Circuit Court for Prince George's County
Case No. CAL18-22868

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1752

September Term, 2019

BRENDA ALLEN

v.

BOARD OF EDUCATION FOR PRINCE GEORGE'S COUNTY

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

JJ.

Opinion by Leahy, J.

Filed: January 25, 2021

Appellant, Brenda Allen ("Ms. Allen"), appeals from the dismissal of her amended complaint filed against the appellee, Board of Education for Prince George's County, Maryland ("Board"), in the Circuit Court for Prince George's County.

Prior to filing the underlying complaint, Ms. Allen filed an administrative appeal before the Board following her termination from her employment as Director of Purchasing and Supply Services in June, 2016. Rather than pursue this action, Ms. Allen filed a "Complaint/Action for Writ of Mandamus" in the Circuit Court for Prince George's County that included one count under 42 U.S.C. § 1983, and alleged, among other things, that Ms. Allen was discriminated against and denied a "full pre and post-termination due process hearing." The circuit court granted the Board's motion to dismiss the mandamus action with prejudice on May 11, 2017.

On June 30, 2017, Ms. Allen filed another complaint in the United States District Court for the District of Maryland. This complaint contained the same statement of facts as the complaint for writ of mandamus. In addition to one count under 42 U.S.C. § 1983, the federal complaint also included counts alleging wrongful discharge, defamation *per se*, and a claim under Maryland Code, State Personnel and Pensions Article, (1993, 2015 Repl. Vol., 2016 Supp.), §§ 5-301-314 ("Maryland Whistleblower Law"). On November 28, 2017, the federal court granted the Board's motion to dismiss on the grounds that the claims were barred by the doctrine of res judicata, and even if they were not so barred, the court would not exercise jurisdiction over the merits of the case under the abstention doctrine.

Following the dismissal of her claims for the second time, Ms. Allen initiated a third lawsuit—the underlying action—on July 2, 2018. In her third complaint against the Board,

Ms. Allen alleged wrongful discharge, defamation *per se*, and retaliation based on the same set of operative facts alleged in the prior federal court and state mandamus actions. Almost one year later, after receiving a Notice of Contemplated Dismissal, Ms. Allen filed the operative amended complaint on June 3, 2019. On October 11, 2019, following a hearing, the circuit court granted the Board's motion to dismiss and entered an order dismissing the amended complaint with prejudice because Ms. Allen's claims were barred by res judicata. Ms. Allen timely appealed and presents four questions for our review, which we have rephrased and consolidated as follows:[1]

[1] The Questions Presented are listed in Ms. Allen's brief as follows:

I. "Did the court below err in dismissing Allen's claims as barred by res judicata because of previous court actions filed by her where the claims in each action or proceeding are not identical and in the prior actions there was not a final judgment on the merits?"

II. "Did the court below err in dismissing Allen's wrongful discharge claim as barred for failure to exhaust administrative remedies for disciplinary actions taken against school employees where the exhaustion principle should not apply because of waiver, estoppel, and futility?"

III. "Did the court below err in dismissing Allen's defamation claim as barred by the statute of limitations where defamatory statements were made within the one-year period preceding the filing of such a claim?"

IV. "Did the court below err in dismissing Allen's discrimination and retaliation claims as barred for failure to exhaust administrative remedies because Allen filed a complaint of discrimination that was cross-filed among the Prince George's Human Relations Commission, the Maryland Commission on Human Relations, and the Equal Employment Opportunity Commission, and there is no requirement under Maryland law that a complainant receive a 'right to sue' letter before going to court?"

I. Did the trial court err in dismissing Ms. Allen's claims as barred by res judicata?

II. Were Ms. Allen's wrongful discharge, discrimination, and retaliation claims barred for failure to exhaust administrative remedies?

III. Was Ms. Allen's defamation claim barred by the statute of limitations?

We hold that the circuit court did not err in dismissing Ms. Allen's amended complaint because it was barred by the doctrine of res judicata. While our determination under the doctrine of res judicata is dispositive, Ms. Allen's claims are also barred because she failed to exhaust her administrative remedies, and her defamation *per se* claim is also barred under the applicable statute of limitations.

BACKGROUND

Employment History[2]

On September 26, 2011, Brenda Allen was made the Acting Director of Purchasing and Supply Services for Prince George's County Public Schools ("PGCPS"). After working with PGCPS for six or seven months, Ms. Allen interviewed for the permanent position of Director of Purchasing and Supply Services on May 25, 2012. Three days later, on May 28, 2012, a member of the administration informed Ms. Allen that she was not selected for the position. Ms. Allen alleges that the individual explained that she was not selected because she did not have "school facing."[3]

[2] The facts concerning Ms. Allen's employment history are primarily drawn from the Amended Complaint.

[3] The record does not supply the meaning of "school facing."

On June 11, 2012, the permanent position was reposted with the instruction that previous candidates need not re-apply. Despite this instruction, Ms. Allen attempted to re-apply but was informed that the posting had closed early. Soon thereafter, Ms. Allen became aware that the position had been transferred to another department and filled by another female minority candidate who had previously applied.

On October 22, 2012, Ms. Allen submitted a letter to the Human Resources Department, requesting additional information about the selection process and the qualifications of the other candidates. Ms. Allen did not receive a response.

The position was reposted in December 2012. Ms. Allen applied again and was interviewed on March 25, 2013. During this time, Ms. Allen served as Acting Director and avers in her amended complaint that she was informed that "she was doing a great job" and "would eventually get the appointment."

Despite this assurance, the position of Director of Purchasing and Supply Services was offered to, and accepted by, another minority candidate in 2013. In response, Ms. Allen filed a complaint of employment discrimination with the Equal Employment Opportunity Commission and another with the Maryland Commission of Human Rights.[4] After Ms. Allen filed the complaints, the successful candidate stopped serving as Director of Purchasing and Supply Services, and Ms. Allen was promoted to the position. Ms. Allen then withdrew her complaints with the Equal Employment Opportunity Commission and the Maryland Commission of Human Rights.

[4] The complaints filed in 2013 with the Equal Opportunity Commission and the Maryland Commission on Human Rights are not in the record.

