

LAVERNE CRUMP,
Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,
Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 10-29

OPINION

INTRODUCTION

In this appeal, the Appellant challenges the decision of the Montgomery County Board of Education (local board) to terminate her for incompetency after being placed in the Peer Assistance and Review program ("PAR").

We transferred this 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 decision proposing that the State Board affirm the local board's termination decision. The Appellant has filed exceptions to the ALJ's proposed decision.

FACTUAL BACKGROUND

The Appellant has been a teacher for over 35 years. During the past 16 years, the Appellant has been employed with the Montgomery County Public Schools ("MCPS"), teaching at various elementary schools over the years. (FOF 1). The Appellant is certified to teach all subjects in grades 1-8. (T.366).¹ Beginning with the 2005-2006 school year, school administrators began observing performance problems with the Appellant's instruction. Those problems led to the Appellant's placement in the PAR program and, ultimately, her dismissal from the school system.

Montgomery County Public Schools' Teacher Professional Growth System

The evaluation of teachers, the MCPS performance standards, and the Peer Assistance and Review ("PAR") program are all components of the MCPS's Teacher Professional Growth System ("TPGS") which was developed in collaboration with the teachers union. (See TPGS Handbook, Jt. Ex. 1; MCPS Regulation GJA-RA).

¹ Citations to "T" are references to the transcript of the hearing before local Hearing Officer Gregory A. Szoka.

MCPS teacher evaluations gauge a teacher's performance using six performance standards. The standards have corresponding performance criteria to help determine whether the standards are met. The standards and corresponding criteria are as follows:

Standard I: Teachers are committed to students and their learning.

- A. The teacher acts in the belief that every student can learn and that all can muster a challenging curriculum with appropriate accommodations.
- B. The teacher sets quantifiable learning outcomes for students and holds the students and themselves accountable for meeting those objectives.
- C. The teacher produces measurable growth in student achievement toward goals he/she has set on systemwide accountability measures.
- D. The teacher recognizes individual differences in his/her students and adjusts his/her practices accordingly.
- E. The teacher understands how students develop and learn.
- F. The teacher extends his/her mission beyond the academic growth of students.

Standard II: Teachers know the subjects they teach and how to teach those subjects to students.

- A. The teacher understands the content of his/her subject area(s) and how knowledge in his/her subject field is created, organized, and linked to other disciplines.
- B. The teacher demonstrates subject area knowledge and conveys his/her knowledge clearly to students.
- C. The teacher generate multiple paths to knowledge.
- D. The teacher uses comprehensive planning skills to design effective instruction focused on student mastery of curriculum goals.

Standard III: Teachers are responsible for establishing and managing student learning in a positive learning environment.

- A. The teacher creates a classroom climate that promotes openness, mutual respect, support, and inquiry.
- B. The teacher creates an organized classroom that maximizes engaged student learning time.
- C. The teacher establishes and maintains respectful,

productive partnerships with families in support of student learning and well-being.

D. The teacher orchestrates learning in a variety of settings.

E. The teachers involves all students in meaningful learning activities.

Standard IV: Teachers continually assess student progress, analyze the results, and adapt instruction to improve student achievement.

A. The teacher uses a variety of formal and informal assessment techniques.

B. The teacher analyzes student information and results and plans instruction accordingly.

Standard V: Teachers are committed to continuous improvement and professional development.

A. The teacher continually reflects upon his/her practice in promoting student learning and adjusts instruction accordingly.

B. The teacher draws upon educational research and research-based strategies in planning instructional content and delivery.

C. The teacher is an active member of professional learning communities.

Standard VI: Teachers exhibit a high degree of professionalism.

A. The teacher understands and supports the vision of the school system.

B. The teacher views him/herself as a leader in the educational community.

C. The teacher contributes to the smooth functioning of the school environment.

(TPGS Handbook, Jt. Exh. 1, p.3 & Appendix A).

The PAR program is another component of the TPGS. The PAR Program provides support and mentoring for new teachers and underperforming experienced teachers with issues and concerns related to instructional skills. (TPGS Handbook, Jt. Exh. 1, pp.16, 22).

The school principal initiates the PAR process for an experienced teacher by issuing a below standard rating on the formal evaluation and referring the teacher to the PAR Program. (*Id.* at p.16). A PAR consulting teacher then completes a review of the teacher's instructional skills and makes a recommendation to the PAR panel to include the teacher, or not, in the PAR

Program. The PAR panel makes the final decision whether or not to include the teacher in the PAR program and notifies the teacher and administrator of the decision. (*Id.* at p.19).

Within the PAR program are the PAR Panel and the consulting teachers. The PAR Panel consists of sixteen members, eight teacher representatives and eight school-based administrators, who are recommended by their respective employee unions and appointed by the local superintendent. (*Id.*, pp.16-17). The consulting teachers are experienced teachers selected by the PAR Panel. (*Id.*, p.17).

The consulting teachers provide direct instructional support to teachers in the PAR program, conduct classroom observations and collect data to report on the progress of the teacher to the PAR Pair, one teacher and one principal who are members of the PAR Panel and assigned to oversee the work of the consulting teacher. (*Id.*, p.22). The consulting teacher writes a mid-year summary and a final summative report at the end of the period of support. The consulting teacher makes recommendations to the PAR Panel in the final summative report. (*Id.*).

The principal or immediate supervisor receives a copy of the consulting teacher's final summative report. If the administrator disagrees with the consulting teacher's final summative report, the administrator may appear before the PAR panel and provide further information with documentation concerning the teacher's performance. (*Id.*, p.18). If this occurs, the teacher is invited to appear before the PAR Panel to provide additional information. (*Id.*). The PAR panel then issues an evaluation and makes a recommendation to the superintendent regarding continuation for a second year in the PAR program, the teacher's return to the regular professional growth cycle, or contract termination. (*Id.*, p.16 -17).

The consulting teacher and school administrators conduct formal observations of the teacher during the PAR year. The TPGS Handbook sets forth the requisite number of observations. (*Id.*, p.8). The specific number of required observations depends on the teacher's status and performance. (*Id.*).

The TPGS Manual requires a total of 5 formal classroom observations for a tenured teacher in the PAR Program if the consulting teacher is planning to rate the teacher below standard. (*Id.*, p.8). The Manual requires the consulting teacher to perform four of those observations. (*Id.*). In addition, the Manual requires the consulting teacher to announce one of the four ahead of time, and to perform at least one each semester. (*Id.*). The Manual requires the principal, immediate supervisor or assistant principal to perform one formal observation during the year. (*Id.*). Although the school administrators are responsible for conducting one of the five formal observations, they are not responsible for issuing the year end evaluation for a tenured teacher in the PAR Program. (*Id.*).

In addition to the formal observations, the consulting teacher and the school administrators may also conduct informal observations of the teacher. The TPGS Manual does not require any specific number of informal observations, any particular format or length of time.

(*Id.*, p.7). In fact, the PAR procedures expect that school administrators will continue to informally observe and collect data on teachers receiving PAR support. (*Id.*, pp.13, 20).

Appellant's Case

The Appellant began teaching the first grade at Bel Pre Elementary School (Bel Pre) at the start of the 2005-2006 school year. (T.329; FOF 2). She received a final rating of "below standard" on her Professional Growth System Final Evaluation Report. Some of the comments from Bel Pre's principal, Carmen van Zutphen, noted the Appellant's shortcomings in differentiating instruction, in using quantifiable outcomes consistent with MCPS curriculum guidelines, in maximizing student instructional time, in maintaining records of student performance and using assessment data to analyze student progress, and in meeting professional obligations in a timely fashion. (2005-2006 Final Evaluation Report, Sup't. 1).

Ms. van Zutphen referred the Appellant to the PAR program. A consulting teacher reviewed the Appellant's teaching performance and concurred with the referral. The PAR panel admitted the Appellant into program for the 2006-2007 school year. (FOF 13).

2006-2007 PAR Year

During the 2006-2007 school year, the Appellant remained in her position as a first grade teacher at Bel Pre. Various administrators and the PAR Program's consulting teacher, Cheryl Booker, conducted formal and informal observations of the Appellant. (FOF 16 – 21). At the end of the 2006-2007 PAR year, Ms. Booker gave the Appellant a final rating of "Meets Standards" and recommended that the Appellant exit the PAR Program. (Final Summative Report, April 2007, Sup't. Ex. 5).

Ms. van Zutphen disagreed, however, with the conclusions of the consulting teacher and expressed her view to the PAR Panel. Ms. van Zutphen raised concerns about the Appellant's failure to differentiate instruction; her failure to consistently teach the curriculum for her grade level and subjects as defined by the MCPS curriculum standards; her failure to maximize student learning time; and her failure to consistently assess student progress, analyze the results and adapt instruction to improve achievement. (Professional Progress Summary, Sup't. Ex. 6). In addition, Ms. van Zutphen noted the Appellant's reluctant and defensive participation in conferences and feedback conversations, her inconsistent modification of instruction based on the feedback, her failure to produce student data and adequate lesson plans upon request. Ms. van Zutphen also expressed concerns about the Appellant's tactic of leading her students out of the classroom as a means of ending instruction in order to prevent administrators from conducting formal and informal observations. On several occasions when administrators came to perform observations, the Appellant had the class leave the classroom to walk the halls or sit outside in the hall. (*Id.*; Mem. 10/30/06, 2/20/07, 3/14/07, 4/24/07, Sup't. Ex. 24). One day, she did this three different times during a period of 45 minutes. (*Id.*, Mem. 2/20/07).

The Appellant also made a presentation to the PAR Panel at its May 2008 meeting. (FOF 25).

After reviewing the materials submitted by the consulting teacher, the Appellant and the principal, the PAR Panel rated the Appellant as "Below Standard" on her evaluation and determined that she should participate in the PAR Program for a second school year. (FOF 24, 26; Exh. 57). The PAR Panel found the following deficiencies:

Standard I:

- Appellant does not maximize student learning by using practices to differentiate instruction for students based on student differences.

Standard II:

- Appellant does not consistently teach the curriculum for her grade level and subjects defined by MCPS curriculum standards;
- Appellant uses minimal comprehensive planning skills to design effective instruction focused on student mastery of curriculum goals.

Standard III:

- Appellant does not consistently maximize student learning time.

Standard IV:

- Appellant does not consistently use a variety of formal and informal assessments techniques to inform instruction;
- Appellant does not consistently maintain complete and accurate records of student performance, or communicate with parents as appropriate;
- Appellant does not consistently communicate clear criteria for success for student work.

