Circuit Court for Prince George's County
Case No. CAL19-04007

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2006

September Term, 2019

PATRICE WATSON

v.

BOARD OF EDUCATION FOR PRINCE GEORGE'S COUNTY

Arthur,
Leahy,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: October 20, 2021G

In 2016, Ms. Patrice Watson was the Principal at C. Elizabeth Rieg Regional School (the "School"), a Prince George's County Public School ("PGCPS"). On September 2, 2016, a contract duty nurse allegedly physically assaulted a student, striking him first with her hands and then with a shoe, on a school bus. After boarding the bus, Ms. Watson and another school employee physically removed the student from the bus. This incident was investigated by the Prince George's County Police Department, Child Protective Services, and the PGCPS. Ultimately, criminal charges were brought against the nurse for assault and reckless endangerment. Ms. Watson was placed on paid administrative leave on September 15, 2016 for failing to report the incident.

Ms. Watson, accompanied by a representative of her union, the Association of Supervisory Administrative School Personnel ("ASASP"), participated in a pre-disciplinary *Loudermill* hearing on January 19, 2017.[1] At the hearing, Ms. Watson was informed that in addition to the charge of failure to report, she was also charged with physical assault of a student. The next week, Ms. Watson was told by her union representative that PGCPS intended to terminate her employment, and that her choices were to either resign or be terminated. Over three weeks later, on February 16, 2017, Ms. Watson submitted her resignation in lieu of termination. On October 17, 2017, PGCPS recommended the revocation of Ms. Watson's teaching certificate, and a separate administrative proceeding took place to revoke her teaching certificate.

[1] The term refers to the Supreme Court's opinion in *Cleveland Board of Education v. Loudermill*, in which the Court held that employees with vested employment rights must receive procedural due process prior to dismissal. 470 U.S. 532, 545 (1985).

On August 21, 2018, Ms. Watson filed concurrent charges of discrimination and retaliation with the Prince George's County Human Relations Commission ("the HR Commission") and the Equal Employment Opportunity Commission ("EEOC"). She subsequently filed a complaint against the Board of Education for Prince George's County ("Board") in the Circuit Court for Prince George's County on February 8, 2019.

On April 22, 2019, she filed an amended complaint alleging breach of contract; involuntary resignation; deprivation of procedural due process in violation of the Maryland Constitution, Declaration of Rights, Art. 24; defamation per se; gender discrimination in violation of the Maryland Constitution; and retaliation/hostile work environment. The Board responded with a motion to dismiss, or, in the alternative, for summary judgment.

A hearing was held on the Board's motion on November 1, 2019. The court granted the Board's motion, finding that there was no genuine dispute of material fact that Ms. Watson: (1) voluntarily resigned; (2) failed to exhaust her administrative remedies; and (3) had notice of the charges against her at the *Loudermill* hearing.

Ms. Watson noted this timely appeal and poses five questions[2] for our consideration, which we have reordered and recast as four:

[2] Ms. Watson's questions were presented in her brief as follows:

> I. "Did the court below err in dismissing Watson's breach-of-employment-contract claim on the grounds that she voluntarily resigned and was not constructively discharged and that there was an exclusive statutory remedy?"
>
> II. "Did the court below err in dismissing Watson's procedural due process claim on the ground that she received adequate due process regarding her termination of employment?"

(Continued)

I. Did the circuit court err, as a matter of law, in granting summary judgment on Ms. Watson's defamation claim?

II. Did the circuit court err, as a matter of law, in granting summary judgment on Ms. Watson's breach of contract claims?

III. Did the circuit court err, as a matter of law, in finding that Ms. Watson failed to timely exhaust her administrative remedies regarding her gender discrimination and retaliation claims?

IV. Did the circuit court err, as a matter of law, in dismissing Ms. Watson's procedural due process claim on the ground that she received adequate due process regarding her termination of employment?

We affirm, in part, and reverse, in part, the judgment of the circuit court. As a preliminary matter, we hold that Ms. Watson waived her defamation claim by conceding during the November 1, 2019 motions hearing that the statute of limitations had expired.[3]

III. "Did the court below err in dismissing Watson's defamation claim where the claim was timely under the discovery rule?"

IV. "Did the court below err in dismissing Watson's gender discrimination and retaliation claims as untimely?"

V. "Did the court below err in dismissing Watson's claims when there are multiple genuine issues of material fact in this action, precluding disposition on involuntary dismissal or summary judgment?"

[3] At the hearing, the following exchange took place between the circuit court judge and Ms. Watson's counsel:

[MS. WATSON'S COUNSEL]: Your Honor, [Ms. Watson] withdraws the allegation in the complaint that there was defamation.
[THE COURT]: Okay, so you're—
[MS. WATSON'S COUNSEL]: And concedes—
[THE COURT]: -- withdrawing Count 4 [of the Amended Complaint]?
[MS. WATSON'S COUNSEL]: That's correct, Your Honor.

(Continued)

Turning to the remaining claims, we first hold that the circuit court did not err by granting summary judgment and dismissing Ms. Watson's breach of contract claims because she failed to exhaust her contractual remedies before seeking adjudication in the courts. Second, we hold that Ms. Watson's constitutional claim was not preserved below. Third, we hold that the circuit court did not err by granting summary judgment and dismissing Ms. Watson's retaliation claim under SG § 20-1013 because she was required to first file a timely complaint with either the HR Commission, the Commission on Civil Rights, or the EEOC, and she failed to do so. Fourth, we hold that the court's grant of summary judgment dismissing Ms. Watson's retaliation claim in relation to the revocation of her teaching certificate as untimely under SG § 20-1202 was in error because the claim

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[THE COURT]: Okay, you agree that the statute of limitations is already expired.

[MS. WATSON'S COUNSEL]: That's correct, Your Honor.

At the close of the hearing, the court granted summary judgment on the Board's motion explaining that "the counsel for [Ms. Watson's] words were she withdrew, which the Court will take as she no longer is contesting Count 4 which has been brought up with regard to the motion for summary judgment, so that is granted." "Maryland law is well settled that '[t]he right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal.'" *Williams v. Md. Dep't of Human Res.*, 136 Md. App. 153, 176 (2000) (quoting *Osztreicher v. Juanteguy*, 338 Md. 528, 534 (1995)); *see also Weatherly v. Great Coastal Exp. Co.*, 164 Md. App. 354, 366-67 (2005) (holding that a counsel's remarks that she would concede the point of equitable estoppel acted as a waiver to any argument about equitable estoppel on appeal). Ms. Watson's assertion on appeal is inconsistent with her acquiescence to summary judgment on the defamation claim before the circuit court." *Id*. Furthermore, at oral argument, Ms. Watson's counsel agreed that her claim for defamation had been withdrawn. We conclude that Ms. Watson may not challenge the grant of summary judgment on her defamation claim, and we need not consider further this issue.

was filed within the applicable two-year limitations period. Finally, because Ms. Watson's resignation was voluntary and there was no adverse state action against her, we hold that the circuit court did not err by granting summary judgment on her procedural due process claim.

BACKGROUND[4]

The Incident

On September 2, 2016, the student involved in the incident was en route to the C. Elizabeth Regional Center on a PGCPS school bus. As summarized in a PGCPS Department of Security Services Memorandum dated January 5, 2017 ("DSS Memorandum"), video footage obtained from the school bus showed "several adults having physical contact with [the Student] after [he] attempted to touch [the] Private Duty Nurse." The nurse responded by striking "the student with her hands, then her shoe . . . while on the school bus." Another PGCPS employee then "attempted to remove [the s]tudent from the school bus but ran into opposition by the student." This employee then "was joined on the bus by Principal Patrice Watson who physically aided [the employee] as he had [the s]tudent in a head lock and pulled the student office [sic] the bus. Bus attendant [] did not intervene and Bus Driver [] had already left the bus prior to the alleged incident."

[4] Because this appeal is from the grant of a motion for summary judgment on all of Ms. Watson's claims, "'[w]e look only to the evidence submitted in opposition to, and in support of, the motion for summary judgment in reviewing the trial court's decision to grant the motion.'" *Coit v. Nappi*, 248 Md. App. 44, 51 (2020) (citations omitted).

An incident summary prepared by Instructional Director, Dr. Tricia Hairston, clarifies that "the Department of School Security notified the area office that Ms. Watson, Principal, was recorded on a school bus video allegedly observing a staff member . . . aggressively handling a student in an attempt to redirect his behavior[,]" and that "Ms. Watson did not contact child protective services or the Employee and Labor Relations Office" to report the incident. The summary also includes a handwritten note, made by Dr. Hairston on September 23, 2016, stating that video footage further revealed that "Ms. Watson was pulling on the student[']s arm in an aggressive manner."

Ms. Watson relayed a different account in her affidavit.[5] Ms. Watson attested that the student had "multiple disabilities, which include cognitive disability, autism and emotional behaviors," as well as a history of behavioral problems. When she first approached the bus, Ms. Watson attested that she was met by the private duty nurse, who said she'd been attacked, and yelled that she would not "take it anymore." According to her affidavit, Ms. Watson then boarded the bus and saw the student in the front seat with another employee who was attempting to "get [the student] off the bus."

