

ALLISON YORK,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-12

OPINION

INTRODUCTION

In this appeal, Appellant challenges the decision of the Prince George's County Board of Education (local board) to terminate her from her teaching position for incompetence.

We transferred the case pursuant to COMAR 13A.01.05.07 to the Office of Administrative Hearings (OAH) for a hearing before an Administrative Law Judge (ALJ). The ALJ issued a Proposed Order on Motions recommending that the State Board grant the local board's Motion to Dismiss for an untimely appeal to the State Board, and deny the Appellant's Motion for a New Hearing.

The Appellant filed exceptions to the ALJ's proposed decision and the local board responded. Oral argument on the exceptions was held before the State Board on March 24, 2015.

FACTUAL BACKGROUND

Appellant was a special education teacher with Prince George's County Public Schools (PGCPS). During the 2011-2012 school year, observations and evaluations documented problem areas in her teaching; she received multiple reprimands and an overall unsatisfactory year end evaluation. (Local Hearing Examiner Report, Findings of Fact, pp.2-5). Dr. William Hite, then Superintendent of Schools for PGCPS, terminated the Appellant from her position effective August 20, 2012. (Local Bd. Order).

On August 20, 2012, Appellant, through counsel, appealed the termination to the local board. *Id.* The local board referred the matter to Hearing Examiner, F. Robert Troll, Jr. for review. A hearing was originally scheduled for November 13, 2012, but was postponed at the request of Appellant's counsel. Both Hearing Examiner Troll and Counsel for the Superintendent recalled that Appellant's counsel agreed to the new date of December 17th at the time he requested the postponement. (Tr. 5).

On November 13, 2012, Appellant appeared for the hearing, apparently unaware that her attorney had rescheduled. Ms. Wray, Employee and Labor Relations Specialist, advised the

Appellant that the hearing was cancelled and would be rescheduled for another day, but that she did not have the new hearing date at that time. She also advised Appellant that her attorney had terminated his appearance. (Tr. 4-5).

In a December 6th email, Appellant's former counsel advised Superintendent's counsel as follows:

Ms. York has not responded to any of my attempts to contact her. I'm not sure if Ms. York has retained new counsel at this time. If everyone wishes to continue this matter to another date, I'm willing to make additional attempts to notify her.

Superintendent's counsel responded that it was his understanding that Ms. Wray had told the Appellant of the new date. (Tr. 5-6).

On December 17, 2012, counsel for the Superintendent appeared with his witnesses for the hearing as scheduled. Neither the Appellant nor her legal counsel appeared. Two attempts were made to contact the Appellant that morning but they were unsuccessful. (Tr. 6-9). The Hearing Examiner heard testimony from Ms. Wray regarding her communications with Appellant on November 13th. Ms. Wray stated that nobody from her office provided notice to the Appellant of the December hearing date. (Tr. 4-5). The Hearing Examiner also heard from counsel for the Superintendent regarding the email communications with Appellant's former counsel.

Hearing Examiner Troll proceeded with the hearing at which he accepted evidence in support of the Superintendent's case. On February 7, 2013, the Hearing Examiner issued his Findings of Fact, Conclusions of Law and Recommendations recommending that the local board affirm the Superintendent's decision to terminate the Appellant for incompetency. *Id.* Hearing Examiner Troll found that credible evidence existed to support the termination decision. He also found that Appellant's counsel had agreed to the December 17th date and thus Appellant "voluntarily and willfully chose not to attend the hearing." (Hearing Examiner Report).