Standard V:

- Appellant participates defensively and reluctantly in conferences and feedback conversations;
- Appellant failed to provide professional evidence of progress as agreed upon in her growth plan.

Standard VI:

- The Appellant refused to allow administrators to observe her classroom on five occasions – two attempted formal

- observations and three attempted informal observations;
- Appellant does not consistently use practices that are aligned with MCPS standards and policies;
- Appellant sometimes shows a lack of professional courtesy to members of the school community.

(2006-2007 PAR Program Evaluation, Supt. Ex. 7).

The PAR Panel also recommended that the Appellant be transferred to another school for the 2007-2008 school year in order to get a fresh start because conflicts had developed between the Appellant and Ms. van Zutphen. (T.34, 412).

2007-2008 PAR Year

The Appellant began teaching the third grade at Beall Elementary School (Beall) at the start of the 2007-2008 school year. (FOF 26, 28; T.34). Sandra Holmes became the Appellant's consulting teacher. Ms. Holmes first met with the Appellant at Beall on August 28, 2007 for approximately two hours. (T. 60). Ms. Holmes testified that much of that meeting consisted of the Appellant expressing her frustration and anger in being in the PAR Program for a second year. (T.61).

During September of 2007, Ms. Holmes began informally observing the Appellant. Ms. Holmes informally observed the Appellant two times, on September 7th and 17th, 2007. (T.62). Based on these observations, Ms. Holmes found several weaknesses in Appellant's instruction. (T.61 – 62). Specifically, Ms. Holmes observed that Appellant was not engaging in any direct instruction in the classroom, that she was not monitoring for student understanding, and that she did not post mastery objectives. (T.63).

On September 18, 2007, the Appellant went on long-term sick leave for depression and anxiety. (FOF 32). The Appellant made two unsuccessful attempts to return to her teaching position but immediately returned to sick leave. (Hearing Ex. Dec. p.6). MCPS vacated the Appellant's position and filled it by someone else because the Appellant had been on leave for more than 60 days. (T. 35; FOF 34).

The Appellant returned to work on February 12, 2008, as a fourth grade teacher at Piney Branch Elementary School (Piney Branch). (FOF 35). Ms. Holmes conducted an informal observation on February 19 and provided the Appellant feedback. (T. 70; Final Summative Report, Sup't. Ex. 15).

The first formal observation of the 2007-2008 PAR year took place on February 29, 2008. Because the first formal observation was an announced observation, Ms. Holmes met with the Appellant for a pre-conference before it took place. (T.71). According to Ms. Holmes, the Appellant was not prepared for the pre-conference. (*Id.*). Instead of preparing a lesson plan, the

Appellant produced a lesson guide for fourth grade students in which she had picked a lesson she wished to use. (*Id.*). The Appellant had not adapted the plan to her class, was unsure that the lesson was suitable for her class and was unsure how to implement the lesson. (T.72).

At the first formal observation on February 29, 2008, Ms. Holmes found several inadequacies in the Appellant's instruction. She found that the Appellant failed to send the Four Key Messages² to her students either through words or interactive behavior, that she did not plan or implement the lesson focused on mastery of an objective, that she was ineffective in using explanatory devices to clarify her lesson. She also found that the Appellant was not clear in setting expectations for quality of student work and study habits. (Formal Observation Report, 2/29/08, Sup't. Ex. 11). Ms. Holmes believed that the Appellant should have been acclimated to her class by the date of the observation given that the Appellant had already been with the students for 2 ½ weeks. (T.82).

Administrators at Piney Branch also observed the Appellant, albeit informally. (FOF 38). Piney Branch's Principal, Bertram Generlette, testified that he and Roger Prince, the Assistant Principal, did informal observations of the Appellant's classroom at least once per week. (T.208). These observations led to concerns about the Appellant's performance, in particular her failure to differentiate instruction and maintain instructional rigor. (T.214-215). Mr. Generlette and Mr. Prince had feedback meetings with Appellant to discuss their concerns. (T.214).

On February 28, 2008, Mr. Prince conducted an informal observation of the Appellant teaching a reading block. He expressed concerns about the Appellant's failure to set a clear purpose for the reading activity, Appellant's failure to differentiate instruction and take individual student need into account, Appellant's lack of instructional rigor, and the Appellant's failure to align the activity with the MCPS curriculum. (Prince 2/28/08 E-mail, Sup't Ex. 10).

Mr. Prince conducted another informal observation on March 12, 2008 in which he observed a math lesson. He was again concerned with the Appellant's failure to differentiate instruction. He stated the following in feedback to the Appellant:

There was no evidence of planning for varied groups. After you modeled the word problems, you failed to properly organize small groups for instruction. There were students who needed support with basic division concepts and should have had immediate access to manipulatives and small group support from one of the two paras in the room. These students needed repetition along with use of the manipulative to strengthen their concept of dividing by tens. The

² Teachers in MCPS are expected to send the four key messages to students through instructional practices and interactive behavior. They are: (1) This is important; (2) You can do it; (3) I won't give up on you; and (4) Effective effort leads to achievement. (TPGS, Appendix A, A-1, Jt. Ex. 1).

question to focus on is “What do you do when students have not learned a concept? Another group of students demonstrated complete understanding of the objective but were given more of the same type of problems as did the rest of the class to complete. The question you need to focus on is “What do you do when they have already learned it?” As the teacher, it is expected that you anticipate these questions to effectively plan for instruction.

(Prince 3/12/08 E-mail, Sup’t Ex. 10)(emphasis omitted). Mr. Prince also expressed concern about the Appellant’s failure to give students sufficient time to process and answer the Appellant’s questions before providing an answer to the class herself. (*Id.*).

Ms. Holmes informally observed the Appellant on March 11, 2008. (T.86). The next day, on March 12, 2008, Mr. Prince informally observed a math class. He noted the Appellant’s failure to differentiate instruction, her failure to organize into smaller groups, and her failure to provide sufficient time for students to respond to her questions before she answered them herself. (Hep.11).

Ms. Holmes helped develop a growth plan for the Appellant. The growth plan set two primary goals and provided specific strategies, methods and steps on how to attain them. (Growth Plan #1, Sup’t. Ex. 12; T.85). The Appellant discussed and signed the growth plan at a meeting with Ms. Holmes, Mr. Prince and Mr. Generlette on March 14, 2008. (T.87).

Ms. Holmes attempted to conduct a second formal observation of the Appellant between March 17 and April 9, 2008, but was unable to do so because the Appellant was either not at school or occupied with other meetings. (T.88-91).

Ms. Holmes conducted an unannounced formal observation of the Appellant’s 4th grade reading class on April 10, 2008. Ms. Holmes found that the Appellant neither posted nor stated a mastery objective for the students, that the Appellant gave no direct nor guided instruction, that the Appellant did not engage in differentiated instruction; and that she was ineffective in using equitable measures in her instruction. (Formal Observation Report, 4/10/08, Sup’t. Ex. 13; T.93-95). In addition, although the Appellant attended the post-observation conference, she refused to actively participate in the conference. (*Id.*).

Ms. Holmes conducted a third formal observation of the Appellant’s math class on April 24, 2008. Ms. Holmes did not observe any instruction focusing on strategies for the students to solve the problems they were given to work on, found the Appellant ineffective in sending the four key messages to her students, found that the Appellant did not differentiate instruction, did not implement a lesson focused on a mastery objective, did not maximize engaged student learning time by appropriately pacing lessons, and that she did not check for understanding before, during or after the lesson. (Formal Observation Report, 4/24/08, Sup’t. Ex. 14).

At the end of the PAR year, Ms. Holmes issued a PAR Program Final Summative Report in which she evaluated the Appellant according to the MCPS performance standards. She found as follows:

Performance Standard I

Ms. Crump does not hold all students to high standards and expectations. She does not consistently demonstrate that she understands how students develop and learn. Ms. Crump did not consistently communicate the Four Key Messages to students through daily instruction and interactive behavior with students. (i.e., Appellant excluded special education students from the whole group lesson; she called on students to answer questions but did not give them sufficient thinking time to answer before moving on the next volunteer).

Performance Standard II

Ms. Crump does not plan lessons that focus on mastery objectives, nor does she consistently communicate those objectives to students. Ms. Crump does not provide clear explanations to her students. Ms. Crump does not plan for flexible student groupings to maximize student learning. (i.e., Appellant assumed students understood how to compare and contrast on an assignment even though Appellant provided no instruction on the concept; gave students an assignment with a chart of questions without explaining how to use the questions).

Performance Standard III

Ms. Crump created an organized classroom. She did not consistently maintain a classroom climate that promoted openness, mutual respect, support and inquiry among the students and teacher. Ms. Crump is inconsistent in establishing clear expectations for students. (i.e., Appellant does not use think-pair strategies or cooperative groups to promote student interaction; was overheard arguing with students about behavior; she has to make repeated attention moves before students focus on her).

Performance Standard IV

Ms. Crump does not communicate clear criteria for success for student work. She is inconsistent in assessing student progress

before, during and after instruction. However, Ms. Crump develops and uses a clearly defined grading system that is consistent with the MCPS Grading and Reporting Policy and Regulations. (i.e., Appellant asks students to complete assignments without use of exemplars or rubrics to guide them; she assumes a student's raised hand to demonstrate problems on the board means the student fully understands the lesson; she has not shown how assessment data is used in her instruction).

Performance Standard V

Ms. Crump has been inconsistent in reflecting on the effectiveness of her instructional practice. She does not modify instruction based on feedback from formal and informal observations. Ms. Crump does not actively participate in her own informal and formal feedback conversations by analyzing teacher and student behaviors and making appropriate comments, questions, and suggestions for improvement. (i.e., Appellant consistently tried to focus feedback conversations on her dissatisfaction with PAR process rather than on her teaching practices; at times the Appellant refused to speak to the consulting teacher about her lessons).

Performance Standard VI

Ms. Crump does not consistently meet professional obligations in a timely fashion. She has not demonstrated that she understands and supports the vision of the school system. (i.e., Appellant does not consistently return e-mails or produce documents in a timely manner; she does not use the Baldrige tools; she did not use the MCPS curriculum guide for her lessons during the three formal observations by the consulting teacher).

(Sup. Exh. 15). Mr. Generlette agreed with Ms. Holmes and provided his written agreement to the findings of the summative report. (Sup. Exh. 16).