Ms. Watson related in her affidavit that she directed this employee to step to one side and then stated that

> I called [the student's] name, and I reached my hand out to him and I proceeded to reach for his left hand (principle of engagement, CPI, 2016). I pull back as he spat, kicked; and I reached again to assist [the student] out of the seat (wrist/arm hold, CPI 2016). We counted as we walked down the stairs to change position to (Two person's Medium−level hold, CPI, 2016) until we got him in the building.

[5] The affidavit attached to Ms. Watson's Motion for Summary Judgment was undated.

The student was then taken into the guidance office with his classroom teacher.

Ms. Watson attested that, after getting the student into the School, she returned to the bus to obtain referrals from the bus driver and the bus aide. Ms. Watson claims that "[a]t no time did the bus driver or bus aide tell [her] that the private duty nurse . . . hit [the student][,]" and that she only learned of the incident when Child Protective Services called her at 11:37 a.m. on September 2, 2016.[6]

Report and Administrative Leave

Ms. Watson claimed in her affidavit that she reported the bus incident that afternoon to Dr. Tricia Hairston. However, the DSS Memorandum reports that she "never advised Dr. Hairston of any involvement [in the incident] by her or any other staff members."

On September 15, 2016, Dr. Hairston, Dr. Gwendolyn Mason, and Ms. Sabrina Jones arrived at the School and showed Ms. Watson a video clip of the incident. Ms. Watson attested that she was told that she "needed to write a report of abuse and submit the paperwork to Child Protect[ive] Services." Ms. Watson was reluctant to write the report, because she did not agree that she had seen the "inappropriate behavior" she was asked to report. Instead, she "submitted the write-up based on the lens in which [she] saw" what happened.

Ms. Watson attested that, "[w]ithin [] 30 minutes of sending the letter to Dr. Mason[,] [s]ecurity came into [her] office" and Dr. Hairston informed her that, "effective

[6] The DSS Memorandum contradicts this claim and states that Ms. Watson reported the incident to Child Protective Services.

immediately," she would be "placed on administrative leave for 'Failure to Report.'" Wanda Battle, of Employee and Labor Relations, told Ms. Watson that she would receive a letter in the mail concerning her administrative leave. Ms. Watson attested that she never received this letter.

Loudermill Hearing and Resignation

On January 5, 2017, the PGCPS Department of Security Services submitted a report recommending charges of "Inappropriate Conduct (Assault on a Student by Employees)" against Ms. Watson and three other School employees. Around the same time, Ms. Watson received a call from Ms. Battle informing her that a *Loudermill* hearing was scheduled for January 19, 2017. Present at the hearing were Ms. Battle, Ms. Watson, Mr. Hugh Weathers of the ASASP, and Dr. Hairston. Mr. Weathers took part in the hearing as Ms. Watson's union representative.

At the hearing, Ms. Watson was informed that the allegations against her were (1) failure to report and (2) physical assault of a student. Ms. Watson attested in her affidavit that the hearing was the first time she learned of any assault allegations against her. At the hearing, she was informed that both a Prince George's County Police Department report and a Child Protective Services report of the incident concluded that assault charges were "unsustained."[7] Although "no conclusive findings" were presented against her, Dr. Mason expressed the opinion that she "could have done more."

[7] According to Ms. Watson, Ms. Battle informed her that the Prince George's County Police Department "could not share the written report with the school system." The report from the DSS Memorandum confirms that the Prince George's County Police (Continued)

On January 24, 2017, Mr. Weathers informed Ms. Watson that "PGCPS decided to terminate [her] employment" and that Ms. Watson could either "retire or be terminated."[8] "Between January 24 and February 15, 2017, [Ms. Watson] was repeatedly told by her union representative that PGCPS was going to terminate her employment." Ms. Watson explained that, during this time, she explored her eligibility for retirement and sought to extend her employment with the School through the end of the 2017 school year. Ms. Watson claimed that she "never received a letter of termination or any written correspondence concerning the Loudermill Hearing" from the Board.

On February 14, Ms. Watson sent a letter to PGCPS concerning her "[d]ecision to resign." The letter stated, in pertinent part:

> Dear PGCPS Leadership Team,
>
> As I contemplate an extremely difficult decision to resign from the school system that I have known since age 12 as a student . . . , it is with a heavy heart that I come to turns [sic] with the fact that I must depart. I will never be able to recuperate lost time with my "cherubs," staff members, adult mentors, as well as student mentees throughout PGCPS[.]
>
> I am fortunate to have been given an option to resign on my own recognizance. In doing so, I realize that I need "grace and mercy" from the leadership team of PGCPS in my asking for consideration to separate from the school district effective June 1, 2017."

Department "advised that they could not share written statements" with the School unless the School "obtained a subpoena from the State's Attorney's Office." Likewise, Ms. Watson alleged that she was refused permission to record the hearing and that Mr. Weathers informed her that she could not have a copy of any report made as a result of the hearing.

[8] According to Ms. Watson, she was never told the grounds upon which she was forced to retire or be terminated.

(Emphasis in original). The day after submitting her letter, however, Mr. Weathers called Ms. Watson to inform her that her resignation had to be submitted and effective by 4:30 p.m. on that day.

In a letter dated February 16, 2017, Ms. Watson submitted her resignation "effective immediately," citing "[d]isappointing and unexpected circumstances." She stated that she was told by ASASP that she could either resign or be terminated, and that "[b]eacuse of the options presented [she] decided to resign so that [her] professional career and character will not be tarnished."

Revocation of Teaching Certificate

On October 12, 2017, PGCPS's Chief Executive Officer notified the State Superintendent at the Maryland Department of Education (the "Department") of Ms. Watson's "separation from the Local Board" and "requested that the State Superintendent revoke [Ms. Watson's] teaching certificate." On October 17, 2017, Ms. Watson received notice that PGCPS had filed charges with the Department to revoke Ms. Watson's teaching certificate and requested a hearing. After the matter was transmitted to the Office of Administrative Proceedings, PGCPS filed a Motion for Summary Decision, which Ms. Watson's opposed. The administrative law judge ("ALJ") issued his ruling on April 3, 2018. The ALJ determined that PGPCS was entitled to summary judgment, in part, because Ms. Watson resigned after "notice of allegation[s] of misconduct involving a student[,] which subject[ed] her teaching certificate to being suspended or revoke[d] under

COMAR 13A.12.05.02C(5),"[9] but concluded that it was not clear which sanction was most appropriate. A hearing on the most appropriate sanction was scheduled for April 12, 2018. Ms. Watson's teaching certificate was eventually revoked on November 23, 2018.

Administrative Charges of Discrimination

On August 21, 2018, Ms. Watson filed concurrent charges of discrimination and retaliation with the HR Commission and the EEOC. Specifically, in her charges of discrimination, Ms. Watson alleged that the Board "discriminated against me in the terms, conditions, and privileges of employment on the bases of age, sex, and retaliation." According to Ms. Watson, the Board "suspended [her], forced [her] to resign, and eventually revoked [her] certification to teach because of [her] age, sex, and in retaliation for exercising civil rights."

Proceedings Before the Circuit Court

A. Complaint and First Amended Complaint

Several months later, on February 8, 2019, Ms. Watson filed a complaint and jury demand in the Circuit Court for Prince George's County against the Board. On April 22, 2019, Ms. Watson filed a "First Amended Complaint" in which she asserted the following causes of action:

Count I, Breach of Contract – Employment;

[9] The ALJ noted that the legal issue before him was "not whether [Ms. Watson] committed misconduct under section 6-202 of the Educational [A]rticle." Rather, he explained, this was an issue that was "required to be resolved on its own merit through a hearing before the local board of education." The ALJ noted that many of the allegations made by Ms. Watson, including facts about her career, the student, and the requirement to report an incident of suspected abuse to CPS, were simply "not relevant" to the matter before him.

Count II, Breach of Contract/Involuntary Resignation;

Count III, Deprivation of Procedural Due Process in Violation of Maryland Constitution, Declaration of Rights, Art. 24;

Count IV, "Defamation – Per Se"; [10]

Count V, Discrimination – Gender in violation of the Maryland Constitution"; and

Count VI, "Retaliation/ Hostile Work Environment."[11]

Under Counts I and II, Ms. Watson alleged that she was terminated without good cause in breach of her collective bargaining agreement. She alleged that, although she was told that she was going to be terminated for child abuse and failure to report, she was constructively terminated for "exercising her specific legal right and duty not [to] make false statements against [her employee] that he committed the crime of child abuse." Ms. Watson further alleged that, in contravention of her collective bargaining agreement, she was forced to resign by PGCPS and never received written notification of the assault charge against her. According to her amended complaint, the Prince George's County Police

[10] Because we do not address Ms. Watson's claim for defamation in this opinion, we do not detail the defamation allegations included in her complaint.

[11] The Complaint provided in the record extract is a different complaint containing different counts, including: Count I: Wrongful Discharge; Count II: Deprivation of Procedural Due Process in Violation of 42 U.S.C. § 1983; Count III: Discharge in Retaliation for Exercise of First Amendment Right to Free Speech in Violation of 42 U.S.C. § 1983; Count IV: Defamation—Per se; Count V: Breach of Contract. At oral argument, Ms. Watson's counsel confirmed that the First Amended Complaint provided in the record and by the Board in its appendix is the correct complaint, and that the complaint in the record extract should not be relied on.

Department and Child Protective Services determined that the assault allegations against her were unsustainable.