Approximately four months later, on June 24, 2013, Appellant filed a Motion for a New Hearing with the local board claiming that although she was represented by counsel at the time the hearing date was postponed, she was unaware of the new date. The Superintendent opposed the request because Appellant's counsel had requested the postponement of the original hearing date and agreed to the new date while he was still representing the Appellant, thereby effectively serving as notice to the Appellant. The Superintendent also maintained that the Motion for a New Hearing was untimely filed because it was filed more than four months from the date the Hearing Examiner had issued his recommendation. The local board heard oral argument from the parties on April 24, 2014. *Id.*

On May 15, 2014, the local board issued its decision denying the Appellant's request for a new hearing and affirming the termination. *Id.* The local board noted that the Appellant had received the Hearing Officer's recommendation when it was issued and that she simply chose not to deal with it rather than file something in response. The local board also pointed out that there is no provision in its procedures for an appellant to request a new hearing. The local board's

decision advised the Appellant of her right to appeal to the State Board within thirty days of the date of the local board's order. *Id.*

On June 13, 2014, the Appellant appealed the local board's decision to the State Board maintaining that she did not receive communication by letter or phone as to the time and place of the December hearing. (Appeal). We referred the matter to OAH.

The local board filed a Motion to Dismiss maintaining that counsel for Appellant had agreed to the hearing date change at the time he represented Appellant and that this served as notice to the Appellant. The local board argued that Appellant's claims regarding lack of notice actually have to do with her communications with her attorney, which as a matter of law is not an issue for the State Board. Because Appellant was deemed to have had notice of the hearing and she failed to appear, the local board maintained that Appellant had waived her right to challenge the local board's decision affirming the termination. The Appellant also filed the same Motion for a New Hearing at OAH that she had filed before the local board. The ALJ conducted a hearing on the both motions on August 12, 2014.

On August 28, 2014, the ALJ issued a Proposed Order on Motions recommending that the State Board grant the local board's Motion to Dismiss based on the Appellant's untimely appeal of the local board's decision, and deny the Appellant's Motion for a New Hearing.

The Appellant filed exceptions to the ALJ's Proposed Decision and the local board responded.

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.01.05.05(F)(1) and (2). The local board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05(F)(3).

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

ANALYSIS

Untimely Appeal

The ALJ, citing the thirty day time frame for filing appeals to the State Board set forth in COMAR 13A.01.05.02, determined that Appellant's appeal of the local board's February 7, 2013 decision was untimely filed because the Appellant did not file her Motion for a New Hearing with the local board until more than four months after the local Hearing Examiner's recommendation. We find this reasoning confusing. The cited COMAR provision pertains to the time frame for filing an appeal to the State Board. The local board issued its decision

accepting the recommendation of Hearing Officer Troll on May 15, 2014. The appeal to the State Board was therefore due to be filed on June 16, 2014.¹ Appellant filed her appeal on June 13, 2014. Thus, the State Board appeal was timely filed.

It seems that the ALJ is actually concluding that the Motion for a New Hearing filed by the Appellant with the local board was untimely because it was filed more than thirty days after the Hearing Examiner's February 7, 2013 recommendation. The local board's appeal procedures do not provide for the filing of any motions or other papers after a hearing examiner has issued a recommendation to the local board. Rather the procedures state that the hearing examiner shall provide a recommended order to the local board and the local board shall schedule oral arguments "for the parties to address the recommendations of the Hearing Examiner." (Local Bd. Policy 4200 – Employee and 4-205 appeals Before the Board of Education, II.D.6 & 7). Furthermore, although the local board cites to COMAR 13A.01.05.07(F)(1) in arguing that the Appellant had only fifteen days to file the Motion for a New Hearing, that regulatory provision applies to appeals to the State Board of Education, not appeals to the local board. In our view, the date of the filing of the Motion with the local board is of little consequence given that the local board was required to hold oral argument, which it did, the Appellant raised the issues in her Motion at that time and the local board denied the Motion.