The PAR Panel informed the Appellant that she was being considered for termination and that she could appear before the PAR Panel at its May 15, 2008 meeting. (Gainus/Prouty 5/1/08 Letter, Sup't. Ex. 18). The Appellant did not appear at that meeting. The PAR Panel gave the Appellant a "Below Standard" rating on the PAR Evaluation and recommended the Appellant's termination based on her poor teaching performance. (Sup't. Ex. 17, 18).

The Deputy Superintendent of Schools, Freida K. Lacey, advised the Appellant that she was planning to recommend her termination and offered Appellant the opportunity to discuss the

recommendation. (Lacey 6/6/08 Letter, Sup't. Ex. 19). The Appellant and her union representative met with Stephen L. Bedford, the superintendent's designee, on July 16, 2008. (Weast 7/23/98 Letter, Sup't. Ex. 20). Thereafter, the local superintendent recommended the Appellant's termination to the local board and placed the Appellant on a no-pay status pending final action on the recommendation. (*Id.*). The local board upheld the recommendation.

The Appellant appealed the local board's decision to the State Board. We transferred the matter to an ALJ for review.

ALJ's PROPOSED DECISION

The ALJ found that the local board was justified in terminating the Appellant's teaching contract for incompetency. The ALJ highlighted the fact that several different observers over the course of three consecutive school years found the Appellant's performance to be below standard. (ALJ Proposed Decision at 21– 22). The deficiencies in the Appellant's teaching included the following: lack of differentiation to meet the learning needs of her students; inconsistency in focusing on a mastery objective; inconsistent adherence to the MCPS curriculum; lack of lesson planning and failure to check student understanding during and after instruction; loss of instructional time; failure to consistently assess student progress, analyze the results, and adapt instruction accordingly; inconsistent commitment to improvement and participation in professional development; and lack of professionalism. (*Id.* at 22).

In response to the Appellant's argument that she receive three, not four, formal observations from the consulting teacher during the 2007-2008 school year as set forth in the Professional Growth System Handbook, the ALJ determined that the Appellant had not shown that she was prejudiced by any deviation in procedure. The ALJ noted that because the Appellant was on leave for most of the 2007-2008 school year, there was limited time within which to conduct more than three formal observations. The ALJ also found no evidence that demonstrated that an additional evaluation would have been advantageous to the Appellant given her inability to progress. (ALJ Decision at 23).

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 of the employee. COMAR 13A.01.05.05(F)(1) and (2). The State Board gives no deference to the local board's decision under this standard.

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. In reviewing the ALJ's Proposed Decision, the State Board must give deference to the ALJ's demeanor based witness credibility findings unless there are strong reasons present that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

ANALYSIS

The Appellant has raised exceptions to the ALJ's Proposed Decision that we address below.

APPELLANT'S EXCEPTIONS TO ALJ'S PROPOSED DECISION

Number of Observations in 2nd PAR Year

The Appellant maintains that the local board's termination decision should be reversed and that she should be reinstated and granted a third year in the PAR program because she did not receive the requisite number of observations as set forth in the TPGS Handbook while she was in her second PAR year.

Appellant's argument is essentially an *Accardi* doctrine claim. Under the *Accardi* doctrine, "[a]n agency of the government must scrupulously observe rules, regulations, or procedures which it has established." *U.S. ex rel Accardi v. Shaughnessy*, 347 U.S. 260 (1954). This doctrine applies to regulations that are intended to "affect individual rights and obligations" or to "confer important procedural benefits upon an individual." *Pollack v. Patuxent Institution Bd. of Rev.*, 274 Md. 463, 503 (2003). It does not apply to an agency's departure from purely procedural rules that do not invade fundamental constitutional rights or are not mandated by statute, but are adopted primarily for the orderly transaction of agency business. *Id.* Where the *Accardi* doctrine is applicable, a complainant must show that prejudice to him or her resulted from the agency's violation in order for the agency decision to be struck down. *Id.* at 504. The Maryland Court of Appeals has held the *Accardi* doctrine applicable to administrative proceedings in Maryland. *Pollack v. Patuxent Institution Bd. of Rev.*, 374 Md. 463 (2003).

As explained above, if the consulting teacher plans to give the teacher a below standard rating, the consulting teacher is supposed to perform a total of four formal observations. (TPGS Handbook, p.8). Moreover, the administrator is to conduct one formal observation. (*Id.*). Here, the consulting teacher rated the Appellant as below standard, but she performed only three formal observations of the Appellant. In addition, no school administrator conducted a formal observation of the Appellant during her second PAR year.

Although the TPGS Handbook establishes the number of formal observations the consulting teacher and the school administrators shall conduct, the PAR process is not rigid and its guidelines allow for adjustments on an individualized basis. The PAR procedures specifically state that "[i]f a teacher goes on emergency leave while in the PAR program," as did the

Appellant in this case, “the process will be completed and the PAR Panel will decide on any adjustments to the process on a case by case basis.” (TPGS Manual, p.20).

The local board maintains that the flexible approach set forth in the PAR procedures allows for variation in the number of required observations in this case. The PAR Panel here implemented the flexible approach and moved forward with the PAR process despite the two missing observations. Doug Prouty, coordinator of the TPGS and PAR Panel co-chair, testified that the PAR Panel had sufficient data before it in order to form an accurate assessment of the Appellant’s teaching performance. (T.299-300). Mr. Prouty expressed that the PAR Panel encounters circumstances in which the Panel must make decisions “without every “t” being crossed or “i” being dotted.” (*Id.*).

This flexible approach supports the school system’s need to balance the interests of its students in learning and making progress towards mastering curriculum goals versus the interest of the teacher in receiving a fair evaluation, the outcome of which could determine whether the teacher loses employment. *Cf. Board of Educ. of Anne Arundel County v. Barbano*, 45 Md. App. 27, 40 (1980) (“The primary purpose of the State Board of Education is not to bestow procedural benefits upon teachers of questionable competency, but to bestow upon students education by teachers of unquestionable competency.”). MCPS seeks to provide a high quality education for every child by employing teachers who can accomplish the duties and responsibilities of their jobs at a high level of performance. (MCPS Regulation GJA-RA). Indeed, the stated purpose of the PAR program is for “maintaining systemwide quality control and ensuring that all MCPS teachers responsible for teaching students meet MCPS standards of performance.” (TPGS Handbook, p.16).

In our view, the PAR Panel acted reasonably and within its discretionary authority to make a decision concerning the Appellant’s performance on the three formal observations of the consulting teacher. We note that the consulting teacher and the school administrators conducted many informal observations during the course of the PAR year. Because we concur with the local board that the PAR process contains flexibility in the application of its rules, we conclude that the local board did not violate the *Accardi* doctrine.

Even if the local board committed an *Accardi* violation, the Appellant would have to show that she was prejudiced by the failure to conduct the requisite number formal observations in order to necessitate a reversal of the local board’s decision. The Appellant, however, has not presented any evidence that the PAR Panel’s use of three rather than five formal observations to evaluate her performance was prejudicial to her.

Again we note that although Ms. Holmes did not conduct a fourth formal evaluation, she conducted at least four informal observations and three formal observations with consistent findings regarding problems with the Appellant’s instruction. In addition, while Mr. Generlette and Mr. Prince did not conduct a formal observation of the Appellant, they did conduct weekly informal observations which also resulted in consistent findings. Moreover, most of the concerns

expressed by Ms. Holmes, Mr. Generlette, and Mr. Prince were the same types of concerns expressed by Ms. van Zutphen when the Appellant was at Bel Pre. All of this must also be considered in light of the fact that the Appellant was an experienced teacher and had already been in the PAR program the previous school year. There is simply no evidence that the additional formal observations would have been advantageous to the Appellant and rendered a different result.

Amount of Time on PAR Program

The Appellant also believes that her termination was arbitrary or unreasonable because she did not receive a full second year in the PAR Program. Appellant maintains that the program consisted only of a total of 10 weeks at her new assignment at Beall due to her extended absence from school for anxiety and depression beginning on September 18, 2007 and ending on February 12, 2008.

As stated above, the PAR process is flexible and allows for variation on a case by case basis when the teacher is on emergency leave. It just happened that the Appellant was on leave for a large portion of the 2007-2008 school year, which resulted in a shortened PAR year. This shortened year, however, does not automatically entitle the Appellant to additional time in the PAR program. The PAR Panel completes the PAR process and makes adjustments as it deems fit. Given that the Appellant had not improved her instructional deficiencies, it seems reasonable that the PAR Panel would not extend the Appellant's time in the PAR program. Moreover, the Appellant never requested that the PAR Panel provide her with additional time, despite the fact that she was given the opportunity to address the Panel prior to its final evaluation and recommendation.

Amount of Collaboration with the Consulting Teacher

The Appellant argues that her termination was arbitrary because Ms. Holmes, the consulting teacher for the 2007-2008 PAR year, did not spend the same amount of time coaching the Appellant as the other consulting teacher at Bel Pre the prior PAR year. The comparison between the two years is unwarranted given that the circumstances were completely different. During the second PAR year, the Appellant was out on extended sick leave from September 18, 2007 until February 12, 2008. This left far less time for Ms. Holmes to work with the Appellant than did the consulting teacher the previous year. The Appellant's argument lacks merit.

Recommendations of the Principal and Assistant Principal at Piney Branch

The Appellant argues that her termination was arbitrary and unreasonable because there was little basis for the administration at Piney Branch to agree with Ms. Holmes' negative assessment of Appellant's teaching skills in the final summative report for the 2007-2008 PAR year. She argues that only two informal observations conducted by Mr. Prince serve as the basis for the administration's conclusions. The record shows, however, that Mr. Generlette and Mr.

Prince performed informal observations of the Appellant's classroom at least once a week. (T.208 – 209). Those classroom visits were the impetus for Mr. Generlette and Mr. Prince conducting feedback meetings with the Appellant, having discussions with the Appellant about her lessons, and sharing their concerns with her about issues they wanted Appellant to improve. (T.214 – 215). Indeed, there is no support for the Appellant's claim here as the record demonstrates that the Principal and Vice Principal were quite familiar with the Appellant's performance even though they did not conduct any formal observations of the Appellant.

Appellant's Placement on No-Pay Status

The Appellant maintains that the local Superintendent effectively terminated her when he placed her on no pay status pending the local board's decision on the termination recommendation. The Appellant argues that she should have been suspended with pay until the termination decision was reached by the local board. The Appellant has no legal basis for this claim. In fact, in a decision made almost 30 years ago, the State Board determined that a local superintendent has an independent authority to suspend an employee without pay, even before the local board acts on the recommendation for termination. *Waeldner v. Prince George's County Bd. of Educ.*, 2 Ops. MSBE 345 (1981).