Ms. Allen continued to serve in the position of Director of Purchasing and Supply Services until she received a letter of termination on June 27, 2016, effective July 2, 2016, "on the grounds of incompetence." The letter was issued pursuant to the Board of Education Policy No. 4200. The policy stated in pertinent part:

> II. Matters Pursuant to Section 6-202 of the Education Article
>
> A. Upon the recommendation of the Superintendent, the Board of Education (the Board) may suspend or dismiss an employee for immorality, misconduct, insubordination, incompetency, or willful neglect of duty.
>
> Upon finding of just cause, the Superintendent shall communicate in writing to the employee:
>
> 1. A short and plain statement of the charges made by the Superintendent against the employee;
>
> 2. A concise statement of Superintendent's recommendation(s) to the BOE affecting the employee's employment status;
>
> 3. A statement of the legal authority for the Superintendent's actions and recommendations; and,
>
> 4. A statement of the time limit for requesting a hearing before the Board.

Just prior to receiving the letter, Ms. Allen and the chief financial officer of PGCPS, Ray Brown, had a serious disagreement about a contract award. Specifically, Ms. Allen alleged that Mr. Brown ordered her to approve a contract and award it to a specific vendor. Ms. Allen asserted that she refused to sign off on the contract because it was three million dollars higher than the other bids, and that her refusal resulted in hostility from Mr. Brown and others.

On June 27, 2016, Ms. Allen filed a Notice of Appeal to the Board and requested that she be placed on administrative leave pending review of her termination.[5] On July 2, 2016, Ms. Allen was escorted from her office at the close of business in front of staff. Ms. Allen alleges that after being physically escorted from the premises, she received phone calls from staff informing her that they were told that she was fired for accepting "kickbacks" from vendors after awarding them contracts. On September 2, 2016, Ms. Allen's counsel sent the Board the following letter:

> Please be advised that this office represents [Ms. Allen], in the Appeal of her June 27, 2016, termination of employment.
>
> I have called your office on several occasions to inquire about the status of this appeal to no avail. As you are aware, Ms. Allen has a protected property interest in her job/employment as a government employee, which entitles her to a federal constitutional claim for procedural due process that sounds under 42 U.S.C. § 1983.

[5] Ms. Allen's brief states that she re-filed a charge of discrimination with the Equal Employment Opportunity Commission and the "Maryland Commission on Human Relations" (presumably, the "Maryland Commission on Civil Rights"). The record on appeal contained a letter, dated May 17, 2018, to Ms. Allen's counsel from the State of Maryland Commission on Civil Rights stating,

> After careful review and consideration of the information that you provided, the Maryland Commission on Civil Rights is unable to take any further action on this matter for the following reason []:
>
> It has been determined that you have filed the same complaint of discrimination with the Prince Georges County Human Rights Commission. Therefore, the Maryland Commission on Civil Rights will take no further action in this matter.

It is unclear what happened with Ms. Allen' complaint before the Prince George's County Human Rights Commission. During oral argument, counsel for Ms. Allen explained that she did not have access to those records to supply to the court due to circumstances relating to the outbreak of COVID-19.

* * *

> It is imperative that I hear from your office no later than September 30, 2016, or suit will be filed in the Maryland Federal District Court.

On October 4, 2016, the Board sent Ms. Allen a letter notifying her of the appeal process. In its letter, the Board stated that the Notice of Appeal was delivered on June 29, 2016. The letter further stated, in pertinent part:

> Please be advised that the Board has decided it will consider this appeal following the submission of documents, affidavits, and if the Board deems such to be necessary, oral arguments by both parties. Consequently, you are requested to present all factual information that you wish the Board to consider through sworn affidavit(s) and submission of relevant documents, together with any legal argument you maintain is in support of your position.
>
> Such materials, with sufficient copies for each member of the Board of Education should be submitted to the Board of Education of Prince George's county . . . **within (30) thirty days** of your receipt of this letter[.]
>
> After receipt of all materials, the Board will determine if it deems it necessary to schedule oral arguments before it renders a final decision. If such determination is made, you will be informed of the specific date and time for the scheduling of oral arguments.

(Emphasis added). Ms. Allen requested an extension of time to provide the requested information. The Board extended the deadline to December 5, 2016.

On December 5, Ms. Allen did not submit affidavits or supporting documents; rather, she filed the mandamus action in the Circuit Court for Prince George's County and provided the Board with a copy of the complaint. Following Ms. Allen's filing of the mandamus action, the Board moved to dismiss the administrative appeal on or about

February or March of 2017, and Ms. Allen filed an opposition.[6] The Board never issued a ruling on the Board's motion to dismiss the administrative appeal.

Original Complaint in Prince George's County Circuit Court

On December 5, 2016, Ms. Allen filed a "COMPLAINT/ACTION FOR A WRIT OF MANDAMUS" in the Circuit Court for Prince George's County, captioned *Allen v. Board of Education of Prince George's County*, CAL 16-43869. In this single-count complaint, Ms. Allen averred that she "was denied her Constitutional Right to Due Process" under 42 U.S.C. § 1983 because she "was never presented with any specific details identifying the acts of incompetence or an opportunity to defend herself against the allegation(s)" that resulted in her termination. Ms. Allen further outlined her employment history, beginning with her selection as the Acting Director of Purchasing and Supply Services for Prince George's County Public Schools on September 26, 2011, her experiences serving in that role, her unsuccessful applications for the job as permanent Director of Purchasing and Supply Services on multiple occasions, and finally, her termination on June 27, 2016.

Ms. Allen asserted that she was not given adequate notice of her termination because the letter of termination did not provide her with "specific facts" outlining the Board's decision. According to Ms. Allen, the Board's only explanation that she was "terminated on grounds of incompetence" was inadequate and prohibited her from preparing a defense

[6] The Board's counsel stated during oral argument that the motion to dismiss the administrative appeal was filed in February or March of 2017.

properly. To move forward with the appeal process offered by the Board, she claimed, would be fundamentally unfair.

Ms. Allen requested that the court "command[] the [Board] to provide [her] with specific facts for her termination and afford her a post termination due process hearing." **S**he also sought "damages and costs." On December 8, 2016, the court entered an Order finding there was "no emergency warranting immediate action on the complaint for mandamus" and directing that "the case will proceed in due course."

