Circuit Court for Baltimore City
Case No. 24-C-17-006461

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3343

September Term, 2018

VENUS JACKSON

v.

BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS

Leahy,
Shaw Geter,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: September 20, 2021

The appellant, Venus Jackson, is employed by the appellee, Baltimore City Board of School Commissioners ("BCBSC"). On December 18, 2017, Ms. Jackson filed a complaint against BCBSC for breach of contract and for retaliation and harassment in violation of the Public School Employee Whistleblower Protection Act ("PSEWPA"), Maryland Code (2017, 2018 Repl. Vol.), Education Article ("EA"), §§ 6-901-906 (effective October 1, 2017). At the time, she held a teacher-level position at New Era Academy (the "Academy"), a public school in Baltimore City for students in grades 6-12, and claimed that her supervisors at the Academy retaliated against her after she "blew the whistle" on illegal grade-changing.

On December 19, 2018, following a hearing, the circuit court granted BCBSC's motion for summary judgment and entered an order signed on the same date dismissing the PSEWPA claims for failure to exhaust administrative remedies and for failure to file suit within six months of the alleged violations as required under the statute. The court also dismissed the remaining contract claim for failure to produce an employment contract.

Following her timely appeal, Ms. Jackson presents two questions for our review:

> "1. Did the lower court err when it awarded summary judgment to the School Board on Venus Jackson's PSEWPA claim when Ms. Jackson filed suit within six ("6") months of the retaliatory acts and reported illegal and retaliatory acts but the School Board failed to investigate?
>
> 2. Did the lower court err when it awarded summary judgment to the School Board on Venus Jackson's breach of contract claim when Ms. Jackson was a School Board employee, her salary was reduced and the contract states that 'the salary shall not be reduced for the remainder of the year?'"

We affirm the judgments of the circuit court. First, we conclude, as a matter of law, that Ms. Jackson's PSEWPA claims fail because all but one of the alleged retaliatory acts

by BCBSC predate the effective date of the PSEWPA, which does not apply retroactively. Even if PSEWPA applied to Ms. Jackson's remaining claim that BCBSC retaliated against her in April 2018 by eliminating her position, that claim is barred under the doctrine of exhaustion of administrative remedies. Second, we conclude that the trial court correctly found no evidence of a breach of contract and properly granted summary judgment on the breach of contract claim.

BACKGROUND

The Academy was founded in 2003 with the intention to replicate the success of the high performing Frederick Douglass Academy in Harlem, New York, which sends over 90% of its graduates to four-year colleges or universities. At the Academy, Ms. Jackson was an "Educational Associate" and a mathematics teacher by certification. As an Educational Associate, Ms. Jackson was a member of the Academy's leadership team and served as an Instructional Lead for Mathematics and English Language Arts. She took on various administrative tasks assigned by the Academy's principal, including serving as a master schedular, test coordinator, and a member of the mentorship team for teachers. Ms. Jackson also ran the after-school program at the Academy.

The After-School Program

The after-school program had the dual function of helping students who fell behind and providing after-hours courses for credit. Students in danger of failing were given an opportunity to make up failed assignments and pass their daytime classes. The after-school program also offered a "period 99" course, which allowed students to earn credit-hours

after school, independent of their regular daytime coursework. Ms. Jackson, as supervisor of the program, received a stipend in addition to her regular salary.

In January 2017, Kia Harper was assigned to the Academy as its interim principal. On February 27, 2017, Ms. Jackson received emails from three different instructors of the period 99 courses. One instructor informed Ms. Jackson that two children were "loaded [into a period 99 course] at the beginning of the term" but the instructor "was never emailed that they were added [to her period 99 course]" and that "[t]hey were essentially No Shows in [her] class." The instructor "[didn't] feel comfortable with grading [such] a student that may or may not have been informed of the additions to their schedule." The second instructor wrote that she "was told to give students grades who were enrolled in the 99 classes, but were not enrolled until the day before progress reports were due." A third instructor sent an email to Ms. Harper, copying Ms. Jackson and Ms. Jacque Hayden—Ms. Harper's direct supervisor—and likewise informed that she was "asked . . . to enter grades for the students in [her period 99] courses," but she had "never seen more than half of [those] students."