Use of Performance Standards

Appellant maintains that it was error for the local board to measure her performance using the six performance standards set forth in the Montgomery County Public Schools (MCPS) Professional Growth System Handbook. She argues that the MCPS standards are outdated and are not in keeping with results oriented standards as measured by student performance.

Although Appellant objects to the MCPS performance standards for the evaluation of teacher performance, those were the standards that existed in MCPS at the time of Appellant's observation and evaluation. The use of those standards by the Appellant's evaluators was therefore appropriate. Moreover, an appeal to the State Board, which is a quasi-judicial process, cannot be used to force a change in local board policy - - which is a quasi-legislative decision. *See, e.g., Richard Regan v. Montgomery County Bd. of Educ.*, MSBE Op. No. 02-29 (2002) (appeal process is not the appropriate vehicle for modifying the curriculum or adopting a new policy governing the teaching of the curriculum.). Thus the Appellant may not seek a change in the MCPS performance standards through an appeal of her termination to the State Board.

De Novo Review of the Appeal By ALJ

Appellant contends that the ALJ did not engage in *de novo* review of her case as evidenced by the ALJ's refusal to allow witness testimony and the ALJ's rejection of exhibits the Appellant sought to introduce on appeal.

In appeals involving the dismissal of a certificated employee pursuant to §6-202 of the

Education Article, the State Board engages in *de novo* review as defined in COMAR 13A.01.05.05F(2). COMAR 13A.01.05.05F(2) provides that the “State Board shall exercise its independent judgment *on the record before it* in determining whether to sustain the suspension or dismissal of a certificated employee.” (emphasis added). This means that the State Board does not give deference to the conclusions drawn by the local board from the evidence in the record, rather the State Board makes its own determination as to whether the record contains sufficient evidence to sustain the local board’s decision.

With regard to the hearing before the ALJ, a party may introduce additional testimony or documentary evidence, but the ALJ may exclude it if it is unduly repetitious of that already contained in the record. COMAR 13A.01.05.07C(1). Thus it is within the ALJ’s discretion to determine whether evidence should be admitted to supplement the record that was before the local board.

The Appellant does not elaborate on the type of testimony or documents that she sought to have admitted other than her *curriculum vitae*. She refers to a document that the ALJ refused to admit at p. 9 of the transcript, but that document was dated January 5, 2009 and the ALJ determined that it was not relevant to the case. (OAH T.8 – 9). As for the Appellant’s *curriculum vitae*, the transcript page cited by the Appellant shows that the ALJ found the evidence redundant. The ALJ stated “I’m not going to allow it. The testimony is part of the record as to all the additional training that you went through and speaks to it. It should have been entered at the earlier hearing if you wanted to use it.” (*Id.*, p.13). Moreover, the ALJ did allow the Appellant to introduce several additional documents during the hearing. There is simply no evidence that the ALJ failed to engage in *de novo* review of this case.

Evidence of Appellant’s Impact on Student Achievement

At oral argument, counsel for the Appellant argued that the State Board should consider the Appellant’s positive impact on student achievement in making its determination in this case. We asked counsel to cite those portions of the record that support this claim, specifically including references to assessment tools utilized to measure the performance of the Appellant’s students. We address the citations by Appellant’s counsel below:

- Hearing transcript p. 313 is the Appellant’s testimony concerning a communication from her volunteer parent aide during a school year not at issue in the case. It demonstrates nothing about student achievement.
- Hearing transcript p. 317 refers to App. Ex. 3. App. Ex. 3 is a Reading Proficiency Chart created using the results of a formative assessment given to students in the winter of 2005 at Rosemary Hills Elementary School. The chart depicts the above target, on target, and below target reading behaviors for the ten 1st grade classes there. (T.316). The chart purports to show that 100% of the Appellant’s first grade students during the 2004-2005 school

year were “on target” for reading in the winter of 2005. The chart gives no information on student progress from the beginning of the school year to the end. In addition, it does not provide data about student performance for the years in question in this appeal.

- Hearing transcript pp. 319-321 and App. Ex. 4. The transcript refers to App. Ex. 4 which is a Reading Writing Monitoring Tool that depicts the Appellant’s assessment of student performance in reading during the 2005-2006 school year at Bel Pre. The chart shows student reading levels beginning in June 2005, and student progress in reading through January 2006. (T.318). Appellant measured student progress through testing, with a score of 16 demonstrating that the student had on grade level reading skills. The chart shows that all except one of Appellant’s students made continuous growth to be reading on grade level by January. (T.318-321). This data pertains to the school year that led to the Appellant’s placement in the PAR program.
- Hearing transcript pp. 326 and 328 refer to App. Exs. 6 and 7 which consist of two parent letters regarding Appellant’s efforts with their children during the 2003-2004 school year at Rosemary Hills. These exhibits contain the subjective assessment of the Appellant’s performance for a teaching year not in question.
- Hearing transcript p. 330 in which Appellant testified that she wanted to work at Bel Pre because it had 97% minority students. It is unclear why this reference was included.
- Portions of the transcript of the oral argument before the local board. While oral argument is a part of the record, it is not evidence in the case.
- Appellant’s PAR statement submitted to the PAR Panel at the conclusion of the 2006-2007 PAR year in which the Appellant makes conclusions about her students’ achievement level. It contains no data to support those statements and is not a part of the record in the case.
- Documentation of support from Carl Baskerville, former principal of Rosemary Hills Elementary. The documents consist of: (1) an evaluation from the 1999-2000 school year without the referenced attachment; (2) a post-observation conference report from February 2001 that is not signed by the observer and is missing the second out of three pages; (3) a Final Evaluation Summary from the 2000-2001 school year done for Appellant’s certificate renewal. These documents are not relevant to the years at issue in this case and are not part of the record in the case.

- Copies of statements from parents and others spanning several years. Some statements are signed and some are not. Some appear to have been cut and pasted into the document and some appear to have been retyped. These items are not a part of the record in this case.

Counsel for the local board has also referenced two documents in the record relevant to student performance that were not cited by the Appellant’s counsel:

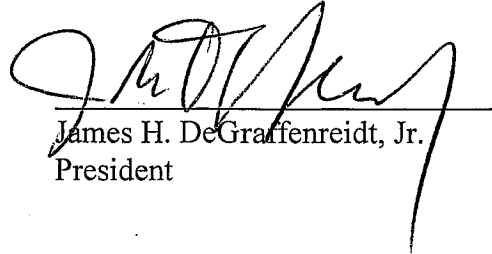
- App. Ex. 8 is a Multiple Measure Report for a math unit for first grade at Bel Pre during the 2006-2007 PAR year which shows student results on an end of unit formative assessment. (T.387; App. Ex. 8). The shaded areas of the document show that all but two of the Appellant’s students demonstrated complete understanding of what was being tested. (T.396).
- Sup’t. Ex. 23 is a chart comparing the proficiency level of all students in the first grade to those in Appellant’s first grade class in October 2006, January 2007, March 2007, and April 2007 - Appellant’s first year in the PAR program. The data is below:

	Not Proficient # of Students		Approaching Proficiency # of Students		Proficient # of Students		Above Proficient # of Students	
	1 st Grade Appellant		1 st Grade Appellant		1 st Grade Appellant		1 st Grade Appellant	
10/2006	15	7	42	6	44	0	26	0
1/2007	7	4	20	8	62	2	40	0
3/2007	2	1	13	2	96	12	21	0
4/2007	2	2	34	10	36	4	64	0

While the Appellant may have had a positive impact on the achievement of some students at various times, the information highlighted by the Appellant does not persuade us that the local board’s decision should be reversed.

CONCLUSION

We concur with the ALJ's assessment that the record in this case supports the local board's termination of the Appellant from her teaching position for incompetency. We, therefore, adopt the ALJ's proposed decision affirming the local board.



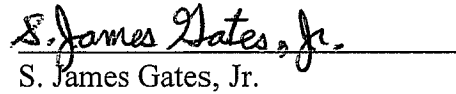
James H. DeGraffenreidt, Jr.
President

DISSENT

Charlene M. Dukes
Vice President



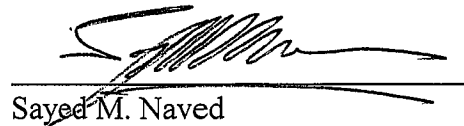
Mary Kay Finan



S. James Gates, Jr.



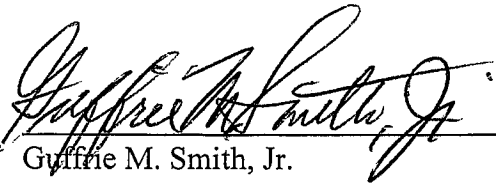
Luisa Montero-Diaz

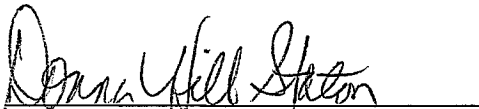


Sayed M. Naved

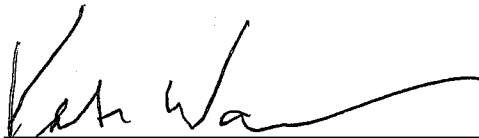
DISSENT

Madhu Sidhu


Guffie M. Smith, Jr.


Donna Hill Staton

DISSENT
Ivan C.A. Walks


Kate Walsh

August 24, 2010

LAVERN CRUMP,
APPELLANT
v.
BOARD OF EDUCATION
OF MONTGOMERY COUNTY

* BEFORE JANA CORN BURCH,
* ADMINISTRATIVE LAW JUDGE,
* MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: MSDE-BE-01-09-26755

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On or about July 23, 2008, Jerry D. Weast, Superintendent of the Board of Education of Montgomery County (County Board) notified Lavern Crump (Appellant), a teacher at Piney Branch Elementary School, that the County Board was recommending the Appellant's termination from employment with Montgomery County Public Schools (MCPS). On November 17 and 18, 2008, Gregory A. Szoka, a Hearing Examiner for the County Board, held a hearing on the Appellant's termination in Rockville, Maryland. On February 2, 2009, Hearing Examiner Szoka recommended the Appellant's termination to the County Board. On April 14, 2009, the County Board accepted the Hearing Examiner's recommendation and terminated the Appellant. Md. Code Ann., Educ. § 6-203 (2008).

The Appellant filed an appeal of the County Board's termination decision with the Maryland State Board of Education (State Board) on May 28, 2009, and it, too, upheld the

termination. On June 5, 2009, the Appellant filed an addendum to her May 28, 2009 appeal with the State Board. On July 13, 2009, the State Board referred the matter to the Office of Administrative Hearings (OAH) for further proceedings. Md. Code Ann., Educ. § 6-202(a)(4) (2008).