The Board filed a Motion to Dismiss, or, in the alternative, a Motion to Stay Judicial Proceedings. In the motion and memorandum in support, the Board argued that the complaint for mandamus should be dismissed for failure to exhaust administrative remedies. Specifically, the Board argued that Ms. Allen was a non-certificated employee who was terminated from employment on June 27, 2016. Ms. Allen failed to "participate in her administrative appeal" before the Board as required by law, and, therefore, the Board asserted, she waived her administrative appeal rights and, as a result, "abandoned her right to seek judicial review of her termination appeal." In the alternative, the Board requested that the court stay the proceedings until completion of the administrative appeal "if this [c]ourt finds that [Ms. Allen] has not waived her rights to the underlying administrative appeal[.]" Ms. Allen never filed an opposition and the court ultimately dismissed her complaint on May 11, 2017, five months after it was filed, *with prejudice*.[7]

[7] On or about May 12, 2017, Ms. Allen filed a Memorandum in Support of a Motion for Reconsideration based on the court's decision to rule without extending the time for Ms. Allen to file an Opposition for the Board's Motion to Dismiss. On May 31, 2017, the (Continued)

Before obtaining a decision on her motion to reconsider dismissal of the mandamus action with prejudice, Ms. Allen filed a complaint in the United States District Court for the District of Maryland.

United States District Court for the District of Maryland

On June 30, 2017, Ms. Allen filed another suit against the Board in the United States District Court for the District of Maryland (Case 8:17-cv-01818-RWT), in which she alleged the very same facts that she alleged in the complaint for mandamus, with a few additional facts in support her defamation claim. The complaint asserted four causes of action: 1) violation of Ms. Allen's statutory and procedural due process rights pursuant to 42 U.S.C. § 1983; 2) wrongful discharge; 3) defamation *per se*; and, 4) violation of the Maryland Whistleblower Law.

On November 28, 2017, the district court granted the Board's motion to dismiss the complaint, in its entirety, on the ground that the claims were barred by res judicata. The court determined that Ms. Allen's claim under 42 U.S.C. § 1983 had already been raised and resolved in the prior mandamus proceeding,[8] and determined that res judicata also barred the additional claims,

Board filed its Opposition to the Motion for Reconsideration. The record on appeal does not reveal whether the court ruled on the motion to reconsider. During oral argument counsel for both parties verified that there has not been a ruling on the motion to reconsider.

[8] The federal district Court cited *Pat Perusse Realty Co. v. Lingo*, 249 Md. 33, 35 (1968) ("The basic rule of res judicata is that the facts or questions which were in issue in a previous action and were there in determined by a court which had jurisdiction of the parties and the subject matter are conclusively settled by a final judgement in the first case and may not again be litigated in a subsequent action between the same parties or their (Continued)

> since all of Allen's state claims—Counts II, III and IV—include the same parties, arise from the same nucleus of operative facts, and could have been brought in the first suit[.]
>
> * * *
>
> Furthermore, even if all of the counts were not subject to a final judgment and precluded by res judicata—which they are—this Court would still refrain from reviewing this case on the grounds of abstention because of the pending motion for reconsideration in the state court.

Second Complaint in Prince George's County Circuit Court

On July 2, 2018, Ms. Allen filed another complaint against the Board in the Circuit Court for Prince George's County based on the same operative facts as the mandamus and federal court actions. The complaint alleged wrongful discharge, defamation *per se*, and a whistleblower claim against the Board. Eight months later, in March 2019, the complaint was dismissed for failure to pay the initial docketing fee, and later reinstated on April 3, 2019. On June 3, 2019, Ms. Allen filed an amended complaint. In addition to the claims alleged in the original complaint, the amended complaint added a retaliation claim.

On July 3, 2019, the Board filed a motion requesting the amended complaint be dismissed with prejudice under Maryland Rule 2-322 because it was Ms. Allen's third attempt at bringing the same suit, and therefore, the claims were barred by res judicata. The Board also argued that the complaint should be dismissed because Ms. Allen had failed to satisfy mandatory conditions precedent to the suit, such as exhausting administrative remedies, and that the defamation claim was barred by the applicable one-year statute of limitations.

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privies even though the subsequent suit takes a different form or is based on a different cause of action.").

In her opposition, Ms. Allen argued that there was no prior final adjudication on the merits of her case. Ms. Allen also argued that she attempted to exhaust her administrative remedies but was unable to because the Board was unwilling to cooperate. Furthermore, she asserted that she was continuously receiving information regarding rumors around her termination, and thus the statutory limitation on her defamation claim had not passed.

On October 9, 2019, the trial court held a hearing on the Board's motion. Counsel for the Board argued that the case should be dismissed as barred by res judicata because this case had been previously tried almost "four times[.]" In the alternative, the Board argued that the suit was barred as a matter of law because Ms. Allen failed to exhaust her administrative remedies.

Ms. Allen's counsel argued that the writ of mandamus was filed because Ms. Allen was unaware why she was terminated. Counsel, it appears, initially attempted to explain to the court that the writ of mandamus and the amended complaint before the court were the same:

> [ALLEN'S COUNSEL]: So, the writ of mandamus and the complaint, it's the same case number, Your Honor, 16-43869. The only issue was a due process violation. And after the court ruled that it was no emergency and they would not - - they would instruct the government to let Ms. Allen know why she was being terminated. Basically, the issue became moot. The federal case, Your Honor - -
>
> THE COURT: So, can you tell me, when you're saying it became moot, it's marked as dismissed with prejudice. So, why is it marked as that and then there's nothing in the file, [] that indicates that there's been some type of reconsideration that's happened. There's been a motion to vacate this dismissal. There's nothing that says any of those things. Can you explain to the Court?

> [ALLEN'S COUNSEL]: Your Honor, there was a motion for reconsideration filed.
>
> THE COURT: But it was denied?
>
> [ALLEN'S COUNSEL] No, Your Honor. It's never been ruled on. It has never been ruled on to date. []
>
> THE COURT: Okay. So, if it's never been ruled on, then the dismissal with prejudice would stand unless you ask for a hearing or ask if they received it. I mean, I don't know why it was never ruled on but if something's been filed, you have to ask for a hearing. If nothing has been asked, I would assume that then the dismissal with prejudice in 2019 because they have been filed and not ruled on.