In response, on that same day, Ms. Jackson forwarded the two emails to Ms. Harper and Ms. Hayden as an attachment to an email in which Ms. Jackson stated:

> Good afternoon,
>
> It seems that the after-school program teachers have been asked to give grades for students that were entered in as period 99 courses without notification to me, the teachers, or most students. Some students said that they were notified as recently as two weeks ago. This is exactly what I discussed during our meeting on Tuesday, February 21, 2017. I pulled a few schedules and noted that some students had [p]eriod 99 courses added as recently as 02/17/2017. There seems to be a major disconnect regarding

> creating a matrix for needed graduation requirements, communicating with the after-school program coordinator, and guidance follow-up. All of these elements are necessary to assure student success. We've had several meetings were this has been discussed and addressed, to no avail. Could we schedule a time to meet?

The next day, February 28, 2017, Ms. Harper sent out an email to nine people involved in the after-school program and Ms. Hayden. In this long email, the interim principal first defined her understanding of "professional leadership" and catalogued the actions she had undertaken during her 34 days at the Academy. She underscored the importance of "educational leadership" vis-à-vis its impact on students' futures. Ms. Harper then announced:

> Unfortunately, systemic norms have created a culture of "covering our tracks" rather than fully understanding and reconciling what this act of selfishness does to our students. **I want to be very clear – I WILL NOT tolerate the "cover-my-tracks" type of culture anywhere that I lead; with children who depend on us every day, permitting or promoting that sort of culture is irresponsible, unprofessional, incompetent and can lead to what I consider professional bullying; we should want to be better than that for our children, not just at New Era, but system-wide.**

(Emphasis in original).

Ms. Harper then directed the remainder of her email specifically to the after-school program. She asserted that "[i]t is no secret that our after school program has not been operating efficiently" and that "both students and teachers have fallen victim to poor leadership[.]" While Ms. Harper assured teachers that she was not "out to get you," she deduced that the after-school program was in a "state of emergency." Another educational associate, Ms. Eleshia Goode, was "insert[ed] into the process" of developing a plan to correct the Academy's after-school program. In dealing with the "harsh reality," Ms.

Harper requested that each teacher respond to seventeen questions to "help [Ms. Harper to] assess our final action plan[.]" These questions included: whether there was guidance regarding "how the after school program was supposed to operate"; whether the teacher was provided curriculum; and "who has been in charge of the after school program thus far[.]" Ms. Harper concluded that "[w]e need to figure this specific challenge out together and immediately so that there is minimum impact of how this will affect our children."

Alleged Retaliatory Action and Grievances

About a week later, on March 6, 2017, Ms. Jackson met with Ms. Harper, who presented her with a "Performance Improvement Plan" ("PIP") that memorialized her removal as the coordinator of the after-school program effective March 3, 2017. The reason cited was "lack of appropriate management and oversight [of the after-school program]." Ms. Jackson's stipend, tied to her role in the after-school program, was eliminated. Instead of signing the PIP, Ms. Jackson requested union representation from the Baltimore Teacher's Union ("BTU").

By letter dated the same day, March 6, Ms. Jackson filed her first complaint with the Office of Staff Investigations under the BCBSC. She averred that: "Ms. Harper has assassinated my character and my formal complaint is in the following areas: professional bullying, undue harassment, defamation of character, and unreasonable and often impromptu task expectations without adequate provision of time for completion of task." She requested a meeting with Ms. Hayden, Ms. Harper, her BTU representative, and a human resources representative and sought that "all defamatory accusations, harassing statements and communications, inclusive of the PIP[, be] removed from [her] permanent

professional record." She also demanded compensation for her after-school work and that the "administration stop all slanderous, intimidating, and malicious unprofessional communications about [her] professional work."