I conducted a hearing on October 22, 2009, at the OAH in Hunt Valley. The Appellant represented herself. Judith S. Bresler, Esquire, represented the County Board. Procedure in this case 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 OAH's Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009); COMAR 13A.01.05; COMAR 28.02.01.

ISSUE

The issue is whether the Appellant's termination was proper.

SUMMARY OF THE EVIDENCE

Exhibits

Except as otherwise indicated, I admitted the following exhibits on behalf of the Appellant:

- App. Ex. A-1 OAH - Not admitted
- App. Ex. A-2 OAH - Letter to the Appellant from Doug Prouty, dated June 14, 2009
- App. Ex. A-3 OAH - Appendix C - COMAR Regulation on Evaluation; II. The Elements of the System - E. Evaluations; Schedule for Evaluation and Professional Development; Special Evaluations for Tenured Teachers not in Formal Evaluation Year; and II. Elements of the System - F. The Peer Assistance and Review (PAR) Program;
- App. Ex. A-4 OAH - Pamphlet - MCEA/MCPS - Peer Assistance & Review Program
- App. Ex. B OAH - Yearly Evaluation Report and MSDE Certificate Renewal for Tenured Teachers in Professional Growth Years

- App. Ex. C OAH - Not admitted
- App. Ex. D OAH - Not admitted
- App. Ex. E-1 OAH - Not admitted
- App. Ex. E-2 OAH - Not admitted
- App. Ex. F OAH - Priority Report E-mail to the Appellant from Judith Zauderer, undated
- App. Ex. G OAH - Not admitted
- App. Ex. H OAH - Not admitted
- App. Ex. I OAH - Not admitted
- App. Ex. 11 OAH - E-mails between the Appellant and Sandra Holmes, dated April 10, 2008

The County Board did not offer any exhibits for admission.

The record included the following exhibits:

- Ex. A - Letter to the Appellant from Jerry D. Weast, dated July 23, 2008
- Ex. B - Report of Hearing Examiner Gregory Szoka, dated February 2, 2009
- Ex. C - Superintendent's Post-Hearing Memorandum and Appellant's Closing Argument Brief
- Ex. D - Joint Ex. 1 - Professional Growth System Handbook
 - Appellant's Exhibits:
 - App. Ex. 1 - Letter to Carl Baskerville from the Lisa Heavner, dated May 12, 2000
 - App. Ex. 2 - Evaluation Support Statements
 - App. Ex. 3 - RHPS Reading Proficiency Chart - Winter 2005, First Grade
 - App. Ex. 4 - Reading/Writing Monitoring Tool - Grade 1, 2005-2006
 - App. Ex. 5 - Wheaton Woods Elementary School - Professional Reference Addendum, dated April 16, 2003
 - App. Ex. 6 - Letter to Ralph Viggiano from Catherine Clifford, dated May 7, 2004
 - App. Ex. 7 - Letter to Ralph Viggiano from Carolyn Lerner, dated May 18, 2004
 - App. Ex. 8 - Multiple Measure Reports - Math by Item 06-07, Grade 1
 - App. Ex. 9 - Sick Leave Bank Physician's Statement, dated January 1, 2008
 - App. Ex. 10 - MCEA Sick Leave Bank Request, dated January 29, 2008
 - Board's Exhibits:
 - S. Ex. 1 - Professional Growth System Final Evaluation Report, dated March 21, 2006

- S. Ex. 2 - Peer Assistance and Review Program Report - Formal Observation # 1, dated May 5, 2006
- S. Ex. 3 - Peer Assistance and Review Program Report - Formal Observation # 2, dated may 23, 2006
- S. Ex. 4 - Letter to Mrs. Van Zutphen from Paula Schmierer, dated May 24, 2006
- S. Ex. 5 - Peer Assistance and Review Program - Final Summative Report, dated April 2007
- S. Ex. 6 - Greeting letter by Carmen Van Zutphen presenting the Appellant, with an attachment consisting of three packets of supporting documentation
- S. Ex. 7 - Peer Assistance and Review Program - Evaluation Form for Tenured Teachers in PAR, signed by Principal Zutphen on July 13, 2007
- S. Ex. 8 - Letter to the Appellant from Raymond Frappolli, dated February 7, 2008
- S. Ex. 9 - Letter to Parents and Guardians from Bertram Generlette, dated February 8, 2008
- S. Ex. 10 - E-mails to the Appellant from Roger Prince, dated February 28, and March 12, 2008; e-mail to the Appellant from Bertram Generlette, dated May 1, 2008, and e-mail to Bertram Generlette from from the Appellant, dated April 30, 2008
- S. Ex. 11 - Peer Assistance and Review Program Report – Formal Observation #1, dated February 29, 2008
- S. Ex. 12 - Growth Plan # 1 - for March 13, 2008 - April 29, 2008
- S. Ex. 13 - Peer Assistance and Review Program Report - Formal Observation # 2, dated April 10, 2008
- S. Ex. 14 - Peer Assistance and Review Program Report - Formal Observation # 3, dated April 24, 2008
- S. Ex. 15 - Peer Assistance and Review Program - Final Summative Report, dated April 28, 2008
- S. Ex. 16 - Peer Assistance and Review Program - Principal's Response Form for the Final Summative Report, dated April 30, 2008
- S. Ex. 17 - Peer Assistance and Review Program - Evaluation Form for Tenured Teachers in PAR, dated October 27, 20008
- S. Ex. 18 - Letter to the Appellant from Phil Gainous and Douglas Prouty, dated May 1, 2008
- S. Ex. 19 - Letter to the Appellant from Frieda K. Lacey, dated June 6, 2008
- S. Ex. 20 - Letter to the Appellant from Jerry D. Weast, dated July 23, 2008
- S. Ex. 21 - Letter to Nancy Navarri from Jerome Fountain, dated July 31, 2008; and letter to the Appellant from Jerry D. Weast, dated July 23, 2008
- S. Ex. 22 - E-mail to Carmen Van Zutphen from Pat Abrunzo, dated May 9, 2007
- S. Ex. 23 - Bel Pre First Grade Data Compared to [the Appellant's] Classroom Data - Unit 1, October 2006

S. Ex. 24 - Three Memoranda to the Appellant from Patricia Smith, dated October 30, 2006, February 20, March 14, and April 24, 2007

Board Ex. E - Transcript of the November 17 and 18, 2008 Hearings

Testimony

Neither the Appellant nor the County Board presented witnesses.

FINDINGS OF FACT

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

1. The Appellant has been a teacher for over 35 years; the 2007-2008 school year was the Appellant's sixteenth year with the County Board. She is certified by the State of Maryland to teach grades one through eight; she is also certified in reading.
2. For the 2005-2006 school year, the Appellant was assigned to Bel Pre Elementary School (Bel Pre) as a first-grade teacher. It was her fourteenth year with the County Board, and was thus an evaluation year for her.
3. Because of concerns about the Appellant's performance, Carmen Van Zutphen, Principal of Bel Pre, contacted the County Board's human resources office to ensure that the Appellant would be evaluated according to the Professional Growth System Handbook.
4. Raymond Frappolli, Director of Performance and Evaluation in the Office of Human Resources for the County Board, informed Principal Van Zutphen that a minimum of two formal observations would need to be done, and that three were recommended. If the rating was going to be "below standard," there had to be a minimum of two qualified observers.

5. Formal observations of the Appellant were conducted by Principal Van Zutphen on October 28, 2005, January 4, 2006, and February 22, 2006. Post-observation conferences with the Appellant were held on November 2, 2005, January 6, 2006, and February 27, 2006.
6. Principal Van Zutphen prepared a Professional Growth System Final Evaluation Report, dated March 21, 2006, of the Appellant's performance. This report was based on the three formal observations as well as informal observations and the Appellant's progress on her "Growth Plan." Principal Van Zutphen gave the Appellant a final rating of "below standard." Principal Van Zutphen also recommended that the Appellant participate in the Peer Assistance and Review (PAR) Program for the 2006-2007 school year.
7. The PAR Program provides intensive, individualized assistance for novice teachers as well as teachers judged to be "below standard." Through the PAR Program, consulting teachers (CTs) provide direct instructional support to teachers in the program and collect data through formal observations.
8. The PAR Panel, which is made up of eight teachers and eight principals recommended by their employee unions and appointed by the superintendent, makes recommendations to the superintendent as to whether a teacher's contract should be renewed, the teacher should spend a second year in the PAR program, or the teacher's contract should be terminated. The PAR Panel generally meets monthly.
9. The PAR Program also includes PAR pairs, a teacher and a principal who together oversee the work of three to five CTs and evaluate the CTs.
10. CTs are teachers with at least five years of experience selected by the PAR Panel through a rigorous process and then trained during the summer. CTs provide support to novice and underperforming teachers, observe these teachers, and provide feedback to the PAR Panel. CTs

also take two courses in Observing and Analyzing Teaching (OAT I and II). The CT position involves a five-year commitment, with three years as a CT and two years in the classroom.

11. The March 21, 2006 evaluation report prepared by Principal Van Zutphen was submitted to Mr. Frappolli.
12. Based upon Principal Van Zutphen's recommendation that the Appellant participate in the PAR Program, a CT, Paula Schmierer (Schmierer), performed two formal observations of the Appellant, first on May 5, 2006, (which was announced) and again on May 23, 2006 (which was unannounced). The purpose of these observations was to gather data for the PAR Panel to evaluate whether the PAR program was appropriate for the Appellant. Ms. Schmierer also recommended that the Appellant participate in the PAR Program; Principal Van Zutphen concurred with this recommendation.
13. On June 1, 2006, the PAR Panel considered the recommendations of Principal Van Zutphen and Ms. Schmierer and admitted the Appellant to the PAR Program for the 2006-2007 school year.
14. For the 2006-2007 school year, the Appellant continued at Bel Pre as a first-grade teacher.
15. During the 2006-2007 school year, the Appellant worked with Cheryl Booker, a CT from the PAR Program. Ms. Booker conducted formal observations on October 17, 2006, November 29, 2006, March 14, 2007, and April 23, 2007. She also conducted numerous informal evaluations throughout the school year.
16. While a teacher is participating in the PAR Program, school administrators are not required to conduct evaluations. However, during the 2006-2007 school year, administrators at Bel Pre continued to evaluate the Appellant through formal and informal observations.