In support of her claim for deprivation of procedural due process under Count III, Ms. Watson alleged that she had a protected property interest in her employment pursuant to her collective bargaining agreement and could not be discharged except for cause. Ms. Watson purported that she was nevertheless "discharged from her employment without being afforded a notice of the charges against her prior to her termination hearing[.]" Specifically, she complained that she was never given written notice of any of the charges against her, nor was she given verbal notice of the child abuse allegations until her *Loudermill* hearing. Ms. Watson insisted that this lack of process deprived her of her property, violated her due process rights and her collective bargaining agreement, and was a "reckless disregard for the state and federally protected rights of others."

Under Count V for gender discrimination in violation of the Maryland Constitution, Ms. Watson asserted that, on information and belief, three male PGCPS staff members employed by the Board were not terminated after physically assaulting students. Accordingly, Ms. Watson argued that she was "discriminated against based on her gender [] with respect to the terms and conditions of her employment i.e. discharge, benefits and pay."

Finally, in support of her statutory retaliation claims, Ms. Watson claimed that her discharge was retaliation for "refusing to participate in the [Board's] plot to cover their liability in not providing a necessary and safe accommodation for a disabled child after

repeated request[s] were made by [Ms. Watson] to accommodate [the Student's] disability."

B. Motion to Dismiss or for Summary Judgment

On May 21, 2019, the Board filed a Motion to Dismiss or, in the Alternative, for Summary Judgment. In the motion, the Board contended that Ms. Watson's claims "fail because she voluntarily resigned, she was afforded due process, she failed to timely exhaust her administrative remedies, and because her claims are barred by the applicable statute of limitations."

According to the Board, Ms. Watson's claims for breach of contract failed because she "voluntarily resigned her employment" and therefore could not sustain any complaint for termination in violation of her collective bargaining agreement. Further, the Board claimed that abusive discharge can only remedy those who are discharged in violation of a clear mandate of public policy which otherwise would not be vindicated by a civil remedy. Ms. Watson, the Board argued, was not discharged, and, even if she was, her complaint could be redressed by a civil remedy in the "anti-retaliation provision of the State Government Article and Prince George's County Code."

Ms. Watson's claim for deprivation of procedural due process was without merit, the Board argued, because she was "not discharged from her employment" but voluntarily resigned and was afforded due process and notice of the allegations against her. Specifically, according to the Board, because Ms. Watson was not discharged from her employment, she was not deprived of a protected property interest. Further, Ms. Watson's amended complaint specified that she "was told on September 15, 2016[] that she was

being placed on paid administrative leave for her failure to report child abuse" and was further informed of her pending charges at the *Loudermill* hearing prior to her resignation and given an opportunity to respond.

Finally, the Board argued that Ms. Watson's claims for discrimination and retaliation were barred by both her failure to timely exhaust her administrative remedies and by the statute of limitations. Ms. Watson failed to exhaust her administrative remedies, the Board asserted, because under SG § 20-1013(a), she could only file a civil action after first filing a timely administrative charge under federal, State or local law alleging an unlawful employment practice.

Next, the Board argued that Ms. Watson's complaint was barred by several applicable limitations periods. First, pursuant to SG § 20-1004(c)(1), a complaint must be filed within six months of the discriminatory act. Section 2-201 of the Prince George's County Code also provides that a complaint must be filed within 180 days. Ms. Watson was placed on administrative leave on September 16, 2016, but did not file her charge of discrimination until August 21, 2018. Accordingly, the Board asserted that Ms. Watson's charge was filed "well past the statutory 180-day statutory period and [wa]s, therefore, untimely and barred."

Second, the Board averred that Ms. Watson's claims for discrimination and retaliation were also barred by SG §§ 20-1013 and 20-1202, which require that a civil action alleging an unlawful employment practice be filed within two years after the alleged practice occurred. Because Ms. Watson was placed on administrative leave on September 16, 2016, argued the Board, her February 8, 2019 complaint was filed "well after the two-

year limitations period expired from the date of her placement on paid administrative leave."

C. Opposition to Board's Motion

On July 13, 2019, Ms. Watson filed a Memorandum in Opposition to the Board's Motion to Dismiss. In her opposition, Ms. Watson claimed that dismissal was improper because she set out sufficient facts to support the claims in her complaint. She also argued that summary judgment was improper because there were many issues of disputed material fact.

Specifically, Ms. Watson argued that a genuine issue of material fact "exists regarding whether Ms. Watson voluntarily resigned, or was constructively discharged, precluding disposition on involuntary dismissal or summary judgment." She also argued that there was a genuine issue of material fact "regarding whether [she] received adequate due process regarding her termination of employment," especially because she was only informed of the hearing three days before it occurred and was not informed of the child abuse allegations before the hearing.

Furthermore, Ms. Watson argued that her gender discrimination and retaliation claims were not untimely because she was constructively discharged on February 15, 2017, when she was forced to resign, and filed her discriminatory practices claim on February 8, 2019. This, she argued, is within the two-year statute of limitations period for actions under SG § 20-1202(c)(1). Further, "in any event, the issue of exhaustion of administrative remedies is not properly resolved regarding employment discrimination claims on a motion to dismiss."

Ms. Watson concluded that there are "[m]ultiple genuine issue[s] of material fact" that "exist in the present legal action precluding disposition of involuntary dismissal or summary judgment." These issues, she contended, include matters such as whether Ms. Watson abused a disabled child; whether Ms. Watson failed to report her own alleged inappropriate handling of the student; whether Ms. Watson voluntarily resigned or was constructively discharged; whether there were factual grounds to support the revocation of Ms. Watson's teaching certificate; and whether Ms. Watson was a scapegoat for PGCPS's failure to find an appropriate placement for the student after Ms. Watson and her colleagues had expressed their concerns.

The Board replied on July 25, 2019, reiterating the arguments in its motion to dismiss or for summary judgment.

D. Motions Hearing

On November 1, 2019, a hearing was held on the Board's motion in the Circuit Court for Prince George's County. Both parties were represented by counsel, and no witnesses were called to testify.

After receiving argument from both parties, the court considered the Board's motion as one for summary judgment. The court began its ruling from the bench:

> In analyzing the motion for summary judgment as to each count, with regard to the first count, breach of contract employment or abusive discharge, the [c]ourt agrees with the County [Board] that there was no discharge. The administrative remedies were not exhausted in this area. That's just with regard to Counts 1, Counts 2, breach of contract involuntary resignation, and Count 3, the due process [claim].
>
> The [c]ourt finds that [Ms. Watson] was placed on notice as [to] what the Loudermill hearing was going to be about prior to the Loudermill hearing

> on January 19th, 2017. But prior to that she was given information. She did view the video[.]

With regard to the sequence of events, the court found that, after the incident occurred, Ms. Watson was placed on administrative leave on September 16, 2016, pending the outcome of an investigation. Video footage from the bus showed a "staff member aggressively handling a student in an attempt to redirect the student's behavior." The court further determined that, by viewing the video with her supervisor, Ms. Watson was placed on notice of the charges against her:

> During the course of [this] investigation[,] [Ms. Watson] viewed video footage with Ms. Hairston, her supervisor, who wrote the summary of the incident originally that was the impetus for her being placed on administrative leave.
>
> Ms. Hairston added after viewing the video with Ms. Watson that the video footage revealed that Ms. Watson was pulling on the student's arm in an aggressive manner. The [c]ourt finds that she's been placed on notice now by viewing the video with her supervisor[.]

Furthermore, the court determined that the January 29, 2017 *Loudermill* hearing gave Ms. Watson further notice of the allegations against her. The court determined that, after the *Loudermill* hearing concluded but "before [her employers] were able to make any ruling or recommendation in this case," Ms. Watson submitted the February 14, 2017 letter containing her intention to resign. The court found that the subsequent letter of resignation, submitted on February 16, 2017, indicated that Ms. Watson relied on her union representative's advice when she chose to resign rather than wait to be terminated. The court explained:

> This letter indicates that her union representative is the one giving her this information, not any representative from the County indicating that is what she must do. That's the union representative passing on information

> and her relying on that information when she submits her decision to resign all before the Loudermill hearing decision.
>
> Had there been a Loudermill decision and she disagreed with that decision, she would have gone through the appropriate administrative procedures that are in place and she did not do so and that was cut short because of the fact that she resigned. And in her own letter she indicates she resigned as a result of what her union representative told her not as an ultimatum presented to her by the County, but what her union representative said to her and she's noted that in her letter.

The court granted summary judgment to the Board on each of Ms. Watson's claims. Regarding the breach of contract claims, the court determined that there was no genuine dispute that Ms. Watson voluntarily resigned and that "she did have the opportunity to exhaust any administrative remedies as a result of any decision of the Loudermill hearing[] and she chose not to." The court also found that Ms. Watson's claim of deprivation of procedural due process was foreclosed by the fact that she voluntarily resigned and "was placed on notice as to what the hearing was going to be concerning."

Regarding Ms. Watson's gender discrimination and retaliation claims, the court found that Ms. Watson was "required to exhaust her administrative remedies . . . within 180 days from the date that the conduct [being complained of] occur[ed]." The court determined that the conduct complained of occurred on September 16, 2016, when Ms. Watson was placed on administrative leave and received notice of the charges against her. Therefore, the court found, Ms. Watson failed to exhaust her administrative remedies within 180 days of September 16, 2016 and also failed, under SG § 20-1202, to file her complaint within two years of that date.