After the conclusion of the parties' argument, the court issued its ruling from the bench, announcing, in pertinent part:

> with regard to res judicata, it's (indiscernible, 12:52:19) bar to subsequent litigation and fully precludes the parties from attempting to relitigate the same issues. The plaintiff in this case [Ms. Allen] pursued the Board of Education [in] Prince George's County Circuit Court alleging violation of rights under 1983. That case was dismissed with prejudice after the motion to dismiss was filed and no opposition was filed with regard to that. And it was dismissed with prejudice.
>
> Then being a motion for reconsideration that was filed in that case, appears not to be ruled on, which means that the motion to dismiss with prejudice is still standing.
>
> The case then went to federal court alleging additional claims of wrongful discharge, defamation per se, whistle blower and another 1983 claim. All stemming from the same common or same operative facts that were established in the first complaint. [Ms. Allen] argues that the discrimination claim could not have been made because of the 180 days. There was room to amend that. There was room to oppose the motion to dismiss but none of those things occurred in the first case.
>
> The federal court has indicated . . .those facts are the same and they could have been tried and wounded [sic] to the first complaint that was filed with the writ of mandamus complaint slash writ of mandamus.

> Res judicata applies to all matters actually litigated or that could have been litigated. And this [c]ourt finds that those matters could have been litigated in the first action. That there had been no new facts that would justify that plaintiff re-litigating this issue.
>
> **So, therefore, the [c]ourt does find that res judicata has occurred and that it would bar all claims in this matter.**

(Emphasis added). On the same day, the court signed an order, entered on October 11, 2019, granting the Board's motion, and stating that "the Amended Complaint is hereby dismissed *with prejudice*, and that all claims therein are barred as the result of *res judicata*[.]" (Emphasis in original). Ms. Allen filed a notice of appeal on October 29, 2019.

STANDARD OF REVIEW

When reviewing the grant of a motion to dismiss, the Court reviews the decision considering "whether the trial court was legally correct." *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019) (*quoting Davis v. Frostburg Facility Operations LLC.*, 457 Md. 275, 284 (2018). Thus, the Court will review this matter without deference.

DISCUSSION

I.

Res Judicata[9]

A. The Parties' Contentions

Before this Court, Ms. Allen contends the trial court erred by dismissing her amended complaint on the ground that her claims were barred by res judicata because each element of res judicata was not present. Specifically, she argues that the claims presented in the mandamus action and the federal court action were not identical to those presented in the amended complaint, even though the parties and the underlying facts were the same. She maintains that the only issue before the court in the mandamus action was the adequacy of the notice of her termination from employment. Ms. Allen also asserts that the prior actions were not final judgments on the merits, and that without discovery, many issues in those cases were not "ripe" for review.

Alternatively, even if the elements of res judicata were present, Ms. Allen contends the instant case represents a "special circumstance" as discussed in *Mettee v. Boone*, 251

[9] On November 30, 2020, Ms. Allen's counsel filed a "Motion to File Supplemental Reply Brief and/or Take Judicial Notice" accompanied with a Supplemental Reply Brief. Oral argument was already scheduled for December 8, 2020—nine days after the filing. In accordance with Md. Rule 8-502, an "appellant may file a reply brief not later than the earlier of 20 days after the filing of the appellee's brief or ten days before the date of scheduled argument." "Although the Maryland Rules provide for the filing of a reply brief [] there is no provision for the filing of supplemental, additional or amended briefs." *Boone v. State*, 3 Md. App. 11, 36 (1968). The Board opposed the motion, and, during oral argument, the Board's counsel argued that the supplemental reply brief should not be admitted due to the lateness of the filing and that, although the motion stated, "[t]he addition only addresses the issue of [r]es [j]udicata[,]" Ms. Allen's counsel attempted to file an entirely new reply brief. We deny the motion to file the supplemental reply brief.

Md. 332 (1968). She asserts that, although the circuit court granted the Board's Motion to Dismiss with prejudice, the court never addressed whether she was provided due process; i.e., whether the Board gave her "fair [and] adequate notice." Ms. Allen maintains that the action filed in the United States District Court for the District of Maryland was dismissed because the § 1983 claim was barred by res judicata and that court lacked subject-matter jurisdiction to hear the other claims.

The Board responds that the circuit court properly dismissed the amended complaint because each of the three elements of res judicata was present to bar Ms. Allen's claims. More specifically, the Board contends that: 1) it is undisputed that Ms. Allen and the Board are the same parties in all cases filed since the first suit in 2016; 2) the claims presented in the current action are identical to the claims determined in the prior actions; and 3) there were two final judgments, in the Circuit Court for Prince George's County and in the federal district court, that bar the parties from relitigating the instant case. The Board argues that, under our caselaw, the dispositive question is whether the claims could have been included in the prior suit. In the instant case, the Board urges, since the claims presented in the underlying case could have arisen from the 2016 termination, they are also barred by res judicata.

Ms. Allen replies that the requirements of res judicata are not satisfied because the claims are not identical and there was no final judgment on the merits. She points out that, in the state court action, there was never a ruling that addressed the administrative appeal, and that a dismissal for lack of jurisdiction in the federal action was not an adjudication on the merits.

B. Analysis

Under the doctrine of res judicata, a final judgment between the same parties "and their privies" will bar another suit based on the same cause of action, and "is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit." *Alvey v. Alvey*, 225 Md. 386, 390 (1961). "Res judicata restrains a party from litigating the same claim repeatedly and ensures that courts do not waste time adjudicating matters which have been decided or *could have been* decided fully and fairly." *Anne Arundel Cnty. Bd. of Educ. v. Norville*, 390 Md. 93, 107 (2005) (emphasis in original).

> The elements of res judicata, or claim preclusion, are:
>
> 1) that the parties in present litigation are the same or in privity with the parties to the earlier dispute; 2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and 3) that there was a final judgment on the merits.

Colandrea v. Wilde Lake Cmty. Ass'n, Inc., 361 Md. 371, 392 (2000). Maryland Courts have established that:

> [t]he basic rule of res judicata is that facts or questions which were in issue in a previous action and were therein determined by a court which had jurisdiction of the parties and the subject matter are conclusively settled by a final judgement in the first case and may not again be litigated in a subsequent action between the same parties or their privies even though the subsequent suit takes a different form or is based on a different cause of action.

Pat Perusse Realty Co. v. Lingo, 249 Md. 33, 35 (1968) (internal citations omitted).

The parties do not dispute that the first element of res judicata is met as Ms. Allen and the Board are the same and only parties involved in the lawsuits under consideration. The resolution of this case turns on whether the second and third elements are satisfied.

