectively when he returned to work in November, 2019 and that placing the Appellant on an action plan did not make sense because it increased the Appellant's anxiety.

An interactive process meeting was held with the Appellant on November 5, 2019, to discuss accommodations, and the Appellant affirmed that he could perform all the essential duties of his job. The accommodations provided to the Appellant, and denied to the Appellant, were outlined in HCPSS' November 20, 2019 letter to the Appellant. Mr. Wasilewski testified before the County Board that the school implemented all the accommodations required outlined in the letter, including an excusal from some duties to allow him extra time to complete trainings.

Importantly, however, the Appellant never established that any medical or psychological condition prevented him from complying with the action plan or caused him to completely miss scheduled meetings without any attempt to reschedule. No evidence was presented of any particular accommodation – either provided to or denied to the Appellant – that would have led

to the Appellant's compliance with his job duties. No one opined that the action plan was impossible for the Appellant to comply with.

The Appellant also failed to perform work duties assigned by his school's administrators. The Appellant failed to participate in required "lightning time" on at least two occasions in the Fall of the 2020-2021 school year. The Appellant also failed to attend the required meeting regarding the events of January 6, 2020 at the U.S. Capitol. On September 25, 2020, the Appellant did not attend an article discussion group meeting on issues of race, marginalization, and discrimination that he was required to attend.

Although HCPSS amended the Appellant's action plan on September 11, 2020 to allow the Appellant more time to prepare lesson plans by shortening the deadline for submitting lesson plans for controversial issues to three days prior to the lesson, the Appellant still failed to submit lesson plans. The Appellant was instructed to meet with Mr. Smart by October 7, 2020, to discuss and implement the revised action plan. However, the Appellant never met with Mr. Smart.

The Appellant did not deny these multiple failures, nor did he present sufficient evidence to excuse them. The insubordination charge against the Appellant is upheld and may be a basis for termination of his employment.

Misconduct in Office

HCPSS Policy 7030, Employee Conduct and Discipline, defines misconduct in office as, "[a]ny wrongdoing by an employee in relation to the duties and responsibilities of his/her assigned position." Examples of misconduct provided by the policy include: "[i]ntimidation of students, staff, or citizens at large, including use of racial slurs and/or other derogatory remarks." The County Board has also established multiple instances of wrongdoing by the Appellant in relation to the duties of his position.

HCPSS Policy 8050, Teaching of Controversial Issues, defines controversial issues as: "Significant academic, social, political, and ideological matters about which there exists opposing viewpoints and/or multiple perspectives." The policy requires that controversial issues be presented,

> with a goal of encouraging discussion and building mutual understanding of the topic[, w]ith access to and respect for multiple perspectives and sources that are founded in relevant and credible information[, and i]n a learning environment that is safe, supportive, inclusive, and focused on an academic examination of the issue.

The Appellant's statements that homosexuality leads to pedophilia and is not much different from bestiality, during a discussion about gay marriage, violated this policy and constituted wrongdoing in relation to his duties. Even if the Appellant was quoting government officials, as he contended, those statements did not serve to build any mutual understanding, were not founded in relevant or credible information, and deprived students of a supportive and inclusive environment. The Appellant's statements were nothing more than slurs, which are explicitly prohibited. The same can be said for the Appellant's statements disparaging Asian, Middle Eastern, and elderly drivers. The Appellant never denied making the statements that were attributed to him. The Appellant's comments deprived his students of a safe and supporting environment. They also cannot be described as modeling an opposing viewpoint, as they did not address the issue of gay marriage and baselessly attacked the LGBTQ community. Although gay marriage is an appropriate subject of discussion, the teaching of that subject must conform to established policies.

On the subject of police brutality, the Appellant also violated HCPSS Policy 8040, Selection of Instructional Materials, by showing his class two videos containing scenes of physical violence. According to Policy 8040, the videos would be categorized as "Supplemental Instructional Materials – Teacher-selected resources, other than approved course specific resources, used to support or reinforce instruction." Policy 8040 requires the following: "All

instructional materials, including supplemental, that are selected to be used with students will be approved using HCPSS established procedures and selection criteria."

The videos the Appellant used, "Rob Hustle – Call the Cops" and "Police Officer Slams S.C. High School Student to the Ground," were not part of the approved HCPSS curriculum. The Appellant did not seek any approval to show the videos to students. Therefore, the Appellant's display of these videos to his students amounted to wrongdoing in relation to his duties as a teacher.

Additionally, the Appellant had a significant history of recent discipline by the time Mr. Wasilewski recommended his dismissal, having received four Letters of Reprimand between January 10, 2019 and January 12, 2021.[4]

In *Resetar v. State Board of Education*, 284 Md. 537 (1979), the Court of Appeals upheld the termination of a teacher who called students a derogatory slur. The teacher had received prior disciplinary reprimands. The Supreme Court of Maryland held that the teacher's actions amounted to misconduct in office within the meaning of section 6-202 of the Education Article, and that the State Board had not acted arbitrarily, capriciously, or illegally when it took the teacher's previous reprimands into account when deciding that termination was proper. *Id.* at 562.