The court entered an order on November 8, 2019, granting the Board's motion to dismiss or, in the alternative, for summary judgment, and ordering that judgment be entered

against Ms. Watson in favor of the Board "as to all counts of the First Amended Complaint." On November 22, 2019, Ms. Watson filed a Motion to Alter and Amend Judgment, asking the court to "reconsider the summary judgment entered against her." She also filed an appeal on that date. On February 25, 2020 the court denied Ms. Watson's motion to alter and amend the judgment.[12]

DISCUSSION

The transcript reflects that the court considered materials outside of the pleadings and treated the Board's motion as one for summary judgment. *See* Md. Rule 2-322(c) ("If . . . matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501[.]").

Summary judgment is appropriate when there is "no genuine dispute as to any material fact" and "the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). Accordingly, we review the trial court's legal determinations without deference. *In re Collins*, 468 Md. 672, 685 (2020).

[12] Maryland Rule 8-202(a) generally requires that a "notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." "Rule 8-202(c) provides for an exception that tolls the running of that appeal period while the court considers certain motions, including motions to alter or amend that are filed **within ten days of entry of the judgment** or order[.]" *Johnson v. Francis*, 239 Md. App. 530, 541 (2018) (emphasis added). A revisory motion, such as a motion to alter or amend, filed more than ten days after entry of judgment "does not stop the running of the thirty day appeal period." *Blake v. Blake*, 341 Md. 326, 331 (1996). Because Ms. Watson filed her appeal more than ten days after the entry of summary judgment and did not file an appeal after the court's decision to deny her motion to alter or amend, that order is not before us. However, Ms. Watson did file a timely notice of appeal of the court's grant of summary judgment.

In reviewing a grant of summary judgment under Maryland Rule 2–501, "we must first ascertain, independently, whether a dispute of material fact exists in the record on appeal." *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 313 (2019). In doing so, we "view the facts 'in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party.'" *Gurbani v. Johns Hopkins Health Sys. Corp.*, 237 Md. App. 261, 289 (2018) (quoting *Windesheim v. Larocca*, 443 Md. 312, 326 (2015)). "'[O]nly where such dispute is absent will we proceed to review determinations of law[,]' and then we will 'construe the facts properly before the court, and any reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party.'" *Macias*, 243 Md. App. at 313 (quoting *Remsburg v. Montgomery*, 376 Md. 568, 579-580 (2003)). Absent exceptional circumstances, "ordinarily a motion for summary judgment may be upheld only on the grounds relied upon by the hearing court." *From the Heart Church Ministries, Inc. v. Phila.-Balt. Annual Conference*, 184 Md. App. 11, 33 (2009). One such exception allows "an appellate court [to] affirm on a different ground where the trial court would have had no discretion to deny summary judgment as to that ground." *Hector v. Bank of N.Y. Mellon*, 473 Md. 535, No. 10, September Term 2020, slip op. at 17 n.6 (2021) (citation omitted), *reconsideration denied* (July 9, 2021) (citation omitted).

I.

Breach of Contract and Constructive Discharge

A. Parties' Contentions

Ms. Watson contends that the trial court erred in granting summary judgment on her breach of contract claims because a genuine issue of material fact exists as to whether she voluntarily resigned or was constructively discharged. She alleges that she was constructively discharged when PGCPS gave her "an ultimatum that forced her to quit to avoid negative consequences for her future employment and her career." According to Ms. Watson, she "had no alternative to resignation other than termination"; "she was harassed and hurried into making her decision"; and, "she had no choice in the effective date of her resignation."

Ms. Watson asserts that the reasons given for her termination were a mere pretext to cover the School's failure to provide appropriate accommodations to the student. She further contends that her actions in removing the student from the bus adhered to training she had received from her employer; and neither Child Protective Services ("CPS") nor the Maryland Police found her conduct abusive. Finally, Ms. Watson rejects the Board's claim that the exclusive remedy for her injuries was under the anti-retaliation provision of State Government Article and the Prince George's County Code.

The Board's counter-argument begins with the contention that Ms. Watson voluntarily resigned and was not discharged. Consequently, the Board avers, Ms. Watson's complaint is actually for abusive and constructive discharge rather than breach of contract, and that, in Maryland, at-will employees may raise wrongful discharge claims only if their

termination violates a clear mandate of public policy set forth in the Constitution, a statute or at common law. Because Ms. Watson was subject to a collective bargaining agreement, she was not an at-will employee. Therefore, the Board contends, Ms. Watson failed to exhaust her contractual remedies with regard to her proposed termination and cannot rely on a constructive discharge claim.

Even if Ms. Watson can claim constructive discharge, argues the Board, she failed to identify the clear mandate of public policy that was violated by her dismissal. Additionally, the Board contends, to the extent that Ms. Watson's claim of wrongful discharge is based on any retaliation she suffered, the "the alleged violation is vindicated by a civil remedy" found in the "anti-retaliation provision of the State Government Article and Prince George's County Code."[13] The Board argues that, where a statute provides a special form of remedy, an appellant is required to use it.

Finally, the Board avers that constructive discharge, on its own, is not a valid cause of action under Maryland.

B. Failure to Exhaust Contractual Remedies

The circuit court granted summary judgment on Counts I & II on two bases. First, the court determined that "administrative remedies were not exhausted in this area." Second, the court found that there was no genuine dispute of material fact regarding whether Ms. Watson voluntarily resigned. The court pointed out that, instead of resigning, Ms. Watson could have waited for the outcome of the *Loudermill* hearing and then, if she

[13] At oral argument, the Board's counsel explained that it was referring to SG § 20-606(f).

disagreed with the decision, appealed that decision through the administrative procedures that were available to her. The court found, however, that Ms. Watson chose not to exhaust her administrative remedies and resigned instead, cutting off any further procedures that she might have pursued.

We agree, and hold that Ms. Watson's breach of contract claims are barred because she failed to exhaust her contractual remedies. Because exhaustion of contractual remedies is a threshold issue, we affirm on this ground rather than reaching the second basis supplied by the circuit court. *Gazunis v. Foster*, 400 Md. 541, 562 (2007) (quoting *Jenkins v. William Schluderberg-T. J. Kurdle Co.*, 217 Md. 556, 561 (1958)) ("The general rule is that before an individual employee can maintain a suit, he must show that he has exhausted his contractual remedies[.]").

As we explain, Ms. Watson failed to exhaust her contractual remedies before pursing her actions for breach of contract and constructive discharge in the circuit court.[14] Therefore, the circuit court properly dismissed her claims.

[14] Exhaustion of contractual remedies is "analogous to the rule requiring the exhaustion of administrative remedies as a condition precedent to resorting to courts[.]" *Jenkins*, 217 Md. at 561; *see also Gazunis*, 400 Md. at 565 ("[A] plaintiff must exhaust all contractual remedies as a condition precedent to seeking judicial relief in the courts."). Exhaustion of administrative remedies is a "threshold issue[] which the Court will consider regardless of the positions that have been taken by the parties and regardless of what has been raised by the parties." *Renaissance Centro Columbia, LLC v. Broida*, 421 Md. 474, 487 (2011). "Consequently, exhaustion of administrative remedies will be addressed by this Court sua sponte even though not raised by any party." *Priester v. Baltimore Cnty.*, 232 Md. App. 178, 190 (2017) (quoting *Renaissance Centro Columbia*, 421 Md. at 487).

1. Exhaustion of Contractual Remedies in Collective Bargaining Agreements

The Court of Appeals outlined the law requiring exhaustion of contractual remedies under collective bargaining agreements in *Jenkins v. William Schluderberg-T. J. Kurdle Co.*, 217 Md. at 561. There, the Court explained:

> The general rule is that before an individual employee can maintain a suit, he must show that he has exhausted his contractual remedies:
>
> > This rule . . . is based on a practical approach to the myriad problems, complaints and grievances that arise under a collective bargaining agreement. It makes possible the settlement of such matters by a simple, expeditious and inexpensive procedure, and by persons who, generally, are intimately familiar therewith.
> >
> > * * *
> >
> > The use of these internal remedies for the adjustment of grievances is designed not only to promote settlement thereof, but also to foster more harmonious employee-employer relations.
>
> Thus, if the employee refuses to take even the initial step of requesting the processing of the grievance, he will not be granted relief in the courts.

Id. at 561-62 (cleaned up); *see also Gazunis*, 400 Md. at 562-63 (analyzing *Jenkins*).

