ALLISON YORK,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
PRINCE GEORGE'S COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 19-07

OPINION

INTRODUCTION

This case has a long procedural history beginning in 2012, and is back before the State Board after a prior remand that directed the local board to conduct a hearing on the Appellant's appeal. *See York v. Prince George's County Bd. of Educ*., MSBE Op. No. 15-12 (2015). Appellant was a special education teacher with Prince George's County Public Schools ("PGCPS"). She challenges the local board's decision upholding her termination for incompetency.

FACTUAL BACKGROUND

During the 2011-2012 school year, observations and evaluations documented deficiencies in Appellant's teaching and she received multiple reprimands and an overall unsatisfactory year end evaluation. *Id*. Effective August 20, 2012, the then Superintendent of the Prince George's County Public School System ("PGCPS") terminated the Appellant from her position with the school system based on incompetency. The Appellant appealed the decision to the Prince George's County Board of Education ("local board") which upheld the termination, and thereafter appealed to the State Board. On May 19, 2015, the State Board remanded the case to the local board for an evidentiary hearing on the Appellant's termination before a local hearing examiner.

On remand, the parties attempted to settle the case but were unsuccessful. Meanwhile, after multiple emails and notifications to the Appellant in an attempt to procure potential hearing dates, to which the Appellant failed to respond, the hearing examiner scheduled the hearing for February 28, 2017. The Appellant received many emails and notifications from the school system reminding her of the hearing date. (*See* Local Bd. Prehearing Information Report, Ex. B – Hearing Transcript 2/28/17 and CEO Ex. 1).

The Appellant did not appear for the hearing and the hearing examiner proceeded without her. On March 21, 2017, the hearing examiner issued a decision finding that the Appellant waived her right to appeal her termination by her consistent failure to respond and participate in the appeal process. The hearing examiner recommended that the local board dismiss the appeal

for lack of prosecution based on the Appellant's failure to appear at the scheduled evidentiary hearing despite multiple notifications of the date. The hearing examiner certified that she mailed her decision to the parties on March 20, 2017.

The local board initially scheduled oral argument on the hearing examiner's decision to take place before the local board on September 13, 2017, but rescheduled it for October 9, 2017. The local board sent numerous emails and notifications to the Appellant about the scheduled date. (*See* Bd. Exs. 1 – 3; T. 9/6/18 at 15-16, 19-20, 22, 27-29, 32).

On Sunday, October 8, 2017 at 11:49 p.m., the Appellant sent Briana Woodson, Executive Administrator to the local board, an email requesting a postponement of the hearing, claiming that she did not have prior notice of the new hearing date because she did not receive any notice by registered mail and had only just accessed her email from September 22nd. (Bd. Ex. 4). The local board denied the request, advising the Appellant via email, and proceeded with oral argument on October 9, 2017 after she failed to appear. (Bd. Ex. 5).

On November 22, 2017, the local board issued a Final Order in the case affirming the Superintendent's decision to terminate Appellant based on incompetency. The local board found that the Appellant had failed to appear for oral argument and that there was no evidence in the record that would mitigate her termination. With regard to the decision to proceed with oral argument in Appellant's absence, the local board stated that it did not find the Appellant to be credible regarding lack of notice about the date.

On December 21, 2017, the Appellant appealed the local board's decision to the State Board. On January 4, 2018, we transferred the case, pursuant to COMAR 13A.01.05.07(A)(1), to the Office of Administrative Hearings ("OAH") for review by an Administrative Law Judge ("ALJ"). The local board filed a Motion for Summary Affirmance, which the ALJ denied. The ALJ scheduled a hearing for July 27, 2018. The hearing was postponed, with consent of the Appellant, because PGCPS was closed on the scheduled date. The parties agreed to a hearing date of September 6, 2018. The ALJ conducted the hearing on September 6, 2018, and both parties were represented by legal counsel. The Appellant and Ms. Woodson both testified at the hearing.

At the OAH hearing, Appellant's counsel essentially argued that the local board violated Appellant's right to due process and a fair hearing by proceeding with oral argument in her absence and not granting her request to reschedule despite her claim that she did not receive notice and was unaware of the hearing date until October 8, 2017.