On March 8, 2017, Ms. Jackson received a formal notice from the Staff Investigations Unit that she had been accused of having "falsified information regarding [the] after school program." After an investigation, the Staff Investigations Unit deemed the allegations "unsubstantiated" and closed the matter. Ms. Jackson later learned that Ms. Hayden was the complainant.

On March 23, 2017, Ms. Jackson filed a second formal grievance against Ms. Harper, this time to BTU. This letter was a verbatim reproduction of the formal complaint filed on March 6, 2017 to the Office of Staff Investigations. The BTU rendered Ms. Jackson's allegations into a "Uniform Grievance Report" on March 27, 2017 and summarized her grievance as follows:

> On or about February 21, 2017, Ms. Jackson became the target of her administrator, Ms. Harper. She has been routinely accused of not fulfilling her professional responsibilities, and required to meet professional expectations outside of her scope [of] duty and in comparison to other colleagues. Additionally, Principal Harper has stripped all authority away from Ms. Jackson as the Test Coordinator, ILT Chair, and School Grader, but has consistently added material that is defamatory to her professional record, while failing to include any material of a positive nature. Relief sought . . . that Ms. Jackson is no longer singled out by her principal and school leaders, and that she is given the same required professional courtesy as all other staff members at [the] school[.]

According to Ms. Jackson, no one followed up on either of her complaints.

After completion of the 2016/17 schoolyear, on or around July 13, 2017, Dr. Chanta Booker was assigned as the principal at the Academy.

On November 6, 2017, Ms. Jackson filed a third complaint, this time against Ms. Hayden. She stated:

> The purpose of this correspondence is to file a formal complaint to address the conduct of Ms. Jacque Hayden . . . . These behaviors include past and present defamation of character, filing a false and later unsubstantiated complaint with the Baltimore City Public Schools (BCPSS) Legal Department in March of 2017, and immediately moving toward corrective action without requesting a meeting, conference, or due course to discuss with me the allegations in the complaint.

Ms. Jackson alleged that, even though the claims against her were unsubstantiated, "Ms. Hayden told [her] new principal that [Ms. Jackson] had mismanaged funds and the program[.]" In addition, Ms. Jackson averred that Ms. Hayden had called her character into question before the Chief of Schools, and that accordingly, she was unduly deferred for a year from the New Leaders Aspiring Principals Program in June 2017. A deferral, Ms. Jackson claimed, prevented her potential promotion because successful completion of the program was required for promotion to a principal in the Baltimore public school system. Ms. Jackson alleged that Ms. Hayden influenced the person in charge and persuaded him that she was "brash and not a team player."

Procedural History in Circuit Court

On December 18, 2017, Ms. Jackson filed a complaint against BCBSC in the Circuit Court for Baltimore City for violations of the PSEWPA and for breach of contract. In her two PSEWPA counts, one for retaliation and the other for retaliatory harassment, she averred that she was targeted for "reporting BCPSS [Baltimore City Public School System] policy violations" relating to illegal grade changing in the after-school program. In her breach of contract count, she alleged that BCBSC breached her employment contract by

reducing her pay when it cancelled her after-school program stipend, among other "illegal reprisals." BCBSC answered the complaint with a general denial pursuant to Maryland Rule 2-323(d) and asserted fourteen affirmative defenses, including a failure to exhaust administrative remedies.

On April 9, 2018, Ms. Jackson received a notice in writing, signed by Ms. Booker, that "[d]ue to changes in our school budget, **your position has been eliminated from our school budget for FY 19, which means that you are surplus**." (Emphasis in original). However, the April 9, 2018 notice did not terminate Ms. Jackson's employment or result in a demotion in pay.[1] Rather, by the summer of 2018, Ms. Jackson was promoted to the New Leaders Aspiring Principals Program.