In *Gazunis*, the Court of Appeals addressed whether, under her collective bargaining agreement, the respondent was required to exhaust her contractual remedies before she was entitled to adjudicate her claims for wrongful demotion, termination, and breach of contract. 400 Md. at 544. In that case, respondent was employed as a User Support Specialist by the Montgomery County Board of Education ("MCBE"). *Id.* at 545. She was demoted after she notified her school's principal that new servers were likely crashing due to another employee's failure to correctly shut them down. *Id.* The accused employee was the son of Ms. Gazunis, one of the petitioners. *Id.* Upon discovering what respondent told

the principal, Ms. Gazunis "threatened [] that she would have [respondent] fired for complaining to [the principal] about [her son] and would ruin [respondent's] reputation by telling everyone [] that the network was a big mess." *Id.* at 545-546. A few days later, the principal relieved respondent of many of her responsibilities, placed her on administrative leave, and demoted her. *Id.*

In response, respondent filed two grievances and "began the administrative review process in accordance with the policies and regulations of the Montgomery County Public Schools and the union contract between her employer, the [MCBE], and the Montgomery County Council of Supporting Services Employees [.]" *Id.* at 547. Although respondent's union pursued her grievance through arbitration, respondent later withdrew her request for arbitration, and instead filed an action against Ms. Gazunis and MCBE in the Circuit Court for Montgomery County alleging, amongst other things, wrongful demotion, wrongful termination, and breach of contract. *Id.*

At trial, petitioners filed a motion for summary judgment on all counts, alleging that respondent had failed to exhaust the remedies in her collective bargaining agreement. *Id.* at 548. The circuit court stayed the counts of wrongful demotion, termination, and breach of contract "pending completion of arbitration as required by the collective bargaining agreement." *Id.* Respondent asked MCBE to resume arbitration, but MCBE refused. *Id.*

After trial resumed and the jury returned a verdict for respondent on some of her claims, a series of appeals ensued. *Id.* at 550-51. Petitioners eventually filed a petition for writ of certiorari to the Court of Appeals, asking whether an employee who is subject to a collective bargaining agreement is required to exhaust contractual and administrative

remedies set forth in the agreement prior to bringing a lawsuit on a claim that is covered by the agreement. *Id.* at 551 n. 13.

The Court of Appeals explained that when an employee subject to a collective bargaining agreement has a grievance against their employer, "[t]he general rule is that before [they] can maintain a suit, [they] must show that [they have] exhausted [their] contractual remedies[.]" *Id.* at 562 (quoting *Jenkins*, 217 Md. at 561-62; *see also id.* at 563 (quoting *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 163 (1983) ("Ordinarily . . . an employee is required to attempt to exhaust any grievance or arbitration remedies provided in the collective-bargaining agreement.")). Because respondent's collective bargaining agreement "directly govern[ed]" her employment-related grievances, and the agreement provided contractual remedies, the Court of Appeals held that she was required to exhaust those remedies before seeking adjudication in the courts. *Id.* at 564, 566. By withdrawing her request for arbitration, she chose not to exhaust her contractual remedies, and therefore the courts could not hear her claims. *Id.* at 566-67.

We now turn to analyze the terms under the operative collective bargaining agreement and explain how Ms. Watson failed to fully exhaust the contractual remedies that it provided.

2. Analysis

Here, it is undisputed that Ms. Watson was not an at-will employee and was instead covered by a Negotiated Agreement between the Board and her union, ASASP. Ms.

Watson's collective bargaining agreement contains a four-step grievance procedure[15] and provides that "[t]he parties understand and agree that only grievances as defined in Section 3.01 [of the Agreement] are subject to arbitration under this Agreement." Article 3.01(A)(1) defines "grievance" as "[a]n allegation by a unit member that an action affecting them is a violation of one or more provisions of this Agreement[.]" These include provisions pertaining to "Resignation/Separation" at Section 3.06 and "Discipline/Discharge" at Section 3.11. The purpose of the grievance procedure as stated in 3.01(B) is "secur[ing] at the lowest possible level an equitable solution to the grievance."

Ms. Watson does not dispute that she failed to utilize the grievance procedure outlined in her collective bargaining agreement. As in *Gazunis*, Ms. Watson's collective bargaining agreement directly governs her grievances pertaining to breach of contract and constructive discharge. She argues that she was forced to resign and was constructively terminated—not for cause—but for "exercising her specific legal right and duty not to make false statements against [a member of her staff]." She also argues that the discipline to which she was subjected was inappropriate because her interactions with the student on the bus adhered to her training, and that she never received written notice of the charges against her as required in Section 3.11 of the Negotiated Agreement.

[15] The four steps of the grievance procedure are as follows. First, the grievant "should discuss it with their immediate supervisor." Second, if "the grievant is not satisfied with the outcome of the Step One discussion, the grievant may file the grievance in writing with ASASP," which may be forwarded to the grievant's immediate supervisor, who must then respond. Third, if the grievant is unsatisfied with the outcome, the grievant may file a second written grievance with ASASP, which may be forwarded to the Chief Human Resources Officer. Fourth, ASASP, on behalf of the grievant, may demand arbitration of the dispute.

We conclude that these claims are intertwined with the collective bargaining agreement and are "exactly what the collective bargaining agreement was designed to cover." *Gazunis*, 400 Md. at 564. Ms. Watson was required to exhaust her contractual remedies provided in the collective bargaining agreement before she was entitled to adjudicate her claims of breach of contract and constructive discharge. In sum, we hold that Ms. Watson failed to exhaust the contractual remedies provided under her union contract; consequently, her contract claims are barred as a matter of law.

II.

Gender Discrimination and Retaliation

A. Parties' Contentions

Ms. Watson argues that the circuit court erred in dismissing her gender discrimination and retaliation claims as untimely. She contends that the discriminatory act she complains of is her constructive discharge, effective February 15, 2017, and that, under SG § 20-1202, a person subjected to a discriminatory act prohibited by the Prince George's County Code may bring a civil action in the circuit court within 2 years after the occurrence of that act. Ms. Watson avers that, because she filed her discrimination and retaliation claims on February 8, 2019, she was "well within the two-year statute of limitations period for such actions."

Ms. Watson also argues that, because Maryland is a deferral state, plaintiffs pursuing discrimination claims have 300 rather than 180 days to file an administrative charge of employment discrimination under federal law. She filed administrative charges

with the HR Commission and the EEOC on August 21, 2018, and she claims that this was within 300 days of when her action accrued.

According to Ms. Watson, her claim of discrimination accrued on December 8, 2017. Ms. Watson's opening brief merely states that this is the "date of one of the alleged acts supporting her claim of discrimination," but her reply brief explains in a footnote that this is the date that one of her male colleagues had a separate physical altercation with a student, after which he was not fired.[16] She does not explain why her filing deadline should be measured against this date, but we infer her reasoning to be that her gender discrimination and retaliation claims accrued only once she could identify a similarly-situated man who was treated differently than she was as a woman.

She also asserts that her gender discrimination claim under the Maryland Constitution was timely under Maryland Code (1973, 2013 Repl. Vol., 2018 Supp.), Courts & Judicial Proceedings Article, § 5-101, which generally provides that a "civil action at law shall be filed within three years from the date it accrues[.]"

The Board responds that Ms. Watson's gender discrimination and retaliation claims were not "timely administratively exhausted." Ms. Watson filed a charge of discrimination on August 21, 2018 after being placed on administrative leave on September 16, 2016 and voluntarily resigning on February 16, 2017. According to the Board, this charge "was filed

[16] The news article she cites to support her description of the incident with the male employee was published on December 8, 2017, but it describes the incident as actually occurring a week earlier, on December 1, 2017. *PGCPS Administrator on Leave After Charge He Chased Student for Littering*, NBC4 WASHINGTON, (Dec. 8, 2017, 6:51 PM), https://www.nbcwashington.com/news/local/prince-georges-county-administrator-on-leave-after-charge-he-chased-student-for-littering/33807/.

well past the statutory 300-day period," and her claim for retaliation was "untimely and barred." The Board contends this limit also applies to Ms. Watson's allegation of retaliation stemming from the Board's October 12, 2017 recommendation that the Department revoke her teaching license.

Likewise, the Board argues that Ms. Watson has not exhausted her administrative remedies relating to her claim for gender discrimination under the Maryland Constitution, because, although the Maryland Constitution does not specifically require administrative exhaustion, "the Court of Appeals and this Court have both applied notice and other requirements of statutes to constitutional claims." The Board concludes that, because Ms. Watson does not have a viable claim under Title VII because she failed to timely exhaust her remedies, her claims under the Maryland Constitution are also barred.

B. The Doctrine of Administrative Exhaustion

The doctrine of exhaustion of administrative remedies "requires that a party must exhaust statutorily prescribed administrative remedies, generally evidenced by a 'final decision' by the administrative agency, before the resolution of separate and independent judicial relief in the courts." *Arroyo v. Bd. of Educ. of Howard Cnty.*, 381 Md. 646, 661 (2004). "The statutory frameworks from which these administrative remedies arise, however, do not always act as a complete bar to the pursuit of alternative judicial relief." *Id*. at 662. Rather, "[s]hort of an express statutory grant, 'the relationship between [an] administrative remedy and a possible alternative judicial remedy will ordinarily fall into one of three categories.'" *Priester v. Baltimore Cnty.*, 232 Md. App. 178, 205 190 (2017)

(quoting *Zappone v. Liberty Life Ins. Co.*, 349 Md. 45, 60 (1998)). The Court of Appeals has defined these three categories as follows:

> First, the administrative remedy may be exclusive, thus precluding any resort to an alternative remedy. Under this scenario, there simply is no alternative cause of action for matters covered by the statutory administrative remedy.
>
> Second, the administrative remedy may be primary but not exclusive. In this situation, a claimant must invoke and exhaust the administrative remedy, and seek judicial review of an adverse administrative decision, before a court can properly adjudicate the merits of the alternative judicial remedy.
>
> Third, the administrative remedy and the alternative judicial remedy may be fully concurrent, with neither remedy being primary, and the plaintiff at his or her option may pursue the judicial remedy without the necessity of invoking and exhausting the administrative remedy.