The ALJ issued a Proposed Decision on November 28, 2018. The ALJ found that the Appellant and Ms. Woodson had established a practice of communicating by email and telephone throughout the entirety of the appeal process, and that the Appellant, in her emails, had specifically invited Ms. Woodson to communicate with her in this way. (ALJ Proposed Decision at 9-10). The ALJ determined that the Appellant was properly notified of the October 9, 2017 date for oral argument based on: (1) Ms. Woodson's September 22, 2017 email to Appellant; and (2) Ms. Woodson's testimony that on October 5, 2017 the Appellant had left a voicemail message, to which Ms. Woodson responded, confirming her understanding that oral argument would proceed on October 9. (ALJ Proposed Decision at 10). The ALJ found that the Appellant was not credible regarding receipt of notice and gave little weight to her testimony. *Id*. In

addition, the ALJ found it inconsequential that the Appellant did not receive the hard copy notice that Ms. Woodson had sent by priority mail because there is no legal requirement or policy requiring the local board to send notice by certified or priority mail and the Appellant had actual notice through other means. *Id*. at 9-11.

The Appellant did not file exceptions to the ALJ's proposed order.

STANDARD OF REVIEW

Because this appeal involves the termination of a certificated employee pursuant to §6-202 of the Education Article, the State Board exercises its independent judgment on the record before it in determining whether to sustain the termination. COMAR 13A.01.05.05F(2). In addition, the State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.05E.

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(b).

LEGAL ANALYSIS

We agree with the ALJ in this case. The record demonstrates that the Appellant had actual notice of the October 9, 2017 oral argument before the local board as early as September 22, 2017 and no later than October 5, 2017. Although the Appellant claims otherwise and tried to support her claim through her testimony, we rely on the findings of the ALJ that the Appellant was not a credible witness. Under *Dep't of Health and Mental Hygiene v. Shriev*es, 100 Md. App. 283 (1994) and *Anderson v. Dep't of Pub. Safety & Corr. Servs*., 330 Md. 187 (1993), even when the ALJ has proposed decision-making authority, the agency decision maker must give due deference to the demeanor based credibility determinations made by the ALJ.

Not only did the Appellant fail to appear for oral argument before the local board on October 9, 2017, she failed to appear for the evidentiary hearing before the local hearing examiner that took place on February 28, 2017, despite being given appropriate advance notice of that hearing as well. The Appellant's failure to appear for the February 28 hearing and the October 9 oral argument acted as a waiver of her right to challenge the Superintendent's termination decision.

The ALJ concluded that the local board "has proven by a preponderance of the evidence that its action dismissing the Appellant's appeal for her failure to appear for oral argument on October 9, 2017 should be sustained" and recommended that the State Board dismiss the appeal. In its Final Order, however, the local board did not dismiss the appeal, rather it affirmed the Appellant's termination for incompetency. We agree with the ALJ that procedurally this case is more appropriately dismissed because the Appellant's lack of prosecution acted as a waiver of her right to appeal the Superintendent's decision to terminate her for incompetency. *See Tague v. Charles County Bd. of Educ*., MSBE Opinion No. 12-32 (2012) ("Failure to appear is a

reasonable and legally appropriate basis on which to dismiss the appeal."). The Superintendent's termination decision stands.

CONCLUSION

For the reasons stated above, we adopt the ALJ's Proposed Decision and dismiss the Appellant's appeal of her termination.

Signatures on File:

_____
Justin M. Hartings
President

_____
Stephanie R. Iszard
Vice-President

____Absent_____
Chester E. Finn, Jr.

_____
Vermelle D. Greene

_____
Jean C. Halle

_____
Rose Maria Li

_____
Joan Mele-McCarthy

_____
Michael Phillips

_____
David Steiner

_____
Warner I. Sumpter

January 22, 2019

ALLISON YORK,	*	**BEFORE STUART G. BRESLOW,**
APPELLANT	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE**
PRINCE GEORGE'S COUNTY	*	**OF ADMINISTRATIVE HEARINGS**
BOARD OF EDUCATION	*	**OAH No.: MSDE-BE-01-18-00961**