In response to the April 9th notice, Ms. Jackson amended her complaint on July 9, 2018 to include an allegation that BCBSC "engaged in additional retaliatory actions against [Ms. Jackson], including re-assigning [her] to a position as classroom teacher, then eliminating [her] position at [the] Academy. As a result of [BCBSC's] decision . . . , [Ms. Jackson] is considered 'surplus' and must interview for open positions within BCPSS."

Summary Judgment Motion

On November 14, 2018, after the conclusion of discovery, BCBSC filed a motion for summary judgment and supporting memorandum on all counts. In its memorandum, BCBSC contended that Ms. Jackson's PSEWPA counts failed because she "failed to file

[1] The April 9, 2018, notice specified: "Please note that while your assignment at our school has been impacted, you are still employed with the district. Additionally, the decision to eliminate your position was fiscal in nature, and not based on your performance."

her complaint within six (6) months as expressly required by [P]SEWPA"; "failed to exhaust her administrative remedies"; and failed to "produce evidence of a complaint of a violation as expressly required by [P]SEWPA. Regarding her claim for breach of contract, BCBSC asserted that Ms. Jackson had not produced "evidence to support any claims of a contractual breach," because Ms. Jackson "has admitted that at all times she has maintained her employment with BCBSC, maintained her employment salary with BCBSC, was never terminated by BCBSC, and was in fact promoted to a higher position by BCBSC."

Ms. Jackson filed an opposition to BCBSC's motion on November 30, 2018. Regarding her PSEWPA counts, Ms. Jackson raised five primary arguments. First, she contended that BCBSC admitted to all facts in the complaint by answering with a general denial Ms. Jackson's statutory claims under PSEWPA rather than a denial to each of Ms. Jackson's factual averments. Second, Ms. Jackson asserted that she timely filed suit within six months "of the ***employer's retaliation*** in response to her reports of misconduct" because BCBSC "continued its retaliatory acts after the original complaint was filed." (Emphasis in original). Third, Ms. Jackson exhausted her administrative remedies when she filed various grievances in 2017, and "her complaints were ignored." Fourth, Ms. Jackson complied with the PSEWPA "when she reported misconduct in writing to her supervisors." Fifth, BCBSC cannot absolve itself of Ms. Jackson's PSEWPA claim by asserting that "its employees 'had the authority' to reassign Ms. Jackson and remove her from positions she's held without citing to any facts regarding BCBSC's motivations."

In response to Ms. Jackson's assertion in her opposition that BCBSC admitted the facts in the complaint because its answer was a general denial, BCBSC filed a motion for

leave to amend its answer to Ms. Jackson's amended complaint. The circuit court did not render a decision on BCBSC's motion.

On December 19, 2018, the circuit court held a hearing on BCBSC's motion for summary judgment. First, counsel for BCBSC argued that Ms. Jackson failed to offer any support for her assertion that she was retaliated against for reporting grade-changing in violation of BCPSS policy. According to counsel for BCBSC, Ms. Jackson failed to present any admissible evidence to demonstrate her averments but only inadmissible items such as news clippings. Next, counsel for BCBSC argued that Ms. Jackson failed to exhaust administrative remedies and that the statute of limitations had run. Specifically, counsel averred that Ms. Jackson claimed a grievance in March 2017 but failed to file suit until December 2017, past the six months limitations period.

In response, counsel for Ms. Jackson first asserted that Ms. Jackson provided evidence in opposition to the summary judgment motion. This evidence included Ms. Jackson's deposition and emails to Ms. Harper and Ms. Hayden.

The circuit court judge then questioned whether Ms. Jackson could show that she exhausted administrative remedies:

> There's no correlation between her calling anybody and talking to supervisors and her being denied after school activities and if there were some correlation that would be an employee action that she should have taken to the union. That there should have been administrative processes. The BTU should have heard it. There should have been a hearing, a hearing officer or ALJ rendering an order. If she didn't like the order, an appeal, judicial review. She had to exhaust those administrative remedies before you could bring this action.

Counsel for Ms. Jackson answered, "with respect to the exhaustion issue, the Board and BCPSS, the Baltimore City Public Schools, they have no administrative remedies for whistle blowers."