Arroyo, 381 Md. at 662 (cleaned up) (quoting *Zappone*, 349 Md. at 60-61).

C. Remedies and Timelines

Title 20 of the State Government Article

Title 20 of the State Government Article prohibits certain forms of employment discrimination. Of particular relevance here are SG § 20-606(a) and (f). First, SG § 20-606(a) provides in relevant part that an employer may not "fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of: (i) the individual's . . . gender identity." Second, SG § 20-606(f) further provides that an employer may not

> discriminate or retaliate against any of its employees or applicants for employment . . . because the individual has:
>
> (1) opposed any practice prohibited by this subtitle; or

> (2) made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subtitle.

Title 20 also creates the Commission on Civil Rights, SG § 20-201, and vests it with the authority to hear a complaint from "[a]ny person claiming to be aggrieved by an alleged discriminatory act," SG § 20-1004. "Discriminatory act" is defined by SG § 20-101 to mean an act prohibited under subtitles 3 through 8 of Title 20, including SG § 20-606.

An aggrieved party can seek to remedy a violation of SG § 20-606 either through a civil action in court or through an administrative complaint in the Commission on Civil Rights. SG § 20-1013 (civil actions); SG § 20-1004 (administrative complaints). Section 20-1013(a)(1) states that to bring a civil action alleging an unlawful employment practice—defined by SG § 20-1001 as "an act that is prohibited under § 20-606 of this title"—the complainant must have "initially filed a timely administrative charge or complaint under federal, State, or local law alleging an unlawful employment practice by the respondent[.]"[17] We identify the EEOC, the Commission on Civil Rights, and the HR Commission as the bodies Ms. Watson could have filed a timely complaint with under federal, state, and local law, respectively.

Under federal law, a complaint filed with the EEOC must be made "within one hundred and eighty days after the alleged unlawful employment practice occurred," unless the complainant has already initiated related proceedings with a state or local agency, in

[17] The complainant is also required to wait until at least 180 days have passed since the filing of the administrative charge or complaint, and to file the civil action within two years of the alleged unlawful employment practice, or, if the complaint alleges harassment, within three years. SG § 20-1013.

which case the complaint must be filed with the EEOC "within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State of local agency has terminated the proceedings . . ., whichever is earlier." 42 U.S.C. § 2000e-5(e)(1).

Under state law, a complaint filed with the Commission on Civil Rights must be made "within 300 days after the date on which the alleged discriminatory act occurred." SG § 20-1004(c)(2)(i).[18]

Finally, under local law, a complaint filed with the HR Commission must be made "no later than one hundred eighty (180) days after the date of the alleged violation." Prince George's County Code ("PGCC") § 2-201.

Prince George's County Code

Section 2-222 of the PGCC states that "[n]o employment agency in the County shall fail or refuse to refer a person for employment or act against any person respecting the kind of employment for which a referral could have been made, or classify a person for employment because of discrimination." "Discrimination" is defined by § 2-186(a)(3) in relevant part as "acting, or failing to act, or unduly delaying any action regarding any person because of . . . sex . . . or gender identity, in such a way that such person is adversely affected in the areas of . . . employment[.]"

[18] No complaint filed with the Commission on Civil Rights was included in the record in the present case.

Section 2-231.04(c) prohibits employers from "retaliat[ing] against any person for . . . lawfully opposing any violation of this Subdivision," which includes PGCC § 2-222.

A cause of action for violations of PGCC § 2-231.04(c) is provided by SG § 20-1202(b), which applies to anti-discrimination provisions in the codes of Howard, Montgomery, and Prince George's counties. It states that "a person that is subjected to a discriminatory act prohibited by the county code may bring and maintain a civil action against the person that committed the alleged discriminatory act for damages, injunctive relief, or other civil relief." Such an action must be brought "within 2 years after the occurrence of the alleged discriminatory act." SG § 20-1202(b).

Unlike SG § 20-1013, SG § 20-1202 contains no express exhaustion requirement. The most that it says about administrative remedies is that "an action under subsection (b) of this section alleging discrimination in employment or public accommodations may not be commenced *sooner* than 45 days after the aggrieved person files a complaint with the county unit responsible for handling violations of the county discrimination laws." SG § 20-1202(c) (emphasis added).

D. Analysis

The circuit court found that Ms. Watson's constitutional claim, her claim under SG § 20-1013, and her claim under SG § 20-1202 were all subject to an administrative exhaustion requirement. The court held that she was required to exhaust her administrative remedies within 180 days of September 16, 2016, the date she was placed on administrative leave, and because she failed to do so, all three of these claims were barred. The court also

held that her constitutional claim was barred because it was subject to a two-year statute of limitations, and she filed her complaint more than two years after her resignation. We hold Ms. Watson's constitutional claim was not preserved below. We affirm the circuit court's judgment with respect to her SG § 20-1013 claim but reverse the circuit court's judgment with respect to her SG § 20-1202 claim.

Constitutional Claim

In Count V of her amended complaint, Ms. Watson purports to allege a claim for "Discrimination- Gender in violation of the Maryland Constitution." However, the allegations under this count cite to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2 (2012), rather than any applicable provision of the Maryland Constitution. Count V also quotes from Title VII and asserts, without further attribution, that Maryland mirrors the provisions of Title VII:

> Maryland state law mirrors federal law in that it shall be unlawful for an employer to discriminate against any individual with respect to hiring, discharge, compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

Maryland Rule 2-303(b) requires a pleading to "contain only such statements of fact as may be necessary to show the pleader's entitlement to relief." Maryland Rule 2-305 likewise commands a "clear statement of the facts necessary to constitute a cause of action[.]" In considering whether a cause of action states a claim, "any ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader." *Shenker v. Laureate Educ., Inc.*, 411 Md. 317, 335 (2009).

In her amended complaint, Ms. Watson does not provide the basis for her constitutional cause of action. *See LaSalle Bank, N.A. v. Reeves*, 173 Md. App. 392, 411 (2007) (summarizing the "four distinct roles" of pleading, including that it "provides notice to the parties as to the nature of the claim or defense" and "states the facts upon which the claim or defense allegedly exists") (quoting *Scott v. Jenkins*, 345 Md. 21, 27 (1997)). Ms. Watson did not explain in her opposition to the motion to dismiss or in her motion for reconsideration that she was asserting a cause of action under the Maryland Constitution, much less the applicable provision under which she could be afforded relief. *See Rounds v. Maryland-Nat. Cap. Park & Plan. Comm'n*, 441 Md. 621, 637 (2015) ("[A] cause of action for damages may not lie for all violations of the state constitution."). Likewise, she did not explain the grounds for her constitutional claim to the judge at the November 1, 2019 hearing. Instead, her arguments below focused on statutory claims. It was not until her initial brief on appeal that she even referenced a provision of the Maryland Constitution, Maryland Declaration of Rights, Article 46.

Maryland Rule 8-131(a) provides, aside from jurisdictional challenges, that "[o]rdinarily, the appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court." The Court's "prerogative to review an unpreserved claim of error . . . is to be rarely exercised and only when doing so furthers, rather than undermines, the purposes of the rule," *Ray v. State*, 435 Md. 1, 22 (2013) (citation omitted), which are to ensure fairness for the parties involved and to promote orderly judicial administration," *McDonell v. Harford County Hous. Agency*, 462 Md. 586, 602 (2019) (citation omitted). Here, Ms. Watson did not identify the basis for

her bald constitutional claim at the administrative level or in the circuit court. Accordingly, we hold that Ms. Watson's constitutional claim was not preserved.

Retaliation Under SG § 20-1013

To maintain her SG § 20-1013 claim in the circuit court, Ms. Watson was required to first file a timely complaint with an appropriate federal, state, or local agency. SG § 20-1013(a)(1). In her amended complaint, Ms. Watson alleged that she was retaliated against for "refusing to participate in [the Board's] plot to cover [its] liability in not providing a necessary and safe accommodation for a . . . child after repeated request [sic] were made by [Ms. Watson] to accommodate the child's disability." Ms. Watson alleged that the Board retaliated against her in two manners: first, by causing her to resign on February 16, 2017 and, second, by recommending the revocation of her teaching certificate on October 17, 2017. Her complaints with the HR Commission and the EEOC were allegedly filed simultaneously on August 21, 2018, which was 552 days after her resignation and 309 days after the Board made its recommendation to revoke her teaching certificate. We will assume for the sake of argument that she could predicate her claim on the Board's recommendation to revoke her teaching certificate, because her administrative complaints were untimely even if the clock began running on that later date.[19]

[19] To the extent that this action was retaliatory, the Board's control over the revocation of Ms. Watson's teaching certificate did not extend beyond its initial recommendation. Once the Board filed charges with the Assistant State Superintendent seeking the revocation of Ms. Watson's teaching certificate, it had no decision-making power regarding whether or not the certificate would actually be revoked. The Code of Maryland Regulations ("COMAR") 13A.12.05.02C(5) provides: "Suspension or Revocation. A certificate shall be suspended or revoked *by the State Superintendent of*

(Continued)

We conclude that although Ms. Watson allegedly filed complaints with the HR Commission and the EEOC prior to bringing her suit in the circuit court, both filings were untimely. First, she was required to file her HR Commission complaint "no later than one hundred eighty (180) days after the date of the alleged violation." PGCC § 2-201. One hundred eighty days after October 17, 2017 was April 15, 2018. Her complaint was filed 128 days past that deadline, on August 21, 2018, making it untimely.