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

PROPOSED DECISION

STATEMENT OF THE CASE

Effective August 20, 2012, the then-Superintendent of the Prince George's County Public School System (PGCPSS) terminated the employment of Allison York, Appellant. The Appellant filed an appeal of the Superintendent's decision with the Prince George's County Board of Education (Local Board). The Local Board upheld her termination. On June 13, 2014, the Appellant filed an appeal with the Maryland State Board of Education (State Board) which remanded the case back on May 19, 2015 to the Local Board for an evidentiary hearing. An evidentiary hearing was scheduled before the Local Board's Hearing Examiner for February 28, 2017. The Appellant did not appear for the hearing on that date. The Hearing Examiner found that the Appellant waived her right to an evidentiary hearing when she failed to appear on February 28, 2017. Oral argument based on the Hearing Examiner's decision was initially scheduled for September 13, 2017 by notice sent to the Appellant on July 27, 2017. The day before the scheduled hearing, the Appellant was notified by the Local Board that the hearing

would have to be rescheduled and that she would be notified by email, by phone and mail of the new date.

On September 22, 2017, the Appellant was sent notice by email of the rescheduled date for oral argument, October 9, 2017. On October 8, 2017, the Appellant requested a postponement of the hearing, claiming she only received notice of the oral argument date on October 8, 2017. The request was denied and oral argument proceeded on October 9, 2017 without her appearance. The Local Board issued its Final Order on November 22, 2017 and the Appellant filed her Petition for Appeal on December 21, 2017.

On January 4, 2018, the State Board forwarded the Appellant's Petition for Appeal to the Office of Administrative Hearings (OAH) to schedule a hearing in accordance with section 6-602 of the Education Article of the Annotated Code of Maryland (2018) and for the presiding Administrative Law Judge (ALJ) to submit to the State Board proposed written Findings of Fact, Conclusions of Law and Recommendations to the Board. Code of Maryland Regulations[1] (COMAR) 13A.01.05.07E.

On April 23, 2018, the Local Board filed a Motion for Summary Affirmance (Motion). On May 11, 2018, the Appellant filed an Opposition to Appellee's Motion for Summary Affirmance (Opposition). On May 25, 2018, I denied the Motion and scheduled a hearing for July 27, 2018. The hearing was postponed with consent of the Appellant, because the PGCPSS was closed on the scheduled date. The parties agreed to hold a hearing on September 6, 2018.

On September 6, 2018, I held a hearing at the Local Board's offices located at the Sasscer Administration Building, 14201 School Lane, Upper Marlboro, Maryland. Shani Whisonant, Esquire represented the Local Board. Paul V. Bennett, Esquire, represented the Appellant, who was present.

[1] Code of Maryland Regulations may be found at: http://www.dsd.state.md.us/COMAR/ComarHome.html.

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, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 13A.01.05 and .07; COMAR 28.02.01.

ISSUES

Was the decision of the Local Board to proceed with oral argument on October 9, 2017 in the absence of the Appellant proper, and if so, did the Appellant waive her right to further pursue her appeal?

SUMMARY OF THE EVIDENCE

Exhibits

The Local Board submitted the following exhibits which I admitted into evidence:

Bd. #1 Email from Briana Woodson, Executive Administrative Board Associate, Local Board to the Appellant, dated July 27, 2017, along with an attached letter from Eddie L. Pounds, Board Counsel to the Appellant of even date

Bd. #2 Email from Ms. Woodson to the Appellant, dated September 12, 2017 and email reply from the Appellant, dated September 13, 2017

Bd. #3 Email from Ms.Woodson to the Appellant dated September 22, 2017 along with attached letter from Eddie L. Pounds to the Appellant

Bd. #4 Email from Appellant to Ms. Whisonant and Mr. Pounds, dated October 8, 2017

Bd. #5 Reply email from Ms. Woodson to the Appellant, dated October 9, 2017

The Appellant did not offer any exhibits for admission into evidence.

Testimony

Briana Woodson, Executive Administrator, Board Associate to the Chairman and the Vice Chairman of the Local Board testified on behalf of the Local Board.

The Appellant testified on her own behalf and also called Ms. Woodson to testify as well.