The second element requires that "the claim presented in the current action is identical to the one determined in the previous adjudication," *Colandrea*, 361 Md. at 392, and the Court of Appeals has explained that this principle of res judicata applies to "*all matters actually litigated or that could have been litigated[.]" Id.* at 388 (citations omitted) (emphasis added). Accordingly, in the instant case, we must determine whether the multiple claims asserted in the underlying amended complaint filed in March 2019 are "matters actually litigated or that could have been litigated" in the mandamus action filed in the Prince George's County Circuit Court in 2016. As Judge Raker observed in *Norville*, the analysis is not as straightforward where the first court did not rule directly on a matter presented in the second court:

> When a prior court has entered a final judgment as to the matter sought to be litigated in a second court, the claim analysis is usually uncomplicated. *See FWB Bank v. Richman*, 354 Md. 472, 493, 731 A.2d 916, 927 (1999). It is when a court has not ruled upon a matter directly that the analysis becomes more complex, "for then the second court must determine whether the matter currently before it was fairly included within the claim or action that was before the earlier court and could have been resolved in that court." *Id.* We have adopted the transactional test of the Restatement (Second) of Judgments § 24 to address the latter kinds of cases, which states as follows: "What factual grouping constitutes a 'transaction' and what groupings constitute a 'series,' are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage."

Norville, 390 Md. at 108-09 (quoting *FWB Bank v. Richman*, 354 Md. 472, 493 (1999)). In *Norville*, just like this case, an Anne Arundel Board of Education employee, Mr. Norville, filed several suits after he was discharged from employment. *Id.* at 98-100. Mr. Norville filed the first case in the United States District Court for the District of Maryland stated several different causes of action around what he alleged was his wrongful termination, including age discrimination under the Age Discrimination in Employment Act ("ADEA") and Maryland Code Article 49B, unjust enrichment, quantum meruit, and intentional infliction of emotional distress. *Id.* at 99. After his claims were dismissed by the federal court, with prejudice, Mr. Norville filed a second case in the Circuit Court for Anne Arundel County. *Id.* at 101. Once again, he claimed that he was owed relief as a result of his termination from employment, asserting largely the same causes of action, but this time he included several new theories. *Id.* The trial court dismissed all claims except the ADEA claim, which it ultimately dismissed based on the Board's Eleventh Amendment immunity. *Id.* at 102.

The Court of Appeals did not reach the Eleventh Amendment issue because it held that this second case was barred by res judicata, even though Mr. Norville advanced another theory of liability under the ADEA that was not raised in the federal case*:*

> Norville's "second theory" simply is another attempt to hold the Board liable for the same case of age discrimination which the parties have litigated previously. After losing his case in federal court, Norville cannot apply his new theory to the same set of facts, when this theory is grounded upon a statute that was effective during the litigation of his prior action.

Id. at 111.

Applying the principles articulated in *Colandrea* and *Norville,* we hold that the circuit court did not err in concluding that the claims asserted in the underlying amended complaint arose from the same nucleus of facts and transactions that were addressed in the mandamus action and the federal action. Indeed, although the complaint for mandamus included only one count alleging a violation of Ms. Allen's constitutional right to procedural due process under 42 U.S.C. § 1983, the first 14 paragraphs of the "statement of facts" are identical, word for word, to the first 14 paragraphs of the "statement of facts" in the underlying amended complaint. The remaining paragraphs of the statements of facts in the two complaints are also largely identical, except that the amended complaint: 1) includes some more detail in paragraphs 17 and 18 about Ms. Allen's disagreement with Ray Brown; 2) adds one paragraph alleging, "Ms. Allen has also been told by current employees of the [Board] that management is circulating 'malicious rumors' that Ms. Allen was terminated because she was paid by certain contractors to steer contracts to them. Ms. Allen was escorted [out] of the job by security in the presence of her staff [.]"; and 3) adds a final paragraph asserting that "Ms. Allen vehemently denies this and is fearful that if malicious rumors like this are allowed to circulate and not stopped that it will impact her professional career[.]"

Clearly, all the causes of action alleged in the underlying amended complaint stem from the same set of facts concerning her termination from employment by the Board and "could have been litigated" in the mandamus action. *Colandrea,* 361 Md. at 388. Ms. Allen's attempt to add a new claim of defamation under a theory of "continuing defamation" fares no better than the new theory advanced in *Norville*, because "[b]y

splitting theories applicable to the same case, [Ms. Allen] seeks a second bite at the apple in the Maryland court system, which res judicata does not permit." *Norville,* 390 Md. at 112. The federal district court recognized this when it dismissed the same case filed there based on the same facts and causes of action. The *only* difference between the claims asserted in federal court and the amended complaint is the retaliation claim that was added in the underlying case—apart from that, the claims and facts presented are *identical*.

Lastly, Ms. Allen argues that the third element of res judicata was not satisfied because the circuit court's dismissal of the mandamus action, "with prejudice," did not constitute a final adjudication on the merits. We disagree.

Recently, in *Anand v. O'Sullivan,* 233 Md. App. 677 (2017), we addressed this issue in a case involving the foreclosure on a deed of trust that secured a loan. In January 2007, the appellants, Chandra and Renu Anand, refinanced their property by borrowing funds from Saxon Home Mortgage ("Saxon"). *Id.* at 679. Appellants borrowed a total of $729,100 from Saxon, evidenced, in part, by a $500,000 promissory note that was secured by a first lien deed of trust. *Id.* at 681. In August 2008, appellants defaulted on their loans and, on December 30, 2008, they filed suit in the Circuit Court for Montgomery County against Deutsche Bank, Saxon, and the predecessor substitute trustees, hoping to have the lien adjudicated unenforceable and asserting causes of action for negligence, federal Truth in Lending Act violations, and mortgage fraud. *Id.* On April 22, 2010, the circuit court granted a motion to dismiss the appellants' December 2008 suit against all defendants, with prejudice, which was not appealed. *Id.* at 683.