The judge then questioned whether Ms. Jackson would have to proceed through administrative remedies for Ms. Jackson's breach of contract claim. Counsel responded that BCBSC could not identify the actions that Ms. Jackson was required to take in order to exhaust her administrative remedies. With regard to exhaustion for statutory claims, counsel averred that "each retaliatory action lends itself to an extension of that time period because it's . . . six months from that action[.]"

Counsel for BCBSC responded by pointing out that, because the alleged grade changing activity was no longer an issue in the 2017-18 school year after a new principal had been hired, "there's absolutely no nexus to that grade changing allegation [and] any alleged retaliation."

At the conclusion of the parties' arguments, the judge stated that she would "be issuing a written opinion in this case" but provided the "sum and substance of [her] opinion" in open court:

> [I]t suffices to say that when the [c]ourt is considering counts one and two of the [] amended complaint . . ., which alleged the whistle blower statute and retaliatory actions, the [c]ourt is mindful that it is required under the Education Article that [Ms. Jackson] exhaust [her] administrative remedies. In count three of the [] amended complaint where there's an allegation of breach of contract, it also requires that there'd be set forth sufficient facts to prove the existence of a contract and more importantly, the discharge by [Ms. Jackson] that is alleged in the complaint.
>
> The [c]ourt is mindful in reviewing the exhibits and the attachments made that (1) the [c]ourt does not find that [Ms. Jackson] had exhausted her

> administrative remedies; and (2) she does not find . . . a contract existed based on the paperwork that would have, the just cause to remove [Ms. Jackson] or in her [] amended complaint shows evidence of a breach of contract. Without those items, without that evidence, the [c]ourt has no other choice, but to grant [BCBSC's] motion for summary judgment[.]

The judge issued her "Memorandum and Order" granting BCBSC's motion for summary judgment on December 28, 2018. Among the court's factual findings, the court noted that:

> The Exhibits indicate that [Ms. Jackson] sent a complaint letter to the Baltimore Teacher's Union (BTU), and the BTU responded by filing a Level III grievance on behalf of [Ms. Jackson]. This grievance [] never made any allegations of retaliatory actions against [Ms. Jackson] for grade changing. The record shows that no other grievance report has been submitted to this [c]ourt by either party. [Ms.] Jackson admits that she has never had a meeting or hearing regarding any complaints she filed[.]
>
> [Ms. Jackson] is currently participating in the Aspiring Principals Program for the 2018/2019 school year, and has been promoted by BCBSC to the position of "resident principal", which could lead to a permanent principal position. Program participation is not contractual but mandates approval by the School Board. This position also requires change in union membership from BTU to the Baltimore City Public School Administrators and Supervisors Association (PSASA). **For the entirety of 2017 through the present, [Ms. Jackson] has not been terminated from her employment by BCBSC, and she never received a reduction in salary**.

(record citations omitted) (emphasis added).

For the PSEWPA claims, the circuit court granted summary judgment on two procedural grounds: (1) failure to file a timely suit within the statutory limit of 6 months; and (2) failure to exhaust administrative remedies. The court explained, regarding the first ground, that Ms. Jackson initially detailed the alleged violation by BCBSC when she sent a complaint letter to the BTU on March 23, 2017, and, pursuant to EA § 6-904(c), was required to bring her action "within 6 months after the alleged violation." The complaint

was untimely, the court reasoned, because it should have been filed by September 23, 2017, but was not filed until December 17, 2017.

The court also found that Ms. Jackson failed to exhaust her administrative remedies because Ms. Jackson, "through her own admission, filed one (1) Level III grievance through the BTU, [and] never filed a second grievance through BTU or through her current union PSASA." The court found that "[t]here is no evidence presented that any hearing took place regarding these issues, no evidence of an adverse decision against [Ms. Jackson], and no evidence of an appeal filed by [Ms. Jackson] for any adverse decision. There are administrative remedies yet available to [Ms. Jackson] prior to filing this civil action."