PROPOSED FINDINGS OF FACTS

Having considered the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Appellant was terminated from her employment with the PGCPSS, effective August 20, 2012.
2. Following an appeal to the State Board, the State Board remanded the case to the Local Board for a full evidentiary hearing.
3. The Appellant did not appear for the full evidentiary hearing on February 28, 2017.
4. Following the March 20, 2017 decision of the Hearing Examiner, the Local Board scheduled oral argument for September 13, 2017.
5. On September 12, 2017, oral argument scheduled for the following day was cancelled at the request of the Local Board. The Appellant was notified of the cancellation by email at her email address of record and by voice mail.
6. The Appellant responded by email the following day, September 13, 2017, acknowledging the email and the voice mail message that oral argument had been cancelled. The Appellant also invited the Local Board to contact her by phone or by email.
7. On September 22, 2017, Ms. Woodson sent an email to the Appellant at her email address of record along with an attached letter from counsel for the Local Board, Eddie L. Pounds, Esquire, informing the Appellant that oral argument would be heard on October 9, 2017 at 4:00 p.m. The attached letter was also sent by priority mail that provided tracking and confirmation when the letter was received by the recipient.
8. The letter sent by tracking was returned to the Local Board after October 9, 2017 as undeliverable. The Appellant never received the letter that was sent by priority mail.

9. On October 5, 2017, the Appellant left a voice mail message for Ms. Woodson in which she acknowledged that she would be attending the oral argument on October 9, 2017.
10. The Appellant communicated with Ms. Woodson several times through voice mail between the period September 22, 2017 and October 5, 2017.
11. The Appellant opens and reads her email approximately every other day.
12. The Appellant knew between September 22, 2017 and October 5, 2017 that oral argument on her case would be held at 4:00 p.m. on October 9, 2017 at the Local Board's offices in Upper Marlboro, Maryland.
13. On October 8, 2017 at 11:49 p.m., the Appellant sent an email to Ms. Woodson and Ms. Whisonant, with a copy to Local Board counsel, Eddie Pounds, in which she stated that she just had access to the email and requested that oral argument be rescheduled.
14. Ms. Woodson, after conferring with Mr. Pounds concerning the contents of Appellant's email, sent a reply email to the Appellant at 2:25 p.m. on October 9, 2017 informing her that oral argument would proceed as scheduled at 4:00 p.m. that same day.
15. The Appellant did not appear for the oral argument.
16. On November 22, 2017, the Local Board issued an Order affirming the decision of the then-Superintendent to terminate the Appellant's employment with the PGCPSS.

DISCUSSION

Relevant law

In an appeal to the State Board regarding the suspension or termination of a certificated employee pursuant to section 6-202 of the Education Article of the Maryland Annotated Code,

the State Board transfers the appeal to the OAH for review by an administrative law judge (ALJ). COMAR 13A.01.05.07A. The ALJ, sitting in the shoes of the State Board, conducts a *de novo* review of the record, meaning that the ALJ exercises his or her "independent judgment on the record ... in determining whether to sustain the suspension or dismissal ...." COMAR 13A.01.05.05F(1) and (2). The local board must prove by a preponderance of the evidence that its action should be sustained. COMAR 13A.01.05.05F(3). The ALJ submits a proposed decision containing findings of fact, conclusions of law, and recommendations to the State Board and distributes copies to the parties. COMAR 13A.01.05.07E. Either party may file exceptions to the ALJ's proposed decision with the State Board. COMAR 13A.01.05.07F(1).

The burden of proof in this matter is on the Local Board by a preponderance of the evidence, as set forth in COMAR 13A.01.05.05F:

> F. Certificated Employee Suspension or Dismissal pursuant to Education Article, §6-202, Annotated Code of Maryland.
>
> (1) The standard of review for certificated employee suspension or dismissal actions shall be de novo as defined in F(2) of this regulation.
> (2) 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.
> (3) The local board has the burden of proof by a preponderance of the evidence.
> (4) The State Board, in its discretion, may modify a penalty.

The record of proceedings below shall be made a part of the record, and the parties may offer additional documents and testimony as permitted by the administrative law judge. COMAR 13A.01.05.07C.

Analysis

As previously stated, the issue currently before me is a narrow one. It is not whether the Appellant should have been terminated, but rather whether the Local Board's decision to proceed with oral argument on October 9, 2017, without the presence of the Appellant, was proper, and if so, did the Appellant waive her right to pursue her appeal?