The *Resetar* court provided the following guidance concerning misconduct in office:

> Bearing in mind the grant of power by the General Assembly to the State Board to "explain the true intent and meaning of the (school) law," we are of the view that the State Board could well have concluded that the remark of the teacher here might undermine his future classroom performance and overall impact on his students...we find no error of law on the part of the State Board in its conclusion that the "jungle bunny" episode constituted misconduct in office.

Resetar at 561.

[4] I do not consider the warning letters the Appellant received in 2013 to 2016 to be relevant.

I find that the evidence establishes that the Appellant committed misconduct in office. Like the teacher in *Resetar*, the Appellant used derogatory slurs. Similarly, the Appellant has a significant disciplinary history. Moreover, the Appellant here also blatantly violated the instructional materials policy and compared police officers to Nazis. The charge of misconduct in office may be used as a basis for termination of the Appellant's employment.

Willful Neglect of Duty

HCPSS Policy 7030 provides the following definition of willful neglect of duty: "Failure to knowingly follow a requirement of public school law, Board policies, and HCPSS procedures, school system directives, or job duties and responsibilities." An example violation includes: "Failure to follow policies adopted by the Board and HCPSS implementation procedures."

As discussed extensively above, the Appellant knowingly failed to follow multiple job duties and responsibilities in the purposeful failure to abide by the action plan, and failure to attend required pre-scheduled meetings with administrators and students. Further, as discussed above, the Appellant violated HCPSS policies: Policy 8050, Teaching of Controversial Issues, and Policy 8040, Selection of Instructional Materials. The Appellant committed these violations knowingly – he had received training in these areas before, but ignored it. Mr. Smart testified before the County Board that HCPSS provides regular training to teachers on the topic of teaching controversial issues, and the Appellant received that training during professional development in August of each year. Mr. Smart affirmed that the Appellant received the appropriate training and supervision before the controversy arose about his teaching controversial issues. Mr. Smart also testified there are published guidelines on these subjects, and teachers can receive guidance through the Curriculum Coordinator or seek assistance through the school library for use of videos in the classroom.

Nonetheless, the Appellant chose to repeat slurs concerning homosexuality and various ethnicities to his students. He also chose to show his students violent videos without seeking

approval. The Appellant's actions fall squarely within the definition and example of willful neglect of duty. This charge may be used as a basis for termination of the Appellant's employment.

Incompetence

HCPSS Policy 7030 defines incompetence as, "[l]acking in knowledge, skills, ability, or failing to adequately perform the duties and responsibilities of an assigned position." Examples given in the policy include: "[f]ailing to complete work assignments" and "[p]erforming work assignments in an inappropriate or unsatisfactory manner." Section 6-202(c)(3) of the Education Article authorizes local school boards to establish their own "performance evaluation criteria" to measure a teacher's performance and to determine competence. The applicable regulations also provide: "An evaluation shall be based on written criteria established by the local board of education, including but not limited to scholarship, instructional effectiveness, management skills, professional ethics, and interpersonal relationships." COMAR 13A.07.04.02.A(1).

The Maryland courts have given limited guidance on the definition of teacher incompetence. For example, many absences, without more, do not amount to incompetence. *Toland v. State Bd. of Ed.*, 35 Md. App. 389, 397-398 (1977). The court in *Bd. of Ed. of Chas. Co. v. Crawford*, 284 Md. 245, 259 (1979) held: "Implicit in any employment contract is an implied promise on the part of an employee to perform his duties in a workmanlike manner. In the case of a teacher this must mean in accordance with established professional standards." In *Bd. of School Commissioners of Balto. City v. James*, 96 Md. App. 401 (1993), the court acknowledged that determining teacher incompetence was "necessarily qualitative in nature" and, quoting *Clark v. Whiting*, 607 F. 2d 634, 639 (4th Cir. 1979) stated, "teacher's competence and qualifications . . . are by their very nature matters calling for highly subjective determinations, determinations which do not lend themselves to precise qualifications and are not susceptible to mechanical measurement or the use of standardized tests."

For all of the reasons discussed above, the Appellant demonstrated incompetence by failing to adequately perform the duties and responsibilities of his position, failing to complete work assignments, and performing work assignments in an inappropriate or unsatisfactory manner. He failed to abide by the action plan in any meaningful way, and refused to attend required meetings. His instances of presenting derogatory slurs and inappropriate videos were an inappropriate and unsatisfactory performance of his teaching responsibilities.

Moreover, his supervisors' observations further demonstrated the Appellant's incompetence; two of the Appellant's supervisors, Mr. Smart and Ms. Bos, evaluated the Appellant's performance as a teacher and found it significantly lacking. Mr. Smart performed a mid-year evaluation on January 31, 2020. Mr. Smart's mid-year review rated the Appellant "unacceptable," primarily because the Appellant had not submitted SLOs or teaching goals for the school year and had ignored his action plan.