For her breach of contract claim, the court concluded that Ms. Jackson failed to provide any evidence of a contract or breach of that contract. First, the court underscored that Ms. Jackson "ha[d] not provided evidence indicating that the supplemental employment [relating to the after-school program] was contractual" and that neither party submitted an employment contract. Second, even if a contract was provided which limited Ms. Jackson's removal from the after-school program for "just cause," "BCBSC would have just cause to remove [Ms. Jackson] from her supplemental positions, as a matter of law." It was undisputed that Ms. Jackson "was being investigated for falsification of documentation for the after-school program."

Motion to Alter or Amend Judgment

Following the grant of summary judgment, on January 3, 2019, Ms. Jackson moved to alter or amend the judgment. In her memorandum in support, Ms. Jackson averred that

she had exhausted all administrative remedies and timely filed her PSEWPA claims and that BCBSC breached the salary provisions of her contract. Regarding exhaustion of administrative remedies, Ms. Jackson contended that, because "there was no Whistleblower policy in effect that would have protected [her] prior to January 8, 2018," there was no "administrative remedy for [her] to exhaust." Even if she had failed to exhaust administrative remedies, Ms. Jackson asserted that the appropriate remedy was to stay the proceedings. Ms. Jackson further asserted that any alleged reprisals that took place within the six months preceding the date on which she filed her complaint would not be time barred. Regarding her breach of contract claim, according to Ms. Jackson, summary judgment should not have been granted because BCBSC was prohibited from reducing Ms. Jackson's salary pursuant to COMAR 13A.07.02.01B, BCBSC breached her contract and breached its obligation to "operate in good faith and fair dealing." Finally, Ms. Jackson contended "summary judgment should be denied because BCBSC admitted to all facts in the complaint."

The circuit court denied Ms. Jackson's motion to alter or amend the judgment on February 7, 2019.

Ms. Jackson noted an appeal[2] to this Court on January 23, 2019.[3]

STANDARD OF REVIEW

Summary judgment is proper where the trial court determines that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. *See* Md. Rule 2-501. Accordingly, we review the trial court's legal determinations that Ms. Jackson failed to exhaust administrative remedies and failed to produce evidence supporting a contractual breach without deference. *In re Collins*, 468 Md. 672, 685 (2020).

We "independently review the record to determine whether the parties properly generated a dispute of material fact, and, if not, whether the moving party is entitled to judgment as a matter of law." *Kennedy Krieger Inst., Inc. v. Partlow*, 460 Md. 607, 632 (2018) (quoting *Chateau Foghorn LP v. Hosford*, 455 Md. 462, 482 (2017)). In doing so, "[w]e review the record in the light most favorable to the nonmoving party and construe

[2] Ms. Jackson filed her motion to alter or amend, pursuant to Maryland Rule 2-534, within ten days of entry of the court's order granting summary judgment, which stayed the time for filing a notice of appeal. *Johnson v. Francis*, 239 Md. App. 530, 541 (2018). During the pendency of Ms. Jackson's motion, Ms. Jackson filed a notice of appeal within thirty days of the court's order. The Court of Appeals has clarified that "a notice of appeal filed prior to the withdrawal or disposition of a timely filed motion under Rule 2-532, 2-533, or 2-534, is effective" but "[p]rocessing of that appeal is delayed until the withdrawal or disposition of the motion." *Edsall v. Anne Arundel Cnty.*, 332 Md. 502, 508 (1993).

[3] On October 8, 2020, Ms. Jackson filed with this Court a "Request to Consider Corrections to Factual Statements Presented During Oral Argument." In her Request, Ms. Jackson reiterated her prior argument and offered evidence that was not before the circuit court. We decline to consider any evidence that was not presented below and, therefore, is not properly before this Court. Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any . . . issue [except jurisdiction] unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

any reasonable inferences that may be drawn from the facts against the moving party." *Id.* at 632-33 (quoting *Chateau Foghorn LP*, 455 Md. at 482). "[O]nly where such dispute is absent will we proceed to review determinations of law[.]" *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 313 (2019) (first alteration in original). "[A]bsent exceptional circumstances, Maryland appellate courts will only consider the grounds upon which the lower court granted summary judgment." *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). One such exception, relevant here, 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." *Id.* (citation omitted).