The property was scheduled to be sold at auction on June 16, 2010. *Id.* However, appellants filed a second suit on June 10, 2010, against the same defendants listed in the 2008 suit: Deutsche Bank, Saxon, and the predecessor substitute trustees. *Id.* The second suit, like the first, asserted negligence claims and mortgage fraud claims against all the defendants and also sought declaratory and injunctive relief to prevent the foreclosure sale of the property. *Id.* Following a hearing, the court ruled that it would grant Saxon's motion requesting that Saxon be dismissed. *Id.* at 684. Regarding the remaining defendants, Deutsche Bank and the substitute trustees, the court found "all of those matters which were or could have been litigated in that case [*i.e.*, the Anands' first suit] are barred by the doctrine of res [] judicata[.]" *Id.*

In December 2015, Deutsche Bank appointed new substitute trustees, who filed yet another order to docket foreclosure in the Circuit Court for Montgomery County. *Id.* at 685. Appellants filed a motion asking the court to dismiss the action on February 25, 2016. *Id.* at 685. In substantiating the motion, the appellants asserted that their loans from Saxon had been rescinded. *Id.* at 685-86. The circuit court denied the motion, concluding, in relevant part, that "**the issue of rescission was brought up in this initial pleading, and this case went on for two years []. [Appellants] had the opportunity at that time to show the rescission documentation that has been brought forward here. That argument wasn't made thoroughly at that time, and now it's, at least in this member of the bench's opinion, too late.**" *Id.* at 688 (bold emphasis in original).

On appeal, we analyzed whether the appellants' claims should be dismissed pursuant to the doctrine of res judicata. *Id.* at 697. We found that each of the three elements

of res judicata was satisfied. *Id.* at 697-701.[10] We determined that the appellants' December 30, 2008 suit, which was dismissed with prejudice by the circuit court on April 22, 2010, was a "final judgment on the merits." *Id.* at 700 (quoting *Norville,* 390 Md. at 113-14 (holding that a decision of the trial court to grant the Board's Motion to Dismiss, pursuant to Fed. R. Civ. P. 12(b)(6), constituted a final judgment on the merits, which satisfies the third element of res judicata). Accordingly, we held that appellants' claims were barred by res judicata.

In the instant case, the mandamus action was, like the prior action in *Anand,* dismissed on motion, with prejudice, by the circuit court. 233 Md. App. at 683. The issues before the circuit court in 2016 were fully presented in the complaint and in the Board's motion to dismiss and accompanying memorandum of law. Ms. Allen had every opportunity to respond to that motion before the circuit court dismissed the action, with prejudice, five months later. Accordingly, we hold that the judgment dismissing the mandamus action was an adjudication on the merits. *Anand,* 233 Md. App. at 700.

Although the elements of res judicata may be present in this case, relying on *Mettee v. Boone*, 251 Md. 332 (1968), Ms. Allen argues that "special circumstances" should preclude us from barring her claims. We disagree with Ms. Allen's reading of *Mettee* as well as her contention that special circumstances exist in this case.

[10] In regard to the third element, the Appellants contended that their rescission claim was not barred because a "void judgment is not a judgment at all" and the "the void nature of the lien imposed by virtue of the subject Deed of Trust" was capable of attack at any time. *Id.* at 700. We noted the "fallacy in this argument" that Appellants were not "challenging a void judgment." *Id.*

In *Mettee*, the Court of Appeals considered how the petitioner utilized operative facts to claim a breach of contract, then later used those same facts in an attempt to establish claims for "negligence, a breach of warranties expressed and implied in the contract, and the fraudulent and deceitful installation of an inferior quality of pipe." *Id.* at 341. In analyzing these facts, the Court quoted *Alvey*, in which the Court Appeals held:

> Here the appellant seeks to litigate an issue which he could have litigated in the first case . . . [E]nlightened hindsight must gave way to a higher principle based on the protection and security of rights, and the preservation of the repose of society.'
>
> The appellant uses the same facts as in the first case but only seeks different conclusions. He claims that since the first bill did not allege fraud, res judicata does not apply. If this were so, it would strike at the essence of res judicata and the stability of legal decisions.'

Id. at 340-41 (quoting *Alvey v. Alvey*, 225 Md. 386, 389-90 (1961). The Court then highlighted the quote used by Judge Marbury to conclude the *Alvey* opinion stating,

> [i]n trying this question, I believe I state the rule of the Court correctly that where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to bring forward their whole case**,** and will not, **except under special circumstances permit the same parties to open the same subject of litigation** in respect of a matter which might have been brought forward as a part of the subject in contest, **but which was not brought forward only because they have from negligence, inadvertence, or even accident, omitted a part of their case. The plea of res judicata applies, except in special cases, not only to the points upon which the Court was required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence might have brought forward at the time.**

Id. (quoting *Alvey*, 225 Md. at 391) (emphasis added). Ms. Allen cites Judge Marbury's mention of "special circumstances" but ignores the stern language that follows, precluding "every point which properly belonged to the subject of litigation, and which the parties,

exercising reasonable diligence might have brought forward." *Id.* In *Mettee*, the Court of Appeals found no "special circumstances," but rather, that petitioner "should have known that the same facts, having once been used, without success, in pursuit of one conclusion, *cannot*, under another label, still be used to obtain a different conclusion." *Id.* at 341 (emphasis added). The Court of Appeals saw no reason to disturb the judgments of the circuit court. *Id.* Here, we discern no special circumstances that warrant a determination that the trial court erred in applying the doctrine of res judicata where all of the elements of the doctrine are satisfied. The failure to bring a claim due to "negligence, inadvertence, or even accident" does not rise to the level of special circumstances that warrant reversal in this case. *Alvey*, 225 Md. at 391.

For the foregoing reasons, we hold that the circuit court did not err in ruling that the claims presented in the amended complaint are barred as a matter of law under the doctrine of res judicata.

II.

Failure to Exhaust Administrative Remedies and Statute of Limitations

Although our determination under the doctrine of res judicata is dispositive, and the circuit court dismissed Ms. Allen's operative complaint on this basis, we will address Ms. Allen's contentions on appeal that the circuit court erred in ruling that she failed to exhaust her administrative remedies and in dismissing her defamation claim as barred by the statute of limitations. To be sure, these issues were briefed and argued below. Moreover, the Court of Appeals has instructed, "time after time," that 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).

Although statute of limitations "are not ordinarily jurisdictional," *Kim v. Comptroller of the Treas.*, 350 Md. 527, 536 (1998), we also consider whether the statute of limitations barred Ms. Allen's defamation claim, given that limitations was an additional basis to dismiss Ms. Allen's defamation claim.

A. Administrative Exhaustion

1. Parties' Contentions

While the circuit court did not bar Ms. Allen's claims for failure to exhaust administrative remedies, the court enunciated at the hearing:

> So, we're clear that administrative remedy did not - - was not completed. You filed a lawsuit. So you did not exhaust your administrative remedy. You filed a lawsuit.