Ms. Bos conducted an in-person observation that was submitted on March 4, 2020 and a virtual observation that was submitted on January 13, 2021. During the first observation, which was announced, Mr. Price decided to give his students a test, which frustrated the entire purpose of the observation. Most of the time, the students were seated at desks taking exams. Ms. Bos rated the Appellant as "Basic" and "Unsatisfactory" in various areas during this observation. In the second observation, Ms. Bos noted no student engagement or assessment of learning connected to the curriculum, and the Appellant was not teaching consistent with the Maryland State Department of Education's curriculum. Ms. Bos rated the Appellant "Basic" and "Unsatisfactory" in most of the assessment categories. This charge against the Appellant is a proper basis for termination of his employment.

Discrimination

The State Board has recognized that in order to demonstrate a prima facie case of employment discrimination, a party must prove: (1) they are a member of a protected class; (2)

they suffered an adverse employment action; (3) they were performing satisfactorily at the time of the adverse employment action; and, (4) the adverse employment action occurred "under circumstances that give rise to an inference of unlawful discrimination." *Aberdeen v. Howard Cnty. Bd. of Educ.*, MSBE Op. No. 20-31 (2020) (quoting *Miles v. Dell, Inc.*, 429 F.3d 480, 487 n. 4 (4th Cir. 2005) (citation omitted). The State Board has recognized that, "allegations of discrimination must be supported by evidence. Allegations alone are insufficient to support a claim of discrimination." *Weeks v. Carroll Cnty. Bd. of Educ.*, MSBE Op. No. 13-44 (2013). A prima facie case of discrimination may be rebutted by showing a legitimate and legal reason for the adverse employment action. If the employer rebuts the prima facie case of discrimination, the burden shifts back to the employee, to show that the reasons given by the employer are "mere pretext." *Edgewood Mgmt. Corp. v. Jackson*, 212 Md. App. 177, 199-200 (2013).

Here, the Appellant has done little more than make allegations of discrimination. He has no demonstrated bias by anyone, or even disparate treatment. The Appellant did introduce a June 12, 2021 letter from the Howard County Department of Administration, Office of Human Rights and Equity (OHRE), stating that whatever evidence was submitted to that entity did not support any racial discrimination, but "there was sufficient evidence to support the allegations of discrimination on the basis of disability." (App. Ex. 21.) He also introduced a July 19, 2021 letter that the matter was being referred to the Human Rights Commission for a hearing. (App. Ex. 20.) However, there is insufficient evidence in this case of what facts led the OHRE to conclude there was evidence of discrimination. Moreover, that matter appears to still be in active litigation, with no disposition.

What was presented in this case was that the Appellant requested certain accommodations and he was given some, but not all of those accommodations. But the Appellant failed to show that any proposed accommodation would have resulted in better work performance, or that he was denied an accommodation for a discriminatory reason. The

Appellant also failed to present sufficient evidence that any claimed disability prevented him from performing his job duties.

In short, the Appellant presented insufficient evidence in this matter for me to conclude that HCPSS engaged in any discrimination, that the Appellant's action plan was the result of discrimination, or that any of the disciplinary actions taken against the Appellant are the result of discrimination. I am unable to evaluate what was presented to the OHRE, but on the record before me, I do not agree that there is sufficient evidence to support any allegation of discrimination on the basis of disability in this matter.

Any claim of racial discrimination is also unsupported by the record. The Appellant failed to demonstrate any bias or disparate treatment, or that a teacher of another race engaging in the same conduct would not have been subjected to the same discipline.

The Appellant's claim of discrimination also fails because he did not demonstrate that he was performing "satisfactorily" at the time of the adverse employment action (i.e., the February 10, 2021, recommendation for his termination). As discussed above, the Appellant received numerous reprimands related to his poor job performance, as well as poor evaluations prior to the recommendation for his termination.

Even if the Appellant had established a prima face case of discrimination, which he did not, he failed to present sufficient evidence that the reasons his termination was recommended were mere pretext. To the contrary, the evidence presented demonstrated that Appellant's conduct violated multiple HCPSS policies and warranted the recommendation for his termination.

It was the Appellant's own actions in defying school policy and the instructions from his supervisors that led to the recommendation for his termination. He repeated slurs against other races and sexual orientations. He showed graphic violence to students without even attempting to

gain school approval. He refused to attend mandatory meetings. He refused to comply with the action plan. His performance as a teacher was below standards.

CONCLUSION OF LAW

I conclude as a matter of law that the Board of Education of Howard County properly terminated the Appellant's employment as a teacher. Md. Code Ann., Educ. § 6-202 (2022); Howard County Public School System Policies 1000, 1010, 1040, 7030, 8040, and 8050.

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland State Board of Education **UPHOLD** the Board of Education of Howard County's decision to terminate the Appellant's employment because of insubordination, misconduct in office, willful neglect of duty, and incompetence.

November 17, 2023
Date Decision Issued

David Leibensperger
H. David Leibensperger
Administrative Law Judge

HDL/ckc
#208034

NOTICE OF RIGHT TO FILE EXCEPTIONS

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

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