DISCUSSION

I.

Public School Employee Whistle Protection Act

A. Parties' Contentions

Before this Court, Ms. Jackson asserts that the circuit court erred in granting summary judgment on her PSEWPA claims for two reasons. First, she contends that she filed a timely complaint for relief, "within 6 months after the alleged violation," because the School Board engaged in "many" retaliatory acts "within six months of December 18, 2017[.]" In support of her contention, Ms. Jackson references her removal "from the New Leaders Aspiring Principals program on June 21, 2017, a retaliatory action"; the BCBSC's refusal to investigate Ms. Jackson's complaint against Ms. Hayden and Ms. Harper; and the subsequent elimination of Ms. Jackson's position on April 9, 2018.

Second, Ms. Jackson maintains that she exhausted her administrative remedies or should be excused from this requirement. She asserts that BCBSC failed to define what administrative procedures needed to be exhausted. Instead, Ms. Jackson argues, as she did below, that her March 8, 2017 complaint, March 23, 2017 grievance, and November 6, 2017 complaint were sufficient acts taken to exhaust her administrative remedies, and that BCBSC filed to present any witnesses to dispute this contention. In the alternative, Ms. Jackson asserts that she qualifies under one of the exceptions to the requirement to exhaust administrative remedies. She avers that there "was no statutory remedy for which she could have been afforded relief, as the term exhaustion of administrative remedies is neither self-evident, nor defined, nor specifically identified in the statute."

Finally, Ms. Jackson asserts that, rather than dismiss the proceedings, the circuit court was required to impose a stay of the judicial proceedings, pursuant to *Monarch Academy Baltimore Campus, Inc. v. Baltimore City Board of School Commissioners*, 457 Md. 1, 13 (2017).

To the contrary, BCBSC asserts that the circuit court correctly granted BCBSC's motion for summary judgment as to Ms. Jackson's PSEWPA claims "as there is no dispute that [she] never exhausted her administrative remedies prior to filing suit, nor is there any dispute that she failed to file her [P]SEWPA claims within six months as is statutorily required." Specifically, as BCBSC avers, Ms. Jackson "failed to file ***any*** grievance related to the alleged retaliation for making claims of improper grade changing, which is the basis of her [P]SEWPA claim" within six months of the alleged retaliation. (Emphasis in original). Likewise, BCBSC contends that Ms. Jackson failed to exhaust her administrative

remedies because her "March 2017 grievance, the only administrative remedy she has ever sought, failed to make a claim of retaliation or any type of adverse employment action taken against her for reporting grade changing, which is the basis of her compliant [sic] in this case."

Before we can address the questions presented by Ms. Jackson, we must resolve a threshold jurisdictional issue, not raised by the parties below or before this Court, predicated on the fact that the effective date of the PSEWPA statute was not until October 1, 2017. We first summarize key provisions of PSEWPA and then analyze whether the statute may apply retroactively before turning to consider Ms. Jackson's claim.

B. The Act

The General Assembly enacted PSEWPA in 2017 to protect public school employees from reprisal for disclosing employer misconduct or refusing to participate in illegal activities. EA § 6-902. Specifically, PSEWPA states, in pertinent part:

> a public school employer **may not take or refuse to take any personnel action as reprisal** against a public school employee because the employee:
>
> (1) Discloses or threatens to disclose to a supervisor an activity, a policy, or a practice of the employer that is in violation of a law, rule, or regulation[.]

EA § 6-902 (emphasis added).