17. On October 27, 2006, Bel Pre's Assistant Principal, Patricia Smith, visited the Appellant's classroom and noted that the Appellant refused to teach and removed the children from the classroom while she was present.
18. On February 9, 2007, Assistant Principal Smith visited the Appellant's classroom for informal observation. The Appellant refused to teach and thrice removed the children from the classroom.
19. On March 13, 2007, Assistant Principal Smith visited the Appellant's classroom for informal observation and noted that no academic instruction took place during the twenty minutes for which she was present.
20. On March 16, 2007, Assistant Principal Smith attempted a formal observation in the Appellant's classroom, but the Appellant refused to teach, and Ms. Smith ended the observation after ten minutes.
21. On April 24, 2007, Principal Van Zutphen attempted a formal observation, but the Appellant again refused to teach, and Ms. Van Zutphen ended the observation after four minutes.
22. At the end of the 2006-2007 school year, Ms. Booker prepared a PAR Program Final Summative Report and rated the Appellant "meets standard." Subsequently, the PAR Panel tentatively recommended "meets standards."
23. Principal Van Zutphen and Assistant Principal Smith also conducted observations of the Appellant during the 2006-2007 school year. Principal Van Zutphen observed her three times (October 24, 2006, February 12, 2007, and April 24, 2007) and Assistant Principal Smith observed her twice (November 27, 2006, and March 16, 2007).
24. Either the principal or the teacher participating in the PAR Program can appeal a tentative recommendation from the PAR Panel. Principal Van Zutphen disagreed that the Appellant

should be rated "meets standards," and she informed the PAR Panel of her recommendation in a presentation to the panel in May 2008.

25. At the May 2008 meeting of the PAR Panel, the Appellant also made a presentation.
26. The PAR Panel determined that the Appellant should participate in the PAR Program for a second year, the 2007-2008 school year. However, because of tensions between the Appellant and the school administration at Bel Pre, the PAR Panel requested that the County Board assign the Appellant to a different school.
27. In June 2007, the Appellant was placed on administrative leave for not following testing protocols while administering a math test at Bel Pre.
28. For the 2007-2008 school year, the Appellant was assigned to teach third grade at Beall Elementary School (Beall).
29. Sandra Holmes was assigned as CT for the Appellant during the 2007-2008 school year. Ms. Holmes had twenty-two years of teaching experience, nineteen of which were in the classroom. This was her second year as a CT.
30. When Ms. Holmes tried to contact the Appellant by e-mail and telephone before the start of the school year, she received no response. Ms. Holmes was told by a secretary that the Appellant was on leave and would report on the first day of school. When Ms. Holmes sent an e-mail on that first day of school, she still received no response. Finally, Ms. Holmes went to the school to speak to the Appellant in person. She and the Appellant spoke for about two hours, during which the Appellant expressed frustration at being in the PAR Program for a second year.
31. Ms. Holmes informally observed the Appellant on September 7, 2007, and September 17, 2007. She provided feedback to the Appellant via e-mail, and the Appellant responded to the feedback.

32. Beginning September 18, 2007, the Appellant went on sick leave for depression and anxiety. She informed Ms. Holmes that she was going on leave via e-mail.
33. On January 14, 2008, the Appellant returned to her classroom at Beall. However, on January 15, 2008, she called for a substitute teacher halfway through the school day and left Beall.
34. Because the Appellant had been on leave for 60 days at that point, her position at Beall was vacated and someone else was hired to fill the position.
35. On February 12, 2008, the Appellant began a new teaching assignment at Piney Branch Elementary School (Piney Branch). She was assigned to a fourth-grade class.
36. During February 2008, Ms. Holmes informally observed the Appellant three times.
37. On February 28, 2008, Ms. Holmes held a pre-observation conference with the Appellant in preparation for the first formal observation. Ms. Holmes noted that the Appellant was unprepared and had not developed a lesson plan.
38. Also on February 28, 2008, Bertram Generlette, Principal of Piney Branch, and Roger Prince, Assistant Principal at Piney Branch, informally observed the Appellant teaching a fourth-grade reading class. Mr. Prince provided the Appellant with feedback via e-mail. He noted concerns about the lack of instructional rigor and the absence of differentiation.
39. On February 29, 2008, Ms. Holmes formally observed the Appellant during a math class. She noted that the lesson was not focused on a mastery objective and that no direct instruction took place during the lesson.
40. On March 4, 2008, Ms. Holmes had a post-observation conference with the Appellant, and on March 7, 2008, the Appellant received the formal written report of the observation. The Appellant refused to sign the report.

41. On March 10, 2008, Ms. Holmes sent the Appellant a growth plan that she designed. The plan focused on planning and implementing mastery lessons, using equitable based measures, and using explanatory devices to provide clarity in instruction.
42. On March 11, 2008, Ms. Holmes informally observed the Appellant.
43. On March 12, 2008, Assistant Principal Prince informally observed the Appellant teaching a math class. Mr. Prince again provided the Appellant feedback via e-mail. He noted some positive observations but also highlighted concerns, including lack of planning, failure to effectively organize small groups, and a failure to differentiate.
44. On March 14, 2008, the Appellant met with Principal Generlette, Assistant Principal Prince, and Ms. Holmes about the growth plan. Also in attendance was Latricia Thomas, the Staff Development Teacher.
45. Between March 17, 2008, and April 10, 2008, Ms. Holmes tried to observe the Appellant but was unable to do so because the Appellant was either not present at school or in meetings.
46. On April 10, 2008, the Appellant requested that Ms. Holmes model two lessons for her, a language and a math lesson. Ms. Holmes agreed to model one of the two areas, noting that time constraints would not allow her to do both. However, when the Appellant learned that she would need to be involved in planning the lesson, she rescinded her request.
47. On April 10, 2008, Ms. Holmes formally observed the Appellant; the observation was unannounced, and thus there was no pre-observation conference. Again, Ms. Holmes observed no mastery objective and no direct instruction.
48. On April 21, 2008, Ms. Holmes held a post-observation conference with the Appellant, where the Appellant was given the written report Ms. Holmes had prepared. The Appellant refused to sign the report and would not participate in the conference.

49. On April 24, 2008, Ms. Holmes conducted a third formal evaluation of the Appellant during a math class. Ms. Holmes observed that while a mastery objective was posted, it was too broad, and that again, no direct instruction took place.
50. The post-observation conference was held on April 29, 2008. Principal Generlette was present at this conference. The Appellant refused to sign the report.
51. Throughout the 2007-2008 school year, Principal Generlette and Assistant Principal Prince conducted a number of walk-throughs and informal observations, but no formal observations.
52. Ms. Holmes prepared a PAR Program Final Summative Report, dated April 29, 2008, in which she evaluated the Appellant against six performance standards. She rated the Appellant as "below standard." This report was presented to the Appellant in a meeting on or around April 30, 2008.
53. On April 30, 2008, the Appellant requested two days of leave.
54. The PAR Panel met in May 2008, and Ms. Holmes presented her findings.
55. In a letter dated May 1, 2008, the PAR Panel informed the Appellant that she was being considered for termination, and that she could appear before the PAR Panel on May 15, 2008.
56. The Appellant did not request to appear before the PAR Panel. The PAR Panel recommended that the Appellant be terminated.
57. In a letter dated June 6, 2008, Frieda K. Lacey, Deputy Superintendent of Schools, informed the Appellant that she was considering recommending her for termination and proposing a meeting to give the Appellant an opportunity to challenge that recommendation.
58. On July 16, 2008, the Appellant met with Ms. Lacey's designee, Stephen L. Bedford, chief school performance officer, and Jerome Fountain, Montgomery County Education Association (MCEA) UniServ representative.

59. In a letter dated July 23, 2008, the Superintendent Jerry D. Weast informed the Appellant that he was recommending to the County Board that she be dismissed from employment for incompetency.

DISCUSSION

Section 6-202 of the Education Article of the Maryland Annotated Code provides that “[o]n the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant” for reasons including “incompetency.” Md. Code Ann., Educ. § 6-202(a)(1) (2008). It further states that the individual “may appeal from the decision of the county board to the State Board.” Md. Code Ann., Educ. § 6-202(a)(4). Under COMAR 13A.01.05.07A, the State Board “shall transfer an appeal to the [OAH] for review by an administrative law judge” under circumstances including an “appeal of a certificated employee suspension or dismissal” pursuant to section 6-202 of the Education Article. Under COMAR 13A.01.05.05, the standard of review for dismissal actions involving certificated employees is *de novo*: “[t]he State Board shall exercise its independent judgment on the record before it in determining whether to sustain the . . . dismissal of a certificated employee.” In addition, the local board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05F.

MCPS publishes a Professional Growth System Handbook (Jt. Ex. 1) for teachers, which outlines the six performance standards endorsed by the County Board. These six standards are used in evaluating classroom-based teachers. The standards are:

- Standard I: Teachers are committed to students and their learning.
- Standard II: Teachers know the subjects they teach and how to teach those subjects to students.

- Standard III: Teachers are responsible for establishing and managing student learning in a positive learning environment.
- Standard IV: Teachers continually assess student progress, analyze the results, and adapt instruction to improve student achievement.
- Standard V: Teachers are committed to continuous improvement and professional development.
- Standard VI: Teachers exhibit a high degree of professionalism.

The County Board argues that the record shows, by a preponderance of the evidence, that the County Board was justified in terminating the Appellant's contract. The County Board points to observation-based evaluations in which the Appellant was rated "below standard" beginning in the 2005-2006 school year and continuing concerns about her performance in the 2006-2007 and 2007-2008 school years. Primarily, these concerns involve the Appellant's lack of preparedness, a failure to differentiate instruction, a failure to assess student progress and adapt instruction accordingly, and a failure to provide direct instruction. The County Board contends that it did everything it could to support the Appellant, including enrolling her in the PAR Program and encouraging her to take advantage of school-based resources such as reading specialists and math coaches. Despite efforts to help the Appellant improve, the County Board argues that she continued to perform below an acceptable standard.

The Appellant argues that before the 2005-2006 school year, she had taught in Montgomery County for fourteen years without receiving a "below standard" evaluation. She believes objections to her performance began because the administration at Bel Pre disagreed with her teaching methods. She disagrees with the evaluations that found her to be "below standard" and argues that

the performance of her students shows her to be a competent teacher. The Appellant also alleges that the County Board did not follow appropriate procedures in terminating her contract.