Position of the Appellant

The Appellant argues that she was not given proper notice of the oral argument date because the letter that was sent by priority mail, with tracking, never reached the Appellant before the October 9, 2017 scheduled hearing. In addition, the Appellant argues that in the past, the Local Board cancelled oral argument one day before it was scheduled; however, on this occasion, when the Appellant made a similar request to postpone oral argument[2] the day before it was scheduled, her request for postponement was denied. The Appellant claims that the Local Board should have granted the request to postpone the oral argument because the Appellant did not know of the date for the oral argument until late in the evening of October 8, 2017. Finally, the Appellant argues that the Local Board did not follow its customary practice of informing parties of scheduled proceedings. The Appellant never received a letter by certified or priority mail. The Appellant argues that the only notice she received was the September 22, 2017 email which she did not access until October 8, 2017.

Position of the Local Board

The Local Board argues that the Appellant had sufficient notice of the pending oral argument and that her deliberate failure to attend the oral argument results in the waiver of her appeal. The Local Board acknowledges that the letter that was attached to an email and allegedly sent in hard copy format by certified mail to the Appellant on September 22, 2017 (Bd. #3) was not actually sent by certified mail. It was sent by priority mail with a tracking number. The Local Board further acknowledges that the Appellant never received the hard copy of the letter and it was eventually returned to the Local Board after the October 9, 2017 oral argument. However, the Local Board argues that despite the failure to deliver the letter in a timely manner, the Appellant actually received an email with a copy of the letter on September 22, 2017. The

[2] The request was made at 11:49 p.m., the day before the scheduled oral argument when the Local Board's offices were closed. In essence, the request for postponement was received on the day of the scheduled oral argument, October 9, 2017, not October 8, 2017.

Appellant testified that she opens her email approximately every other day. The Appellant confirmed during the hearing that the email was sent to her email address of record with the Local Board. The email was never returned to the Local Board's office as undeliverable. Therefore, if the Appellant followed her normal practice of opening her email every other day, she would have read the email on or about September 24, 2017. There has never been an allegation that there was anything wrong with the Appellant's email or her ability to access it.

The Local Board goes on to argue that even if the Appellant did not read her email, she learned of the hearing no later than October 5, 2017. On that date she left a voice mail message in response to a voice mail message sent to her by Ms. Woodson in which she confirmed her knowledge of the scheduled oral argument for October 9, 2017. Furthermore, the Appellant invited the Local Board to communicate with her directly through email or telephone in her email of September 13, 2017 (Bd. #2).

For the foregoing reasons, I find that the Local Board has sustained its burden by a preponderance of the evidence that the Appellant knew of the scheduled oral argument hearing at least as late as October 5, 2017 and as early as September 22, 2017, and her failure to attend the oral argument results in my recommendation to the State Board that the Appellant's appeal should be dismissed.

The Appellant points to no known policy or procedure that requires the Local Board to notify the Appellant of scheduled hearings in a particular manner, such as certified mail, email or phone call. Ms. Woodson testified that there has never been a policy addressing that particular issue. The only reference to notice for oral argument hearings is found in Article III, H of Policy No. 4200 which requires that the parties will be notified of the date, time and location of the argument. In this particular case, Ms. Woodson had, throughout the Appellant's appeal of the Local Board's decision, communicated with the Appellant through email and/or telephone.

When the Appellant did not answer the telephone, Ms. Woodson would leave a voice mail message. On July 27, 2017, Ms. Woodson sent an email and an attachment notifying the Appellant that a hearing would be conducted on September 13, 2017, at 5:00 p.m. The email was sent to the Appellant's email address of record with the Local Board. Ms. Woodson also left a voice mail message containing the same information that was contained in the attached letter to her email. On September 12, 2017, Ms. Woodson called and left a voice mail message with the Appellant informing her that the hearing of September 13, 2017 would be cancelled. The Appellant answered Ms. Woodson the following day acknowledging her receipt of the email and voice message and confirmed that she understood that the oral argument was cancelled for the following day. This form of communication, by telephone and email, between Ms. Woodson and the Appellant was typical of how they communicated during the pendency of the Appellant's appeal. It is noteworthy that the Appellant responded to Ms. Woodson's email the very next day. The Appellant, in her response to emails sent to her by Ms. Woodson, invited Ms. Woodson to communicate with her by email or by telephone.

On September 22, 2017, Ms. Woodson sent an email with an attachment from Eddie L. Pounds, Local Board Counsel, informing the Appellant that the new date for oral argument was scheduled for October 9, 2017 at the Local Board's offices commencing at 4:00 p.m. She also left a voice mail message informing her of that date (Bd. #3). This method of communication was consistent with Ms. Woodson's prior communications with the Appellant.