Second, because she filed a complaint with the HR Commission, her filing deadline with the EEOC was extended to "within three hundred days after the alleged unlawful employment practice occurred," at the latest. 42 U.S.C. § 2000e-5(e)(1). Three hundred days after October 17, 2017 was August 13, 2018. Although this makes the EEOC complaint less late than the HR Commission complaint, it was still 8 days after the deadline, making it untimely.

A timely filing of at least one administrative complaint under federal, state, or local law is a prerequisite to a civil action under SG § 20-1013. Because the administrative complaints Ms. Watson filed were both untimely, she missed her opportunity to seek

Schools if the certificate holder: . . . (5) Is dismissed or resigns after notice of allegation of misconduct involving a student in any school system or any minor, or allegation of misconduct involving any cause for suspension or revocation of a certificate provided in this regulation." (Emphasis added). The record clearly shows that the revocation of Ms. Watson's teaching certificate was addressed in separate proceedings before the ALJ, before it was revoked on November 23, 2018. Accordingly, the Board's "retaliatory action" occurred on the date it recommended the State Superintendent revoke Ms. Watson's teaching certificate.

judicial relief by the procedure outlined in SG § 20-1013. Consequently, Ms. Watson's claims under SG § 20-1013 are barred.[20]

Retaliation Under PGCC § 2-231.04

Ms. Watson filed her first complaint on February 8, 2019. Accordingly, under the two-year time limit defined by SG § 20-1202(c)(1), her retaliation claim can only proceed to the extent that it alleges that the Board committed retaliatory acts that occurred on or after February 8, 2017.

First, parallel to her claim under SG § 20-1013 set out above, Ms. Watson alleges that the Board forced her to resign "in retaliation for [her] refusing to participate in the [Board's] plot to cover [its] liability in not providing a necessary and safe accommodation for a disabled child after repeated request [sic] were made by [Ms. Watson] to accommodate the child's disability." As we conclude *infra* in our discussion of her procedural due process claim, she resigned voluntarily. Because her resignation was voluntary, it was not an adverse employment action, and it cannot serve as a predicate for a retaliation claim. *Cf. Honor v. Booz-Allen & Hamilton*, 383 F.3d 180, 189 (4th Cir. 2004) (holding that because an employee's resignation was voluntary, it was not an "adverse action" as required for his claim under 42 U.S.C. § 1981).

Second, Ms. Watson alleges that the Board retaliated against her by recommending the revocation of her teaching certificate on October 12, 2017. Because October 12, 2017 falls after February 8, 2017, the claim was filed within the applicable two-year statute of

[20] Ms. Watson's SG § 20-1013 claim could also have been saved by a timely complaint filed with the Commission on Civil Rights, but she did not file such a complaint.

limitations period under and SG § 20-1202. Therefore, we hold that the court erred in dismissing, as untimely, Ms. Watson's retaliation claim as related to the revocation of her teaching certificate under PGCC § 2-231.04.

III.

Procedural Due Process

A. Parties' Contentions

Ms. Watson argues that the circuit court erred by granting summary judgment on her procedural due process claim because a genuine issue of material fact exists regarding whether she received adequate due process in connection with her alleged wrongful termination.[21] Ms. Watson contends that, although she was informed of and afforded a *Loudermill* hearing, she was not informed of the serious allegation of child abuse until the hearing and, correspondingly, was unable to prepare a defense. According to Ms. Watson, her Union representative at the hearing was "wholly incompetent and failed to present an adequate defense." She further avers that the Board never gave her a written statement of the allegations against her, the outcome of the hearing, her appeal rights, or the Board's decision on her employment. She repeats her assertion that the allegation of child abuse was improper and used to cover up the Board's failure to provide adequate accommodations for the student.

[21] Ms. Watson also argues that she was not afforded appropriate process under her Negotiated Agreement. We decline to consider these arguments here because they are governed by the Negotiated Agreement, and as discussed *supra*, Ms. Watson failed to exhaust her contractual remedies. *See Gazunis*, 400 Md. at 564-65.

To the contrary, the Board asserts that the circuit court was correct in granting judgment in its favor because Ms. Watson was afforded a *Loudermill* hearing prior to her voluntary resignation. The Board avers, first, that Ms. Watson was not deprived of any property interest, because she voluntarily resigned and was not discharged. Second, the Board contends, Ms. Watson was afforded appropriate due process through a *Loudermill* hearing at which she was represented by ASASP. The hearing, posits the Board, was sufficient, because a *Loudermill* hearing is merely an employee's chance to be apprised of charges against her, and Ms. Watson was indeed informed of the charges against her. Third, the Board argues that Ms. Watson was aware of her conduct prior to being placed on administrative leave, and that the school considered it inappropriate. She also was aware, insists the Board, that she had failed to report and taken part in child abuse, particularly because she knew of and saw the video footage of the incident. Therefore, according to the Board, Ms. Watson was put on notice about the nature of the charges in advance of her hearing, and any and all process due to her was provided before she resigned.

B. Analysis

The circuit court concluded that the Board was entitled to summary judgment on Ms. Watson's procedural due process allegations for two reasons. First, the court concluded that Ms. Watson was not discharged, but rather voluntarily resigned. Second, the court concluded that Ms. Watson had notice of the charges against her before the pre-

termination *Loudermill* hearing, and that she attended the hearing and subsequently resigned prior to any final decision.[22]

We hold that, in this case, Ms. Watson did not generate a genuine dispute of material fact regarding whether she was deprived of her property interest in continued employment, because there was no genuine dispute as to whether her resignation was voluntary. This determination is dispositive, because, to be entitled to due process, Ms. Watson needed to prove that she was deprived by the Board of a property interest. *See City of Annapolis v. Rowe*, 123 Md. App. 267, 292 (1998) (holding that a police officer with a constitutionally protected property interest was not deprived of that interest when he was suspended from his job and continued to receive pay and benefits).

In order to be "successful in an action alleging denial of procedural due process in violation of a property interest, a plaintiff must demonstrate that he had a protected property interest, that he was deprived of that interest, and that he was afforded less process than was due."[23] *Samuels v. Tschechtelin*, 135 Md. App. 483, 523 (2000). Unless a person is

[22] The circuit court's ruling addressed Ms. Watson's due process claim alongside her two contractual claims and identified her "voluntary resignation" as a basis for granting summary judgment on all three. In addition, the court determined that Ms. Watson "did have the opportunity to exhaust any administrative remedies as a result of any decision of the Loudermill hearings and she chose not to." Accordingly, the court also granted summary judgment on these three claims because Ms. Watson's "administrative remedies were not exhausted."

[23] Article 24 of the Maryland Declaration of Rights protects an individual's interests in procedural due process and states "[t]hat no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land." Md. Const. Decl. of Rts. art. 24.

deprived of their property interest in employment "by 'state action,' the question of what process is required and whether any provided could be adequate in the particular factual context is irrelevant, for the constitutional right to 'due process' is simply not implicated." *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 167, 172 (4th Cir. 1988).

As we have already noted, the parties do not dispute that Ms. Watson had a protected property interest in her employment. Ms. Watson was not an at-will employee but rather, her employment was subject to a three-year Negotiated Agreement between the Board and her union, ASASP.

In this case, however, Ms. Watson failed to establish that she was deprived of her property interest. Maryland law recognizes the concept of constructive discharge and "in a proper case, [the law] will overlook the fact that a termination was formally effected by a resignation if the record shows that the resignation was indeed an involuntary one, coerced by the employer." *Beye v. Bureau of Nat. Affs*., 59 Md. App. 642, 649 (1984). If Ms. Watson "resigned of [her] own free will even though prompted to do so by events set in motion by [her] employer, [s]he relinquished [her] property interest voluntarily and thus cannot establish that the state 'deprived' [her] of it within the meaning of the due process clause." *Stone*, 855 F.2d at 173. If, however, Ms. Watson's "'resignation' was so involuntary that it amounted to a constructive discharge, it must be considered a deprivation by state action triggering the protections of the due process clause." *Id.* As the Fourth Circuit observed in *Stone v. University of Maryland Medical System Corp.*:

> [a] public employer obviously cannot avoid its constitutional obligation to provide due process by the simple expedient of forcing involuntary "resignations." The proper focus of the constitutional inquiry here is

> therefore on the voluntariness of [an employee's] resignation. The answer to that factual inquiry is dispositive of the constitutional "deprivation" issue, and potentially of the constitutional claim.

Id.

"In judging whether a resignation is truly involuntary, the courts have applied an objective standard; the test is not whether the particular employee felt it necessary to resign, but whether 'a reasonable person in the employee's shoes would have felt compelled to resign.'" *Beye*, 59 Md. App. at 652 (citation omitted). As this Court has acknowledged:

> The fact of discharge . . . does not depend upon the use of formal words of firing. The test is whether sufficient words or actions by the employer would logically lead a prudent [person] to believe [their] tenure had been terminated. . . . Employees are often asked to resign as opposed to being fired. While this may be done for any number of reasons, the meaning is clear that the employee is being dismissed.