Motion for a New Hearing at OAH

With regard to the Motion for a New Hearing filed by the Appellant at OAH, the ALJ found that the matter had been resolved by the local board and that the Appellant had not provided any new evidence concerning her failure to appear for the December 17, 2012 hearing. The ALJ pointed out that the Appellant's attorney agreed to the rescheduled hearing date while he was still representing her, thereby serving as notice of the hearing date to the Appellant. This notion is based on the longstanding theory of representative litigation that notice to an attorney serves as notice to the client. See *Irwin v. Department of Veteran's Affairs*, 498 U.S. 89, 93 (1990); *Ryan v. Brady*, 34 Md. App. 41, 54 (1976); *Williams v. Skyline Development Corp.*, 265 Md. 130, 165 (1972). The ALJ agreed with the local board that the Appellant had voluntarily and willfully absented herself from the hearing and recommended dismissal of the State Board appeal and denial of Appellant's Motion for a New Hearing.

We disagree with the ALJ's determination on the issue of notice because it ignores relevant facts that came to light before the hearing proceeded on December 17, 2012. Ms. Wray's testimony alone demonstrates that the school system was aware as early as November 13, 2012 that the Appellant had no notice of the December hearing date. Moreover, Ms. Wray's statements to the Appellant left Appellant with the expectation that she would be receiving notice from the school system about the new date. Furthermore, as of December 6th, Superintendent's counsel had actual knowledge that Appellant's former counsel had not communicated the new hearing date to Appellant. Finally, on the morning of the hearing itself, the Hearing Examiner had before him the totality of information that clearly conveyed that Appellant had no actual notice of the December 17th hearing date. Yet, the hearing proceeded. The local Hearing Examiner, the local board and the ALJ all ignored the unusual confluence of events that transpired in this case regarding notice of the hearing date. Based on the specific facts presented

¹ The thirtieth day fell on Saturday, June 14, 2014. When the last day of the thirty day period falls on a Saturday, Sunday, or State holiday, the period is deemed to end on the next business day. COMAR 13A.01.05.02B(4).

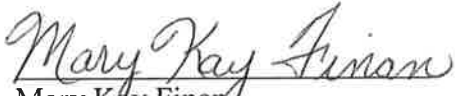
here, because the Appellant was not given notice of the hearing date, she was given no meaningful opportunity to be heard regarding her termination. Thus, she was denied due process of law.

We also point out that over 14 months elapsed between the time the local Hearing Examiner issued his recommendations to the local board and the local board heard oral argument and issued a decision in the case. Very lengthy delays in recent cases before this Board have caused this Board increasing concern about the timing of the local appeal process. We understand, however, that it takes time to process a case and that there may be good reasons for that delay. For example, in this case, seven months elapsed between the time the ALJ issued his proposed decision and the State Board heard oral argument due to the timing of various filings in this case, as well as the schedule for oral argument in other cases on the State Board docket. Cases like this should be the exception, not the rule. Local boards of education should be mindful of time frames when processing cases and should take steps to minimize delay, particularly in teacher termination cases where loss of employment causes serious financial and other consequences.


CONCLUSION

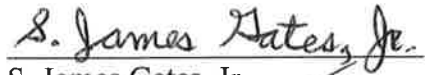
Because we find that the Appellant was denied due process, we remand the case to the local board for a full evidentiary hearing before a local hearing examiner on Appellant's termination. Given the remand, there is no need for this Board to consider the Appellant's other exceptions that deal with the merits of the termination decision.


As for the timeliness of the State Board appeal and the timeliness of the Appellant's Motion for a New Hearing before the local board, we disagree with the ALJ's Discussion and Conclusions and do not adopt those aspects of the Proposed Order on Motions.


Mary Kay Finan
President


James H. DeGraffenreidt, Jr.


Linda Eberhart


S. James Gates, Jr.


Larry Giammo


Luisa Montero-Diaz

Sayed M. Naved

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Guffie M. Smith, Jr.

Guffie M. Smith, Jr.

May 19, 2015

ALLISON YORK

APPELLANT

v.