A hard copy of the letter was sent by priority mail, with tracking. The letter incorrectly indicated that it was sent by certified mail. Ms. Woodson explained during her testimony that she used the certified mail reference although she typically sent hard copy of the letters by priority mail with tracking. In this case, however, the hard copy of the letter was never received by the Appellant. There is no policy that requires hard copies of correspondence be sent by

certified or priority mail. Additionally, as previously stated, the Appellant invited the Local Board to communicate with her by email or telephone. Therefore, the failure to deliver a hard copy of the letter has no bearing on whether proper notice of the oral argument hearing was given to the Appellant.

The Appellant knew that oral argument was scheduled for October 9, 2017 at the Local Board's office at 4:00 p.m. despite the email she sent at 11:49 p.m. the evening before the scheduled hearing. In that email, the Appellant stated that she just had access to her email. First, this statement is contrary to the Appellant's testimony in which she stated that she checks her email about every other day. Since she received the email, dated September 22, 2017, on that day, she certainly had access to her email well before October 8, 2017 at 11:49 p.m. Furthermore, Ms. Woodson testified that she left a voice mail in response to a voice mail from the Appellant on October 5, 2017 in which the Appellant clearly understood and confirmed that the oral argument hearing would proceed on October 9, 2017.

I found Ms. Woodson's testimony to be more credible than that of the Appellant. While Ms. Woodson testified that she never received the undelivered hard copy of the letter from Mr. Pounds until after October 9, 2017, she was emphatic that the Appellant knew of the oral argument hearing date at least as late as October 5, 2017 when she left a voicemail on her telephone. Although she does not preserve voicemail messages, Ms. Woodson was sure of the October 5, 2017 voicemail from the Appellant because she notified Local Board counsel, Mr. Pounds, of that fact and it was documented at the time of oral argument hearing held at 4:00 p.m. on October 9, 2017.

I further find that the Appellant's email of October 8, 2017, in which she said that she "just have access to the e-mail" not credible. At the hearing, the Appellant testified that there was nothing wrong with her email and that she typically checks her email every other day. She

did not explain why more than two weeks had gone by without checking her email even though she acknowledged receiving the email. She could not explain what she meant by stating that she "just have access to the e-mail" on October 8, 2017. As a result, I simply gave very little weight to the Appellant's arguments.

Having established that she received timely notice of the oral argument hearing, the Appellant argues that the Local Board's failure to send the notice to her by certified mail somehow violates her due process rights. First, there is no formal policy that requires notice of oral argument hearings be sent by certified mail. Additionally, the Appellant points to no law or regulation that requires such procedure. Secondly, the Appellant invited the Local Board to communicate with her by telephone or by email. Ms. Woodson used both methods to communicate with the Appellant. Based on the evidence, Appellant clearly knew the date and time of the scheduled oral argument well before late evening of October 8, 2017 when she sent an email to Ms. Woodson (Bd. #4).

While it is an uncontested fact that the hard copy of Mr. Pounds letter of September 22, 2017 that was attached to Ms. Woodson's email of the same date was never received by the Appellant, the email from Ms. Woodson with Mr. Pounds' letter attached was received by the Appellant on September 22, 2017. A presumption (usually referred to as the "mailbox rule") exists under Maryland law that material properly mailed is delivered to the intended recipient. *Benner v. Nationwide Mut. Ins. Co.*, 93 F.3d 1228, 1234 (4th Cir., 1996). In *Benner*, the Court held:

> Under Maryland law, a presumption of delivery and receipt of mail arises when material is properly mailed . . . . Evidence of ordinary business practices concerning the mailing of notices is sufficient to create the presumption of both sending and receiving . . . . While the presumption may be rebutted so as to create a question of fact, testimony by the addressee that he did not receive, or does not remember receiving, the material is not conclusive . . . . The trier of fact should

> consider that proof along with all of the other evidence offered in the case to determine whether the item was mailed and received.

Benner, 93 F.3d at 1234-1235 (citations omitted).