Beginning with the observations conducted by Principal Van Zutphen in the 2005-2006 school year, the record shows that administrators at all three schools at which the Appellant taught during the relevant time frame (school year 2005-2006 through school year 2007-2008), as well as two of the three CTs who observed her, noted significant problems with her performance as a classroom teacher. Based on formal observations of the Appellant Principal Van Zutphen conducted on October 28, 2005, January 4, 2006, and February 22, 2006, as well as informal observations, and the Appellant's progress on her growth plan, Principal Van Zutphen prepared an evaluation report. She noted, among other things, that the Appellant "does not use clearly defined quantifiable outcomes that are consistent with MCPS curriculum guidelines"; "does not differentiate lessons that reflect high standards for all students and meet the learning needs of her students"; "does not consistently plan lessons based on MCPS curriculum"; "missed opportunities to check for student understanding"; "does not consistently maximize engaged student learning time by appropriately pacing lessons, making seamless transitions, and having materials readily available for students throughout the lesson"; "[m]aintains incomplete records of student performance"; "does not use assessment data consistently to analyze student progress"; "assesses students' progress infrequently"; "[d]oes not communicate clear criteria for success for student work; and "does not consistently meet professional obligations in a timely fashion." (S. Ex. 1.) In this evaluation report, Principal Van Zutphen recommended the Appellant for the PAR Program.

Before a teacher is admitted to the PAR Program as an underperforming teacher, one of the PAR Program's CTs conducts two formal observations to determine if the PAR Program is appropriate for that teacher. CT Paula Schmierer conducted these observations on May 5, 2006, and

May 23, 2006. In her written review of the first observation, which was an announced observation, Ms. Schmierer wrote that the "lesson was not delivered on a mastery level" and that "only eight of sixteen students independently completed work related to the objective." (S. Ex. 2.) The lesson, noted Ms. Schmierer, "caused some student confusion and misconceptions." The Appellant "did not deliver a balanced lesson, with all components, for students." While Ms. Schmierer did note that the Appellant "builds positive interpersonal relationships with students and families," she also wrote that the Appellant "had insufficient routines established for students to turn in completed work" and "does not effectively analyze and use data about student performance and other relevant information to plan instruction." (S. Ex. 2.)

Ms. Schmierer's second observation was unannounced. Ms. Schmierer noted in her review that the objectives displayed were not relevant to the lesson, and that the lesson was thus "not planned for or delivered on a mastery level." While the Appellant "gave clear explanations to students during a shared reading activity," she "missed an opportunity to plan and deliver a balanced lesson." Ms. Schmierer noted that the Appellant told her that her goal for the lesson was "to just keep them busy so I could test," and that the Appellant conducted a math assessment during the literacy block. In addition, Ms. Schmierer wrote that the Appellant "did not follow appropriate testing procedures" while conducting the testing. Schmierer recommended the Appellant for the PAR Program. (S. Ex. 3.)

The Appellant challenges Principal Van Zutphen's assessment, arguing that in November of the 2005-2006 school year, Principal Van Zutphen sent in a reading specialist and staff development teacher to "literally take over [her] class," and that "at every turn someone was coming in to show [her] how to do the work." (OAH Hr'g Tr. 64-65.) However, the Appellant acknowledged that at the start of the school year, Principal Van Zutphen had "received [her] warmly" and that she, the

Appellant, was “totally excited” about teaching at Bel Pre. (OAH Hr’g at 73.) There is nothing in the record to suggest that Principal Van Zutphen had a personal or professional vendetta against the Appellant, as the Appellant seems to imply, or that her critique of the Appellant’s teaching was unfounded.

The Appellant also challenges Ms. Schmierer’s independence, noting that the CT had worked at Bel Pre during the 2004-2005 school year and claiming that Ms. Schmierer had a difficult professional relationship with Principal Van Zutphen; however, the Appellant offers nothing to refute Ms. Schmierer’s specific findings. Indeed, it is not clear why she thinks that if Ms. Schmierer and Principal Van Zutphen had a poor relationship, that fact has any relevance to their assessments of her performance. Regardless of any differences they may have had, Principal Van Zutphen and Ms. Schmierer agreed that the Appellant needed the intervention of the PAR Program, and there is no indication that their recommendations were influenced by their own relationship, or that Ms. Schmierer, who was not on staff at Bel Pre during the 2005-2006 school year, was not acting independently.

Based on the evaluations by Principal Van Zutphen and Ms. Schmierer, the Appellant was admitted to the PAR Program for the 2006-2007 school year. The Appellant acknowledged that she was unhappy about her inclusion in the PAR Program (OAH Hr’g T. 67), but decided to make the best of it. She ended up having what she characterized as an “overwhelmingly fantastic year in terms of growth.” (Bd. Hr’g T. 333.) The Appellant testified that she “couldn’t have imagined a better experience,” and that she thought the experience with the CT was “reciprocal.” (Bd. Hr’g T. 333.) Her CT’s Final Summative report is full of praise: the Appellant “continues to plan for differentiation to meet the varying leaning needs of her students”; “consistently communicates key messages to her students through instructional practices and interactive behavior”; “provides prompt

and specific feedback to students on their work and progress towards goals”; “teaches the curriculum for her grade level”; “demonstrated her ability to use the MCPS Instructional Guides to plan and deliver lessons that include all of the essential elements”; “provides lessons and activities that help students to make connections to daily life and are relevant to them”; “builds positive interpersonal relationships with her students”; “uses a variety of assessments to monitor students’ learning and uses the data to make instructional decisions”; “maintains and keeps current records of student’s performance”; and “meets her professional obligations in a fitting manner.” (S. Ex. 5.)

However, Principal Van Zutphen and her Assistant Principal Patricia Smith also conducted observations of the Appellant’s teaching during the 2006-2007 school year, and Ms. Van Zutphen disagreed strongly with the CT’s assessment. Principal Van Zutphen subsequently summarized her concerns in a presentation to the PAR Panel, which was in the process of deciding whether the Appellant should be released from the PAR Program, admitted for a second year of support in the PAR Program, or terminated from employment. Using her own observations as well as feedback from other staff, Principal Van Zutphen highlighted concerns about the lack of differentiation, the absence of a mastery level focus lesson in any of the formal observations, the loss of instructional time for various reasons, a failure to use formal and informal assessment techniques to inform instruction, failure to maintain student records and data, and a failure to meet professional obligations. Principal Van Zutphen also noted that on “five separate occasions,” the Appellant had “refused to allow administrators to observe in [the Appellant’s] classroom.” (S. Ex. 6.)

The Appellant also presented her case to the PAR Panel. However, in June 2007 the PAR Panel found that the Appellant was “below standard” and noted that the Appellant did not “consistently maximize student learning by using practices to differentiate instruction”; “does not consistently teach the curriculum for her grade level and subjects as defined by MCPS curriculum

standards”; “uses minimal comprehensive planning skills to design effective instruction focused on student mastery of curriculum goals”; “does not consistently maximize student learning time”; “does not consistently use a variety of formal and informal assessments techniques to inform instruction”; “does not consistently maintain complete and accurate records of student performance”; “does not consistently communicate clear criteria for success for student work”; “participates defensively and reluctantly in conferences and feedback conversations, at times”; “refused to allow administrators to observe in her classroom”; “does not consistently use practices that are aligned with MCPS standards and policies”; and “shows a lack of professional courtesy at times to some members of the school community.”

The Evaluation Form prepared by the co-chairs of the PAR Panel in June 2007 also noted a number of strengths, including the Appellant’s communication of the “key messages” to her students, posting of the mastery objective, providing prompt and specific feedback to her students, using lessons and activities relevant to the students, promoting cooperation and respect, fostering positive interpersonal relationships with students, using management techniques to minimize off-task behavior, communicating expectations to her students in a positive manner, and participating in some professional development activities. But the concerns noted by the PAR Panel nonetheless resulted in a rating of “below standard” for the 2006-2007 school year. The PAR Panel decided to have the Appellant participate in a second year of the PAR Program, which, while not typical, is also not unusual. (Bd. Hr’g T. 267.) The Appellant was “extremely disappointed” at being in the PAR program for a second year. (OAH Hr’g T. 340.)

Despite the County Board’s effort to give the Appellant a fresh start at a new school, Beall, for the 2007-2008 school year, things went downhill quickly. The Appellant was assigned to teach third grade, and she had a new CT for her second year in the PAR Program, Sandra Holmes. Ms.

Holmes observed the Appellant informally twice in early September, once on September 7, 2007, and once on September 17, 2007. While Ms. Holmes noted some strengths, such as strong classroom management skills, she observed little direct instruction. In addition, objectives were not posted and the Appellant did not check for understanding. (Bd. Hr'g T. 63.) Ms. Holmes provided feedback to the Appellant via e-mail. A few weeks into the school year, the Appellant talked with the Principal at Beall, Troy Boddy, who, she testified in her hearing before the County Board, told her that she needed to decide now if she was "up to teaching in Montgomery County." (Bd. Hr'g T. 342.) At this point in the school year, the Appellant went on leave, citing sleeping difficulties, sadness, anxiety, and depression. (Bd. Hr'g T. 343.)

When the Appellant was finally ready to return to work in February 2008 (after an unsuccessful effort to return to Beall a month earlier), she was assigned to a new school, Piney Branch, where concerns were again raised about her performance soon after she resumed teaching. She was assigned to teach fourth grade, replacing a long-term substitute. In the months that remained of the 2007-2008 school year, Ms. Holmes conducted numerous informal observations and three formal observations. In her report of the first formal observation, which occurred on February 29, 2008, Ms. Holmes noted that the math lesson "was not in alignment with the MCPS curriculum for fourth grade math." The posted objective was "too broad" and "did not align with the lesson." Further, "[n]o direct instruction involving two digit factors occurred during the lesson." Ms. Holmes also wrote in her report that the Appellant "did not plan or implement a lesson focused on mastery of an objective," "was not effective in using explanatory devices to provide clarity in her instruction," and "was not clear in setting expectations for quality of student work and study habits." (S. Ex. 11.)

Ms. Holmes noted similar concerns in the report she prepared after she formally observed a reading lesson on April 10, 2008. Ms. Holmes wrote that the Appellant was “ineffective in providing differentiated instruction to her students”; “ineffective in using equitable measures in her instruction”; and “somewhat effective in using explanatory devices to provide clarity in her instruction.” In addition, no mastery objective was posted, and no “direct instruction, guided instruction, or modeling” was done for the students. (S. Ex. 14.) The third formal observation, which was a math lesson, prompted Ms. Holmes to raise the same kinds of issues: the Appellant “did not effectively differentiate instruction”; “did not implement a lesson that was focused on a mastery objective”; “did not maximize engaged student learning time by appropriately pacing lessons”; and “did not consistently check for understanding before, during, and after instruction.” (S. Ex. 14.)