PRINCE GEORGE'S COUNTY

BOARD OF EDUCATION

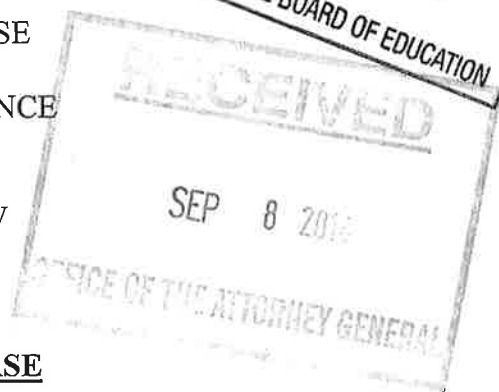
* BEFORE D. HARRISON PRATT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH Case No.: MSDE-BE-01-14-22397

* * * * *

PROPOSED ORDER ON MOTIONS

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER
REVIEW RIGHTS

STATEMENT OF THE CASE



This case concerns the termination of Allison York (Appellant), a teacher in the Prince George's County Public Schools by the Prince George's County Public Schools Board of Education (Local Board). The basis for the termination, as claimed by the Local Board, was incompetence pursuant to Md. Ann. Code, Educ. § 6-202 (2008 & Supp. 2012).¹ The recommendation was made on August 17, 2012. The Appellant's attorney, Kelly Burchell, requested a hearing before the Local Board. Initially a hearing was scheduled for November 13, 2012. On August 20, 2012, the Appellant's attorney requested a postponement of the hearing. The hearing was rescheduled for December 17, 2012. Some time between the postponement and the next scheduled hearing, Mr. Burchell stopped representing the Appellant. Neither the Appellant nor her attorney appeared for the hearing on December 17, 2012. The hearing

¹ All further citations are to the Education Article of the Annotated Code of Maryland.

proceeded in the absence of the Appellant and her attorney. On February 7, 2013, Hearing Examiner F. Robert Troll, Esq., issued a decision recommending that the termination of the Appellant be sustained.

On June 24, 2013, the Appellant filed a Motion for a New Hearing with the Local Board claiming that she did not receive notice of the hearing of December 17, 2012.² On April 24, 2014, the Local Board heard oral argument on the Appellant's Motion for a New Hearing and on May 15, 2014, the Local Board denied the Appellant's motion. At the same time, the Local Board accepted the Hearing Examiner's recommendation to terminate the Appellant's employment. On June 13, 2014, the Appellant filed an appeal to the Maryland State Board of Education (State Board) and on June 25, 2014, the case was transferred to the OAH.

On July 17, 2014, the Local Board filed a Motion to Dismiss, claiming that the Appellant's appeal of the Hearing Examiner's decision of February 7, 2013 was untimely. In its Motion, the Local Board also claims that the Appellant has waived her right to argue the merits of her case because her appeal referred only to the request for a new hearing.³

On July 29, 2014, the Appellant filed with the OAH a copy of the Motion for a New Hearing that had been filed and denied in the proceedings below. Also in her appeal letter, the Appellant again claimed that she was never notified of the December 17, 2012 hearing. I am therefore, treating these recent filings by the Appellant as a Motion.

A hearing on motions was held on August 12, 2014. The Local Board was represented by Shani K. Whisonant, Associate General Counsel for the Local Board. The Appellant represented herself.

² The document filed by the Appellant on June 24, 2013 was titled Motion for a New Hearing and not as an "appeal."

³ In this regard, the Local Board has treated the Appellant's Motion for a New Hearing as an appeal.

ISSUES

The issues are:

1. Whether the Appellant's appeal (motion for a New Hearing) to the State Board on June 13, 2014 was timely.
2. Whether the Appellant is entitled to a hearing before the OAH.

SUMMARY OF THE EVIDENCE

Exhibits

The following exhibits were submitted by the Local Board with its Prehearing Conference Report: ⁴

1. Transmittal for Maryland State Department of Education Appeals with the following attachments:
 - a. Memo from Norris Powell to Michelle Phillips
 - b. Appellant's letter of appeal, June 13, 2014
2. First reprimand of the Appellant, August 30, 2011
3. Substitute Emergency Plans due September 12, 2011
4. Memo to Teachers from Joan Millner Re: Emergency Sub Plans
5. Memorandum to the Appellant from Helen Smith, September 27, 2011
6. Another memorandum to the Appellant from Helen Smith, September 27, 2011
7. Formal Observation of the Appellant on September 20, 2011 by Selena Swilling
8. Performance Improvement Plan, September 27, 2011
9. Memorandum to the Appellant, October 2, 2011
10. Memorandum to the Appellant, October 12, 2011
11. Letter to the Appellant from Helen Smith, October 21, 2011

⁴ Pursuant to COMAR 13A.01.05.07B the Local Board is required to submit to the OAH the entire record from the proceedings before the Local Board below.