In this case, the Appellant does not dispute that she received the email. The only argument made concerning the email is when the Appellant accessed it. The Appellant received the email on September 22, 2017 and knew it was from the Ms. Woodson, yet she failed to respond to it until late in the evening the day before the scheduled oral argument. The Appellant did not rebut the presumption of delivery and, therefore, I find that the email was properly received on September 22, 2017 and she received actual notice of the oral argument hearing as early as that date but no later than October 5, 2018.

The Local Board cites in further support of its argument, *Torres v. Baltimore City Board of School Commissioners*, MSBE Op. No. 18-04 (2018). In *Torres*, the appellant had actual notice which was confirmed by email. Similar to the instant case, the State Board validated the use of email even though the appellant did not receive formal notice of an employment decision because he received actual notice.

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprize interested parties of the pendency of the action and afford them an opportunity to present their objections. *Griffin v. Bierman*, 403 Md. 186, 197 (2008) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). It is not clear from the record when Appellant actually checked his work email and saw the non-renewal letter, but he acknowledges that he(1) was aware it was pending and (2) discussed it with his union five days after it was sent. In short, Appellant received timely, actual notice of the action through email and had the opportunity to present his objections.

Id.

Finally, the Appellant argues that her failure to appear should not result in a waiver of her appeal. Again, the Appellant provides no authority to support her contention. On the other hand, it is well settled that failure to appear can result in the dismissal of a case. Failure to appear is a

reasonable and legally appropriate basis on which to dismiss the appeal. *See Pagano v. Howard County Bd. of Educ.*, MSBE Op. No. 99-4 (1999).

Accordingly, the Appellant was afforded an opportunity to appear and present oral argument on October 9, 2017 before the Local Board. The Appellant received actual notice of the scheduled oral argument well in advance of the scheduled time for the hearing, sometime between September 22 and October 5, 2017. The Appellant requested a postponement of the hearing at 11:49 p.m. on October 8, 2017 when the PGCPSS was closed. The request for postponement was not received by Ms. Woodson, the addressee of the October 8, 2017 email, on October 9, 2017, the day of the hearing. The Appellant was notified by email that day that the oral argument would not be postponed. The Appellant did not appear and as a result, she waived her appeal.

PROPOSED CONCLUSIONS OF LAW

The Appellant was properly notified oforal argument scheduled for October 9, 2017 at 4:00 p.m. at the Local Board's offices. Md. Code Ann., Educ. § 6-202(a)(1) (2018). The Local Board has proven by a preponderance of the evidence that its action in dismissing the Appellant's appeal for her failure to appear for oral argument on October 9, 2017 should be sustained. COMAR 13A.01.05.05F(3).

RECOMMENDATIONS TO THE MARYLAND STATE BOARD OF EDUCATION

I recommend to the Maryland State Board of Education that the decision to proceed with oral argument on October 9, 2017 without the presence of the Appellant was proper and,

I further recommend that the Maryland State Board of Education dismiss the Appellant's appeal of her termination from employment with the Prince George's County School System.

November 28, 2018
Date Ruling Mailed

Stuart G. Breslow
Administrative Law Judge

SGB/cj
#176742

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this Proposed Decision has the right to file written exceptions within 15 days of receipt of the decision; parties may file written responses to the exceptions within 15 days of receipt of the exceptions. Both the exceptions 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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ALLISON YORK,	*	**BEFORE STUART G. BRESLOW,**
APPELLANT	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE**
PRINCE GEORGE'S COUNTY	*	**OF ADMINISTRATIVE HEARINGS**
BOARD OF EDUCATION	*	**OAH No.: MSDE-BE-01-18-00961**

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

FILE EXHIBIT LIST

The Local Board submitted the following exhibits which I admitted into evidence:

Bd. #1 Email from Briana Woodson, Executive Administrative Board Associate, Local Board to the Appellant, dated July 27, 2017, along with an attached letter from Edie L. Pounds, Board Counsel to the Appellant of even date

Bd. #2 Email from Ms. Woodson to the Appellant, dated September 12, 2017 and email reply from the Appellant, dated September 13, 2017

Bd. #3 Email from Ms.Woodson to the Appellant dated September 22, 2017 along with attached letter from Eddie L. Pounds to the Appellant

Bd. #4 Email from Appellant to Ms. Whisonant and Eddie Pounds, dated October 8, 2017

Bd. #5 Reply email from Ms. Woodson to the Appellant, dated October 9, 2017

The Appellant did not offer any exhibits for admission into evidence.