In addition, the Principal, Bertram Generlette, and Assistant Principal, Roger Prince informally observed the Appellant during the remainder of the 2007-2008 school year. On February 28, 2008, Assistant Principal Prince observed a reading block during which the Appellant had students reread a book they had already read; he noted in an e-mail sent to the Appellant that the activity “lacked instructional rigor,” that “there was no evidence of differentiation,” and that “[n]o clear purpose for rereading the book was set.” (S. Ex. 10.) Mr. Prince expressed concern about the depth of the Appellant’s planning. Mr. Prince informally observed the Appellant again on March 21, 2008, and he again noted numerous concerns, including that there was “no evidence of planning for varied groups,” that the Appellant did not wait long enough for students to respond to her questions, and that there was “no evidence of differentiation of student work.” (S. Ex. 10.)

In short, it is clear that over the 2005-2006, 2006-2007, and 2007-2008 school years, numerous observers, including Principal Van Zutphen, Ms. Schmierer, Ms. Holmes, and Assistant

Principal Prince observed significant shortcomings in the Appellant's teaching. Again and again, observers noted her lack of differentiation to meet the learning needs of her students (Standard I); her inconsistency in focusing on a mastery objective (Standard I); her inconsistent adherence to the MCPS curriculum (Standard II); a lack of planning lessons and a failure to check for understanding during and after the lesson (Standard II); loss of instructional time (Standard III); a failure to consistently assess student progress, analyze the results, and adapt instruction accordingly (Standard IV); inconsistent commitment to improvement and participation in professional development (Standard V); and a lack of professionalism (Standard VI). Accordingly, I find that the Appellant's performance was below standard, and termination of her contract was merited.

The Appellant has submitted numerous letters from parents in support of her teaching. (See, e.g., App. Ex. 6, App. Ex. 7.) However, she has offered nothing to refute the overwhelming evidence of her incompetence with regard to the six performance standards. She has offered only some decontextualized data (see App. Ex. 3 and 4) and positive references from her years of teaching before the years that are at issue here.

The Appellant also challenges the process by which her contract was terminated, complaining that proper procedures were not followed. Specifically, she argues that the administration at Piney Branch did not conduct a formal observation during fall 2007, as required by procedures set out in the Professional Growth System Handbook and that Ms. Holmes, as a CT, conducted only three, rather than the required four, formal observations during that school year. This argument by the Appellant is essentially the *Accardi* doctrine from *United States ex rel. Accardi v. Shaughnessey*, 347 U.S. 260, 268 (1954). Under the doctrine, administrative agencies must generally follow their own procedures of regulation. However, as articulated by the Maryland Court of Appeals, even when the *Accardi* doctrine is applicable, the complainant must "also show

prejudice to have the agency action invalidated.” *Pollack v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 469 (2003).

The record indicates that the Appellant was out on leave for much of the 2007-2008 school year, resulting in limited time for observations. Further, the PAR Program process is not rigid; its guidelines allow for adjustments on a case-by-case basis. In light of the Appellant’s extended leave during the 2007-2008 school year, it would have been very difficult for Ms. Holmes to have conducted four formal observations. More significantly, there is no evidence that having only three evaluations resulted in prejudice to the Appellant. I do not find that three observations, rather than four, by the CT undermine my conclusion that the Appellant was “below standard.” Similarly, the Appellant has not shown that the lack of a formal observation by the administration at Piney Branch was prejudicial to her. Both Principal Generlette and Assistant Principal Prince observed her informally, and Assistant Principal Prince provided her with feedback. There is nothing to suggest that a formal observation would have been advantageous to the Appellant. Thus, even if the *Accardi* doctrine were applicable here – and I make no finding that it is or is not because such a finding is unnecessary – the Appellant did not show that the deviations from procedure by the County Board resulted in prejudice to her. Thus, the procedural deviations do not undermine or invalidate the County Board’s termination of the Appellant’s contract. Accordingly, I find that termination of the Appellant’s contract was proper.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the termination of the Appellant’s contract was proper. COMAR 13A.01.05.05F.

PROPOSED ORDER

I **PROPOSE** that the decision of the Board of Education of Montgomery County terminating the Appellant for incompetence be **UPHELD**.

January 19, 2010
Date Decision mailed

Jana Corn Burch
Administrative Law Judge

JCB/kkc
110126

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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LAVERN CRUMP,
APPELLANT
v.
BOARD OF EDUCATION
OF MONTGOMERY COUNTY

* BEFORE JANA CORN BURCH,
* ADMINISTRATIVE LAW JUDGE,
* MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: MSDE-BE-01-09-26755

* * * * *

FILE EXHIBIT LIST

Except as otherwise indicated, I admitted the following exhibits on behalf of the Appellant:

- App. Ex. A-1 OAH - Not admitted
- App. Ex. A-2 OAH - Letter to the Appellant from Doug Prouty, dated June 14, 2009
- App. Ex. A-3 OAH - Appendix C - COMAR Regulation on Evaluation; II. The Elements of the System - E. Evaluations; Schedule for Evaluation and Professional Development; Special Evaluations for Tenured Teachers not in Formal Evaluation Year; and II. Elements of the System - F. The Peer Assistance and Review (PAR) Program;
- App. Ex. A-4 OAH - Pamphlet - MCEA/MCPS - Peer Assistance & Review Program
- App. Ex. B OAH - Yearly Evaluation Report and MSDE Certificate Renewal for Tenured Teachers in Professional Growth Years
- App. Ex. C OAH - Not admitted
- App. Ex. D OAH - Not admitted
- App. Ex. E-1 OAH - Not admitted
- App. Ex. E-2 OAH - Not admitted
- App. Ex. F OAH - Priority Report E-mail to the Appellant from Judith Zauderer, undated
- App. Ex. G OAH - Not admitted
- App. Ex. H OAH - Not admitted

App. Ex. I OAH - Not admitted

App. Ex. 11 OAH - E-mails between the Appellant and Sandra Holmes, dated April 10, 2008

The County Board did not offer any exhibits for admission.

The record included the following exhibits:

Ex. A - Letter to the Appellant from Jerry D. Weast, dated July 23, 2008

Ex. B - Report of Hearing Examiner Gregory Szoka, dated February 2, 2009

Ex. C - Superintendent's Post-Hearing Memorandum and Appellant's Closing Argument Brief

Ex. D - Joint Ex. 1 - Professional Growth System Handbook

Appellant's Exhibits:

App. Ex. 1 - Letter to Carl Baskerville from the Lisa Heavner, dated May 12, 2000

App. Ex. 2 - Evaluation Support Statements

App. Ex. 3 - RHPS Reading Proficiency Chart - Winter 2005, First Grade

App. Ex. 4 - Reading/Writing Monitoring Tool - Grade 1, 2005-2006

App. Ex. 5 - Wheaton Woods Elementary School - Professional Reference Addendum, dated April 16, 2003

App. Ex. 6 - Letter to Ralph Viggiano from Catherine Clifford, dated May 7, 2004

App. Ex. 7 - Letter to Ralph Viggiano from Carolyn Lerner, dated May 18, 2004

App. Ex. 8 - Multiple Measure Reports - Math by Item 06-07, Grade 1

App. Ex. 9 - Sick Leave Bank Physician's Statement, dated January 1, 2008

App. Ex. 10 - MCEA Sick Leave Bank Request, dated January 29, 2008

Board's Exhibits:

S. Ex. 1 - Professional Growth System Final Evaluation Report, dated March 21, 2006

S. Ex. 2 - Peer Assistance and Review Program Report - Formal Observation # 1, dated May 5, 2006

S. Ex. 3 - Peer Assistance and Review Program Report - Formal Observation # 2, dated May 23, 2006

S. Ex. 4 - Letter to Mrs. Van Zutphen from Paula Schmierer, dated May 24, 2006

S. Ex. 5 - Peer Assistance and Review Program - Final Summative Report, dated April 2007

S. Ex. 6 - Greeting letter by Carmen Van Zutphen presenting the Appellant, with an attachment consisting of three packets of supporting documentation

S. Ex. 7 - Peer Assistance and Review Program - Evaluation Form for Tenured Teachers in PAR, signed by Principal Zutphen on July 13, 2007

- S. Ex. 8 - Letter to the Appellant from Raymond Frappolli, dated February 7, 2008
- S. Ex. 9 - Letter to Parents and Guardians from Bertram Generlette, dated February 8, 2008
- S. Ex. 10 - E-mails to the Appellant from Roger Prince, dated February 28, and March 12, 2008; e-mail to the Appellant from Bertram Generlette, dated May 1, 2008, and e-mail to Bertram Generlette from from the Appellant, dated April 30, 2008
- S. Ex. 11 - Peer Assistance and Review Program Report – Formal Observation #1, dated February 29, 2008
- S. Ex. 12 - Growth Plan # 1 - for March 13, 2008 - April 29, 2008
- S. Ex. 13 - Peer Assistance and Review Program Report - Formal Observation # 2, dated April 10, 2008
- S. Ex. 14 - Peer Assistance and Review Program Report - Formal Observation # 3, dated April 24, 2008
- S. Ex. 15 - Peer Assistance and Review Program - Final Summative Report, dated April 28, 2008
- S. Ex. 16 - Peer Assistance and Review Program - Principal's Response Form for the Final Summative Report, dated April 30, 2008
- S. Ex. 17 - Peer Assistance and Review Program - Evaluation Form for Tenured Teachers in PAR, dated October 27, 20008
- S. Ex. 18 - Letter to the Appellant from Phil Gainous and Douglas Prouty, dated May 1, 2008
- S. Ex. 19 - Letter to the Appellant from Frieda K. Lacey, dated June 6, 2008
- S. Ex. 20 - Letter to the Appellant from Jerry D. Weast, dated July 23, 2008
- S. Ex. 21 - Letter to Nancy Navarri from Jerome Fountain, dated July 31, 2008; and letter to the Appellant from Jerry D. Weast, dated July 23, 2008
- S. Ex. 22 - E-mail to Carmen Van Zutphen from Pat Abrunzo, dated May 9, 2007
- S. Ex. 23 - Bel Pre First Grade Data Compared to [the Appellant's] Classroom Data - Unit 1, October 2006
- S. Ex. 24 - Three Memoranda to the Appellant from Patricia Smith, dated October 30, 2006, February 20, March 14, and April 24, 2007

Board Ex. E - Transcript of the November 17 and 18, 2008 Hearings