12. Memorandum to the Appellant, November 1, 2011
13. Memorandum to the Appellant, November 4, 2011
14. Another Memorandum to the Appellant, November 4, 2011
15. A third Memorandum to the Appellant, November 4, 2011
16. Memorandum to the Appellant, November 8, 2011
17. Another Memorandum to the Appellant, November 8, 2011
18. Classroom Observation Form, November 8, 2011
19. Memorandum of November 17, 2011 concerning Appellant's administrative leave
20. Listing of class schedule and other assignments for the Appellant, November 21, 2011
21. Request from Selena Swilling to the Appellant to meet, November 22, 2014
22. Memorandum to the Appellant from Selena Swilling, November 30, 2011
23. Email message to the Appellant from Helen Smith, December 5, 2011
24. Email from Selena Swilling to the Appellant, December 12, 2011
25. Memorandum to the Appellant from Selena Swilling, January 3, 2012
26. Memorandum to the Appellant from Helen Smith, January 17, 2012
27. Memorandum to the Appellant from Selena Swilling, January 17, 2012
28. Memorandum to the Appellant from Helen Smith, January 19, 2012
29. Appellant's Mid-Year Teacher Evaluation, 2011-2012, January 20, 2012
30. Notes concerning Reading Specialist's meetings with the Appellant, August 16, 2011 through January 12, 2012
31. Letter to the Appellant from Helen Smith, January 24, 2012
32. Interoffice Memorandum from Selena Swilling to the Appellant, February 12, 2012
33. Mid-Year Teacher Evaluation, February 15, 2012

34. Memo to the Appellant from Joan Milliner, March 2, 2012
35. Letter from Chris Mills to the Appellant, March 6, 2012
36. Formal Observation, March 12, 2012
37. Email from Helen Smith to the Appellant, March 17, 2012
38. Memo to the Appellant from Selena Swilling to the Appellant, March 19, 2012
39. Notes concerning a collaborative meeting on March 20, 2012
40. Email from Selena Swilling to the Appellant, March 21, 2012
41. Teacher Action Plan, March 19, 2012
42. Memo to the Appellant from Selena Swilling, March 23, 2012
43. Email from Chris Mills to the Appellant re: Action Plan, March 23, 2012
44. Memo to the Appellant from Helen Smith, April 16, 2012
45. Memo from Selena Swilling to the Appellant, April 18, 2012
46. Memo to the Appellant from Selena Swilling, April 12, 2012
47. Warning letter to the Appellant from Helen Smith, April 16, 2012
48. Observation note from April 26, 2012
49. Memo from Selena Swilling to the Appellant, April 26, 2012
50. Warning memo to the Appellant from Selena Swilling, April 27, 2012
51. MSDE – Individualized Education Program (IEP) Administrative Modules
52. Case Management Printout, April 30, 2012
53. Memo to the Appellant from Selena, May 2, 2012
54. Teacher Evaluation, 2011-2012, May 30, 2012
55. Evaluation Cover Sheet, May 30, 2012
56. Letter from William Hite, Superintendent of Schools, to the Appellant recommending termination, April 17, 2012

57. Letter to the Appellant from Trakera Wray, August 2, 2012, re: due process conference on August 14, 2012, August 2, 2012

The Local Board submitted the following additional documents with its Motion:

1. Decision of the Hearing Examiner, February 17, 2013
2. Transcript of hearing held on December 17, 2012
3. Appellant's Motion for a New Hearing, June 24, 2013
4. The Local Board's opposition to Motion for a New Hearing, July 17, 2013
5. Order of the Local Board denying the Motion for a New Hearing and accepting the Hearing Examiner's recommendation for termination, May 15, 2014
6. Transmittal (to the OAH) for Maryland State Department of Education
7. Memo from Norris Powell to Michele Phillips, June 13, 2014
8. Appellant's appeal letter, June 13, 2014

The Appellant has not submitted any exhibits.