Ms. Allen apparently understands that the circuit court dismissed her claim on this basis, in addition to barring her claims under the doctrine of res judicata.

Ms. Allen contends the trial court erred in dismissing her wrongful discharge claim, discrimination claim, and retaliation claims as barred for failure to exhaust administrative remedies. First, she argues her wrongful discharge claim should not have been barred, because, although she concedes that the Board had primary jurisdiction, the Board waived its jurisdiction. In the alternative, Ms. Allen asserts she was excused from her obligation

to exhaust the administrative remedies presented by the Board "because it became futile to do so." As Ms. Allen avers, the "Board did not follow its own procedures and did not provide adequate or available procedures which would have allowed [Ms.] Allen to exhaust[] her administrative remedies."

Second, Ms. Allen contends that she had "satisfied the requirements for bringing" her discrimination and retaliation claims. Ms. Allen asserts that she satisfied her requirements because the amended complaint was cross-filed alongside complaints to the Prince George's Human Relations Commission, the Maryland Commission on Human Relations, and the Equal Employment Opportunity Commission. Ms. Allen contends that there is no requirement under Maryland law that a party receive a "right to sue" letter before pursuing the matter in court.

The Board contends that personnel matters for public school employees fall under the primary jurisdiction of the State Board. Because, pursuant to its authority under the Education Article of the Maryland Code, the Board "enacted an entire regulatory scheme to allow an appellant an avenue to adjudicate those matters to a final decision before the State Board," an appellant is required to exhaust administrative remedies prior to pursuing judicial review before a circuit court.

Ms. Allen replies that she tried to pursue administrative remedies before filing suit, but the Board failed to "follow its own procedures or to provide adequate or available procedures that would have allow[ed] [Ms.] Allen to fully exhaust administrative remedies." Specifically, Ms. Allen contends that she "never received a proper explanation regarding the reason for her termination as needed to prepare a defense, and [the Board]

never set the matter for hearing nor rendered a decision on her appeal, contradicting its own Board [P]olicy No. 4200."

2. Primary Jurisdiction and the Doctrine of Exhaustion

The doctrine of exhaustion of administrative remedies requires that, in situations where a party's claim "is enforceable initially by administrative action," the party must "fully pursue administrative procedures before obtaining limited judicial review[.]" *Maryland-Nat'l Cap. Park & Plan. Comm'n v. Washington Nat'l Arena*, 282 Md. 588, 602 (1978) (citing *Mazzola v. New England Tel. Co.*, 363 A.2d 170, 174 (Conn. 1975)); *see also Arroyo v. Bd. of Educ. of Howard Cnty.*, 381 Md. 646, 661 (2004) (explaining that "[t]he exhaustion of administrative remedies doctrine requires that a party must exhaust statutorily prescribed administrative remedies . . . before the *resolution* of separate and *independent* judicial relief in the courts") (emphasis in original). The doctrine rests on "sound reasoning":

> The decisions of an administrative agency are often of a discretionary nature, and frequently require an expertise which the agency can bring to bear in sifting the information presented to it. The agency should be afforded the initial opportunity to exercise that discretion and to apply that expertise. Furthermore, to permit interruption for purposes of judicial intervention at various stages of the administrative process might well undermine the very efficiency which the Legislature intended to achieve in the first instance. Lastly, the courts might be called upon to decide issues which perhaps would never arise if the prescribed administrative remedies were followed.

Arroyo, 381 Md. at 661-62 (quoting *Soley v. State Comm'n on Hum. Rels.*, 227 Md. 521, 526 (1976)).

"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*, 232 Md. App. at 205 (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 (2004) (cleaned up) (quoting *Zappone*, 349 Md. at 60-61). The Court of Appeals has held that the "very nature of the administrative framework of the Education Article implicitly indicates that it is meant to grant ***primary jurisdiction to a board of education*** in questions involving controversies and disputes that arise under the provisions of the Education Article." *Id.* at 663 (emphasis added).

The grant of authority vested to the State Board of Education is expansive. Our Court of Appeals has explained that the State Board's authority under the Education Article "constitutes a visitatorial power of such comprehensive character as to invest the State Board with the last word on any matter concerning education policy or the administration

of the system of public education." *Monarch Acad. Balt. Campus, Inc. v. Balt. City Bd. of Sch. Comm'rs*, 457 Md. 1, 13 (2017) (citation omitted). This purview includes personnel matters, as noted in section 6-202 of Education Article. Maryland Code (1978, 2014 Repl. Vol.), Education Article ("EA"), § 6-202 (suspension and dismissal of teachers, principals, supervisors, assistant superintendents or other professional assistants).[11] The Maryland Code further directs that "educational matters that affect the counties shall be under the control of a county board of education of each county," EA § 4-101(a), and section 6-202 contemplates that personnel issues are first addressed before the county board and then may be appealed to the State Board, EA § 6-202(a)(1), (4). The General Assembly confers upon each county board a variety of powers and duties, including, most relevant for our purposes, the authority to "[a]dopt, codify, and make available to the public bylaws, rules, and regulations not inconsistent with State law, for the conduct and management of the county public schools." EA § 4-108(4).

Consistent with this authority, the Board adopted Board of Education Policy No. 4200 on June 17, 2010. Policy No. 4200 provides, in pertinent part:

> II. Matters Pursuant to Section 6-202 of the Education Article
>
> A. Upon the recommendation of the Superintendent, the Board of Education (the Board) may suspend or dismiss an employee for immorality, misconduct, insubordination, incompetency, or willful neglect of duty.

[11] We cite to the version of Title 6 of the Education Article in effect on June 27, 2016, when Ms. Allen filed a Notice of Appeal to the Board. A new version of the Education Article took effect on October 1, 2018; the amendments allow a hearing before an arbitrator, in addition to a hearing before the county board. 2018 Md. Laws, ch. 13 (S.B. 639).

Upon finding of just cause, the Superintendent shall communicate in writing to the employee:

1. A short and plain statement of the charges made by the Superintendent against the employee;

2. A concise statement of Superintendent's recommendation(s) to the BOE affecting the employee's employment status;

3. A statement of the legal authority for the Superintendent's actions and recommendations; and,

4. A statement of the time limit for requesting a hearing before the Board.

B. All employees recommended for suspension without pay and/or dismissal shall have the right to request a hearing provided a request is made in writing to the [Board] within 10 business days of receipt of the written notice described in II., (A) above.