Staggs v. Blue Cross of Md., Inc., 61 Md. App. 381, 387 (1985) (quoting *Jackson v. Minidoka Irrigation Dist*., 563 P.2d 54, 58-59 (Idaho 1977)).

In *Stone*, a University of Maryland doctor was referred to two review committees after he was charged with four malpractice suits. *Stone*, 855 F.2d at 169-170. The review committees reported alarming findings, and, based on these, the dean of the medical school informed the doctor of the allegations against him and suggested that he resign. *Id*. at 170. The doctor refused at first, but several hours later, after his employers stated that he could either resign or they would institute proceedings for his dismissal, he agreed to resign immediately. *Id*. at 170-171. The doctor's resignation was conditioned on several things, including his employers' promise that his resignations from the Medical School and University Hospital "would not constitute an admission of any wrongdoing" and that he

would continue "receive his Medical School salary until the effective date of his resignation from that institution." *Id*. at 171. After a few months, the doctor filed a federal claim stating that his employers violated his due process rights by forcing him to resign his positions at the hospital and medical school without a hearing.[24] *Id*. The employers moved for summary judgment, which was granted. *Id*. at 172.

On appeal, the United States Court of Appeals for the Fourth Circuit determined that the doctor's due process rights had not been violated because he voluntarily resigned and was therefore not deprived of a constitutionally protected property interest. *Id*. at 175. The Court explained that the doctor's resignation was voluntary and not induced by his employers' misrepresentation or coercion. *Id.* First, in response to the doctor's claim that, in contravention of hospital bylaws, he was told that his employers would discharge him from the medical staff if he did not resign immediately, the Court observed that there was no genuine dispute of material fact that the doctor relied on these alleged misrepresentations. *Id*. at 176. The Court explained that the doctor was a sophisticated physician who was familiar with hospital bylaws and would have known to consult them before relying on any alleged misrepresentation made by his employers. *Id.*

Second, the court determined that there was no genuine dispute of material fact that the doctor was coerced into resigning, because there was good cause for his termination—

[24] Although Dr. Stone alleged that his rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution had been violated, this case is relevant to our discussion because both Article 24 of the Maryland Constitution and the Due Process Clause of the Fourteenth Amendment "protect an individual's interests in substantive and procedural due process." *Samuels*, 135 Md. App. at 522-23.

he was fully informed of the charges against him; as a sophisticated professional, he knew his rights and, even if he did not, he was given several hours to find out what they were; he was permitted to seek the advice of anyone he wished and did so; "[h]e dictated the terms of his resignation himself" and walked away with "a clean record, a delayed effective date [of resignation], and a full year's salary[;]" and he never made any effort to rescind his resignation. *Id*. at 177-178. The Court noted that the "mere fact that [the doctor] was forced to choose between the inherently unpleasant alternatives of resignation and possible termination for cause does not itself mean that his resignation was submitted under duress, absent evidence that his superiors lacked good cause for the threatened termination." *Id*. at 177; *see also Zepp v. Rehrmann*, 79 F.3d 381, 385-387 (4th Cir. 1996) (holding that, after an inmate was found dead in his cell and his family demanded a deputy sheriff's resignation, the deputy sheriff was not deprived of his constitutionally protected property interest in continued employment after choosing to retire instead of facing disciplinary action or future legal action against him).

Returning to the case at bar, we hold that there was no genuine dispute of material fact generated regarding Ms. Watson's claim that she involuntarily resigned after being given an ultimatum by her employer. First, in support of her claim that she was constructively discharged, Ms. Watson relies on the fact that her union representative informed her that she "could either resign or be terminated."[25] "Because a court may not

[25] Although this evidence refers to hearsay testimony, we "may nonetheless consider it in support of [Ms. Watson's] motion in opposition to summary judgment," because the Board did not object to it. *Hawkins v. Rockville Printing & Graphics, Inc*., 189 Md. App. (Continued)

weigh the credibility of witnesses at the summary judgment stage," we assume that a trier of fact could credit Ms. Watson's account of her discussions with her union representative. *Gurbani v. Johns Hopkins Health Sys. Corp*., 237 Md. App. 261, 289-90, (2018). However, the party opposing a motion for summary judgment has the burden of showing "disputed material facts with precision in order to prevent the entry of summary judgment." *Macias v. Summit Mgmt., Inc*., 243 Md. App. 294, 315 (2019) (quoting *Warsham v. James Muscatello, Inc*., 189 Md. App. 620, 634 (2009)). "Where the moving party attests to a material fact, the non-moving party must do more than simply show some 'conjectural' or 'metaphysical' doubt as to that fact." *Gurbani*, 237 Md. App. at 291. In other words, the "facts offered by a party opposing summary judgment 'must be material and of a substantial nature, not fanciful, frivolous, gauzy, spurious, irrelevant, gossamer inferences, conjectural, speculative, nor merely suspicions.'" *Id*. (citations omitted).

In this case, the Board alleged in its motion for summary judgment that Ms. Watson voluntarily resigned. Ms. Watson responded by claiming that she only resigned after receiving an ultimatum from her "employer through the Union" informing her that she could either resign or be terminated. The record, however, offers no clear evidence that this ultimatum came from PGCPS or the Board; rather, it seems to be largely speculation on Ms. Watson's part that the choice to resign or be terminated was communicated to her by her employer through the Union. Such facts are insufficient to create more than some

1, 16 n. 7 (2009); *see also Mut. Fire Ins. Co. of Calvert Cnty. v. Ackerman*, 162 Md. App. 1, 9 n. 4 (2005).

conjectural doubt about the material fact of Ms. Watson's resignation. *Gurbani*, 237 Md. App. at 291.

Even if the union representative's statement that she should "resign or be terminated" came from the Board, as the Fourth Circuit observed in *Stone*, the "the mere fact that the choice is between comparably unpleasant alternatives—e.g., resignation or facing disciplinary charges—does not of itself establish that a resignation was induced by duress or coercion, hence was involuntary." 855 F.2d at 174. "This is so even where the only alternative to resignation is facing possible termination for cause, unless the employer actually lacked good cause to believe that grounds for termination existed." *Id*.

Here, the record does not support a claim of coercion or inducement. First, as in *Stone*, it is clear that the Board felt it had cause to terminate Ms. Watson. The Department of Security Services memorandum states that video footage of the incident showed that "Principal Patrice Watson . . . physically aided [another individual] as he had Student in a head lock and pulled the student [off] the bus." Additionally, the incident summary prepared by Dr. Hairston states that "Ms. Watson, Principal, was recorded on a school bus video allegedly observing a staff member . . . aggressively handling a student in an attempt to redirect his behavior," and that "Ms. Watson did not contact child protective services or the Employee and Labor Relations Office" to report the incident. The summary also states that the video footage reveals that "Ms. Watson was pulling on the student[']s arm in an aggressive manner." Finally, we are offered no evidence suggesting that PGCPS and the Board "knew or believed that [their] charges against [Ms. Watson] could not be substantiated." *Id.* at 177.

Second, like the doctor in *Stone*, Ms. Watson is a seasoned professional. She was a principal in the PGCPS school system for approximately ten years, giving her the experience necessary to make a considered decision. She was also fully informed of the charges against her, both before and during her *Loudermill* hearing, which gave her the information necessary to understand her situation and to weigh her options.

Third, she had nearly five months to decide what to do after being placed on administrative leave in September 2016, and she did in fact explore her options during this time: she consulted a lawyer and ASASP, and checked into her ability to retire.[26] This months-long period of consideration was far longer than the "several hours" in *Stone* which the Fourth Circuit said was "ample time" for an experienced doctor to contact an attorney and become informed of his rights before deciding whether to resign or face termination.[27] *Id.*

Finally, in her letters on February 14 and February 16, 2017, Ms. Watson expressed an understanding that she was presented with options, and that she was able to make a decision between them. In her letter on February 14, she stated that she was "fortunate to have been given an option to resign on my own recognizance," and that she was choosing

[26] She also had approximately one month between the *Loudermill* hearing and her resignation. Her *Loudermill* hearing was held on January 19, 2017, and she resigned nearly a month later on February 16, 2017.

[27] In *Stone*, the Fourth Circuit expressed that "[u]nder different circumstances, [the time pressure and lack of advice from counsel] might be sufficient to raise a genuine issue as to the voluntariness of his resignation." *Stone*, 855 F. 2d at 177. The court concluded that the few hours the doctor was given were sufficient in that particular case because the record as a whole showed that he was, in fact, able to reach a "carefully considered choice" within that time. *Id.* at 177-78.

that option. Then, in her letter on February 16, she explained that "[b]ecause of the options presented [she] decided to resign so that [her] professional career and character will not be tarnished." In light of the other factors we identify, we conclude that, as in *Stone*, this choice was a "carefully considered" one. *Id.* at 177-78.

Accordingly, although her options were unpleasant, we hold that there was no genuine dispute of material fact generated as to whether Ms. Watson voluntarily resigned, meaning that she was not deprived of her protected property interest by state action. Therefore, "the question of what process is required and whether any provided could be adequate in the particular factual context is irrelevant, for the constitutional right to 'due process' is simply not implicated." *Id.* at 172.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED, IN PART, AND REVERSED, IN PART; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID 75% BY APPELLANT AND 25% BY APPELLEE.