The parties argued their respective positions.

FINDINGS OF FACT

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

1. At the time of the allegations against her, the Appellant was a special education teacher with the Prince George's County Public Schools (PGCPS).
2. During the 2011-2012 school year, the Appellant had significant problems in teaching. She had numerous conferences and evaluations with her principal, instructional specialist, and other supervisory staff. She was issued several warnings and reprimands.

3. On August 17, 2012, the Superintendent of the PGCPS, William R. Hite, recommended that the Appellant be terminated based on the allegation of incompetence and pursuant to § 6-202.
4. On August 20, 2012, the Appellant's attorney, Kelly Burchell, filed an appeal of the recommended termination and at the same time requested a due process conference.
5. A due process conference was scheduled before the Local Board for November 13, 2012.
6. At the request of Mr. Burchell, the hearing scheduled for November 13, 2012 was postponed. Mr. Burchell agreed to a new date for the hearing, *i.e.* December 17, 2012.
7. Some time between the request for postponement of the November 13, 2012 hearing and the December 17, 2012 hearing Mr. Burchell stopped representing the Appellant.
8. On December 17, 2012, neither the Appellant nor her attorney appeared for the hearing.
9. The hearing was scheduled to begin at 9:30 am. The Hearing Examiner delayed the beginning of the hearing while two school system employees, Traketa Wray and Coleen Prout, attempted to contact the Appellant. Both of these persons called the Appellant at the telephone number previously provided by the Appellant. Both left messages on her recording machine. There was no response to the telephone messages.
10. The Hearing Examiner, F. Robert Troll, Esq., proceeded with the hearing on December 17, 2012 in the absence of the Appellant and her attorney. The Local Board presented its case, including documentary evidence and testimony.

11. On February 7, 2013, the Hearing Examiner issued his Findings of Fact, Conclusions of Law, and Recommendation, and found that the Appellant had “voluntarily and willfully chose not to attend the hearing.”
12. The Hearing Examiner also determined that there was sufficient evidence to sustain the recommendation of the Superintendent to terminate the Appellant.
13. On June 24, 2013, four months and 17 days after the February 7, 2013 decision of the Hearing Examiner, the Appellant filed a Motion for a New Hearing.
14. On April 24, 2014, the Local Board heard argument on the Appellant’s Motion for a New Hearing.
15. On May 15, 2014, the Local Board denied the Appellant’s Motion for a New Hearing. At the same time, the Local Board affirmed the recommendation for termination. The Local Board’s order indicated that the Appellant had a right to file an appeal and that any appeal had to be filed with the State Board within thirty (30) days from the date of the order.
16. The Appellant filed an appeal to the State Board on June 13, 2014.
17. The State Board forwarded the case to the OAH on July 3, 2014.

DISCUSSION

I will grant the Local Board’s Motion to Dismiss based on the Appellant’s untimely appeal of the Local Board’s decision of February 7, 2013. I will deny the Appellant’s Motion for a New Hearing.

Pursuant to COMAR 13A.01.05.02, the Appellant had thirty (30) days to appeal the February 7, 2013 decision of the Local Board. This regulation provides as follows:

COMAR 13A.01.05.02 - Appeal Contents.

* * *

B. Deadlines.

(1) Appeals.

(a) An appeal shall be taken **within 30 calendar days of the decision of the local board** or other individual or entity which issued the decision on appeal. (Emphasis added).

(b) The 30 days shall run from the later of the date of the order or the opinion reflecting the decision.