C. Any employee who receives written notice of a recommendation for suspension without pay and/or dismissal and who fails to request a hearing within 10 business days, shall have waived the right to request a hearing on such matters, and the allegations and charges contained in the notice shall be deemed by the Board to be valid and the Superintendent's recommendation accepted and final action on the employee's employment status.

The Policy further dictates that, at the hearing, "unless otherwise determined by the Board," the employee "shall have an opportunity to be heard in person or by a representative, and present witnesses," and that "the hearing shall be conducted in accordance with [EA § 6-203]." The Policy provides that an "employee may appeal from the decision of the Board to the State Board of Education within thirty (30) calendar days from the date of the Order of the Board."

Here, Ms. Allen challenged the termination of her employment "on the grounds of incompetence" and raised additional causes of action related to her employment.

Accordingly, because personnel issues are clearly within the jurisdiction of the State Board and the County Board, and the regulatory scheme offered an avenue to adjudicate these issues, we conclude that Ms. Allen's claims were under the primary jurisdiction of the State and County Board. We now turn to consider whether Ms. Allen fully pursued her administrative procedures before invoking the jurisdiction of the courts. *State v. State Bd. of Cont. Appeals*, 364 Md. 446, 457 (2001).

3. Analysis

Applying the relevant statutes, regulations, and decisional law, we conclude that Ms. Allen's claims related to her termination from employment are barred because she failed to exhaust her administrative remedies.

As referenced above, Policy No. 4200 provides the procedures for appealing a dismissal from employment and requires various steps be undertaken before a final administrative decision is issued. The only requirement that Ms. Allen completed is the first. The Policy directs the dismissed employee to request a hearing in writing within 10 business days, and Ms. Allen filed her Notice of Appeal the same date that she received her termination letter, also issued pursuant to Policy No. 4200.

Next, the Board directed that Ms. Allen submit documents and affidavits. Ms. Allen did not do so. Specifically, after Ms. Allen submitted her Notice of Appeal, the Board advised Ms. Allen of the appeal process in a letter on October 4, 2016. *See* Policy No. 2004 (providing procedure for pursuing appeal "unless otherwise directed by the Board"). The letter stated, in relevant part:

> **Please be advised that the Board has decided it will consider this appeal following the submission of documents, affidavits, and if the Board deems such to be necessary, oral arguments by both parties**. Consequently, you are requested to present all factual information that you wish the Board to consider through sworn affidavit(s) and submission of relevant documents, together with any legal argument you maintain is in support of your position.
>
> * * *
>
> **After receipt of all materials, the Board will determine if it deems it necessary to schedule oral arguments before it renders a final decision.** If such determination is made, you will be informed of the specific date and time for the scheduling of oral arguments.

(Emphasis added). Ms. Allen failed to comply with the appeal process as outlined in the letter directed to her. After receiving an extension of time, Ms. Allen did not submit affidavits or the supporting documents as requested. Instead, Ms. Allen filed a separate judicial proceeding for mandamus and provided the Board with a copy of the complaint.

Clearly, there was no hearing or proceeding before the Board, and no final decision by the Board in the appeal from Ms. Allen's termination from employment. Without a final decision from the Board, Ms. Allen had nothing to appeal to the State Board. Without a final agency determination by the State Board, Ms. Allen was barred from pursuing a judicial action on the same claim(s). *Arroyo*, 381 Md. at 660.

Ms. Allen contends that she is excused from pursuing her administrative action because the Board had not held a hearing or ruled on the Board's motion to dismiss. We are unpersuaded. It was Ms. Allen who failed to provide the necessary affidavits or documentation to support her appeal, as the Board directed. We fail to see how a party can be excused from the requirement to exhaust administrative remedies simply by declining

to pursue them. *See Univ. Sys. of Maryland v. Mooney*, 407 Md. 390, 413 (2009) ("Because we have recognized that the exhaustion of administrative remedies is a condition precedent to the right to sue, we affirm the dismissal of the Mooneys' complaint in the Circuit Court, rather than remand for further proceedings."). Ms. Allen does not request, nor does her case warrant, analysis under any of the recognized exceptions to the exhaustion doctrine. *See Priester*, 232 Md. App. at 200-17 (discussing exceptions to exhaustion doctrine). Although she claims the Board failed to provide her due process by failing to articulate the grounds on which her employment was terminated, her adequate remedy was to pursue this very contention in her appeal, and if necessary, in a petition for judicial review after obtaining a final agency determination.

Accordingly, we hold that Ms. Allen failed to exhaust the administrative remedies presented by the Board, and her claims are barred as a matter of law.

B. Statute of Limitations

Ms. Allen argues that the trial court erred in finding that the defamation claim was barred by the one-year statute of limitations. She contends that the defamation claim did not stem from one act that took place on or around June 27, 2016 but rather derived from rumors that were spread continuously following the incident.

The Board responds that "it would be impossible for [Ms. Allen] to state that she learned of the allegations that gave rise to the defamation cause of action less than a year ago, since she raised the exact same claim in her Complaint to the U.S. District Court on June 30, 2017."

In Maryland, the statute of limitations for a defamation claim is one year from the "date of accrual." Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings, § 5-105; *see also McClure v. Lovelace*, 214 Md. App. 716, 741-42 (2013). Accrual occurs either the day of publication, or, under the discovery rule, "when the [plaintiff] in fact knew or reasonably should have known" of the statement. *Id.* at 741 (quoting *Poffenberger v. Risser*, 290 Md. 631, 636 (1981)).

Here, Ms. Allen's factual allegation in the amended complaint is identical to the factual allegation set out in the complaint in the United States District Court for the District of Maryland.[12] That complaint was filed on June 30, 2017, and the underlying amended complaint was filed on July 3, 2019. Even if we charitably calculate the accrual date as the date that Ms. Allen filed her federal complaint, she was well outside the one-year limitations period when she filed the underlying complaint.

JUDGMENT OF THE CIRCUIT COURT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[12] We also note that Ms. Allen failed to allege facts relating to the alleged defamatory statement, including who made the statement, when it was made, and to whom. *See Samuels v. Tschechtelin*, 135 Md. App. 483, 544 (2000) (elements of defamation include (1) that the defendant made a defamatory communication to a third person; (2) that the statement was false; (3) that the defendant was at fault in communicating the statement; and (4) that the plaintiff suffered harm).