(2) The day of the decision of the local board may not be included in computing any period of time prescribed by these regulations.

(3) For appeals taken on or after April 1, 2011, an appeal shall be deemed to have been transmitted within the 30-day period of time permitted under §B(1) of this regulation if, before the expiration of the time, it has been:

(a) Delivered to the State Board; or

(b) Deposited in the United States mail, as registered or certified mail or Express Mail, or deposited with a delivery service, such as Fed Ex, UPS, or DHL, that provides verifiable tracking of the item from the point of origin.

(4) The last day of the period of time prescribed by this chapter shall be included, unless it is a Saturday, Sunday, or a State legal holiday, in which event the period ends on the next day which is not a Saturday, Sunday, or State legal holiday.

(5) Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after service upon the party of a notice or other paper and service is made by mail, 3 days shall be added to the prescribed period.

There is no dispute that the Hearing Examiner issued his decision on February 7, 2013. Neither is there any dispute that the next action taken by the Appellant was her Motion for a New Hearing filed on June 24, 2013. The June 24, 2013 filing was four months and 17 days after the Hearing Examiner's decision, clearly beyond the thirty (30) day requirement. The Appellant's Motion for a New Hearing filed with the Local Board referred only to her desire to be afforded a new hearing, and, as pointed out by counsel for the Local Board, did not contest the Hearing Examiner's decision on the merits. In actuality, the Appellant failed to file any appeal of the Hearing Examiner's decision. Even accepting the Appellant's Motion for a New Hearing as an appeal it is clear that it was not timely filed.

There being no timely appeal of the Hearing Examiner's decision, I am without jurisdiction to hear this matter on the merits.

As to the Appellant's Motion for a New Hearing, she filed with the OAH the same motion filed with the Local Board and the parties argued their respective positions at the Hearing on Motions before me. I find that the Appellant is not entitled to a new hearing. This issue was resolved by the Local Board on May 15, 2014 and the Appellant provided no new evidence concerning her failure to appear at the hearing on December 17, 2013. The decision of the Local Board as to the Appellant's Motion for a New Hearing was not arbitrary, capricious or illegal. It was based on evidence presented by the parties at the hearing before the Local Board. As pointed out by counsel for the Local Board, the Appellant's attorney agreed to the rescheduled date of December 17, 2012. The Local Board, based on the credible evidence before it, determined that the Appellant had voluntarily and willfully absented herself for the hearing. COMAR 13A.01.05.05A, B & C.

Furthermore, as already mentioned, the Hearing Examiner issued his decision on February 7, 2013 and the Appellant's Motion for a New Hearing was filed more than four months later. The Appellant provided no credible evidence as to why her motion was filed so late.

CONCLUSIONS OF LAW

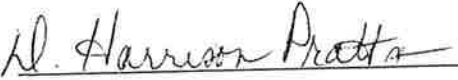
Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Appellant failed to file a timely appeal of the Local Board's decision of February 7, 2013. I conclude further that I do not have jurisdiction to hear her appeal of June 13, 2014. I conclude further that the issues raised in her Motion for a New Hearing were resolved before the Local Board and the Appellant has failed to demonstrate any right to a new hearing. COMAR 13A.01.05.02B(1)(a). COMAR 13A.01.05.05A, B & C.

PROPOSED ORDER

I **ORDER** that the Prince George's County Public School's Motion to Dismiss is **GRANTED** and the Appellant's appeal is hereby dismissed.

I further **ORDER** that the Appellant's Motion for a New Hearing is hereby **DENIED** and dismissed.

August 28, 2014
Date Order Mailed


D. Harrison Pratt
Administrative Law Judge

DHP/tc
#150984

NOTICE OF RIGHT TO FILE OBJECTIONS

Any party adversely affected by this Proposed Decision has the right to file written objections within fifteen days of receipt of the decision; parties may file written responses to the objections within fifteen days of receipt of the objections. Both the objections and the responses shall be filed with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

Copies mailed to:

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