The protection offered to public school employees is conditioned upon the following three conjunctive requirements:

> (1) The public school employee has a reasonable, good faith belief that the public school employer has, or still is, engaged in an activity, a policy, or a practice that is in violation of a law, rule, or regulation;

(2) The public school employee discloses information that the employee reasonably believes evidences:
(i) An abuse of authority, gross mismanagement, or gross waste of money;
(ii) A substantial and specific danger to public health or safety; or
(iii) A violation of law; and

(3) The public school employee has reported the activity, policy, or practice to a supervisor or an administrator of the public school employer in writing and afforded the employer a reasonable opportunity to correct the activity, policy, or practice.

EA § 6-903.

If an employee satisfies these three conditions and suffers retaliation for legitimate whistleblowing, the employee "may institute a civil action in the county where: (1) [t]he alleged violation occurred; (2) [t]he employee resides; or (3) [t]he public school employer maintains its principal offices in the State." EA § 6-904(b). The General Assembly conditioned the cause of action upon administrative exhaustion and a statutory time bar:

(a) A public school employee shall **exhaust any administrative remedies** before instituting a civil action under this section.

* * * * *

(c) The action shall be **brought within 6 months** after the alleged violation of § 6-902 of this subtitle occurred, or within 6 months after the public school employee first became aware of the alleged violation of § 6-902 of this subtitle.

EA § 6-904 (emphasis added).

C. Retroactivity

In Maryland, statutes are presumed to apply prospectively unless the General Assembly "clearly expresses an intent that the statute apply retroactively." *Allstate Ins. Co. v. Kim*, 376 Md. 276, 289 (2003) (quoting *Waters Landing Ltd. P'ship v. Montgomery*

Cnty., 337 Md. 15, 28 (1994)). The Court of Appeals has identified "four basic principles of Maryland law" concerning whether a statute will apply to events occurring before its effective date:

> (1) statutes are presumed to operate prospectively unless a contrary intent appears; (2) a statute governing procedure or remedy will be applied to cases pending in court when the statute becomes effective; (3) a statute will be given retroactive effect if that is the legislative intent; but (4) even if intended to apply retroactively, a statute will not be given that effect if it would impair vested rights, deny due process, or violate the prohibition against *ex post facto* laws.

Id. at 289.

To determine whether a statute should be given retroactive effect, "we engage in a two-part analysis." *Id.* First, we must determine whether the General Assembly "intended the statute to have the kind of retroactive effect that is asserted." *Id.* Second, if the General Assembly "*did* intend for the statute to have retroactive effect, we must then examine whether such effect would contravene some Constitutional right or prohibition." *Id.* at 290 (emphasis in original).

In determining a statute's retroactive effect, we consider whether the effect of the new statute is substantive or merely procedural, because "a statute effecting a change in procedure only, and not in substantive rights, ordinarily applies to all actions[,] whether accrued, pending[,] or future, unless a contrary intention is expressed." *Estate of Zimmerman v. Blatter*, 458 Md. 698, 728-29 (2018) (alterations in original) (citation omitted). As the Court of Appeals explained in *Langston v. Riffe*, a law "is substantive if it creates rights, duties and obligations, while a remedial or procedural law simply prescribes the methods of enforcement of those rights." 359 Md. 396, 419 (2000) (citation

omitted). Alternatively, when a new statute creates a substantive right, we apply it prospectively only, absent a clear showing of contrary legislative intent. *Dabbs v. Anne Arundel Cnty.*, 458 Md. 331, 362-63, *cert. denied*, 139 S. Ct. 230 (2018); *see also Roth v. Dimensions Health Corp.*, 332 Md. 627, 636 (1993) ("Notwithstanding this presumption against retroactivity, if the statute 'contains a clear expression of intent that it operate retrospectively, or the statute affects only procedures or remedies, it will be given retroactive application.'" (citation omitted)).

In *Allstate Insurance*, the Court of Appeals considered whether § 5-806(b) of the Courts and Judicial Proceedings Article, which abrogated the child-parent immunity in automobile tort cases, was retroactive and would apply to an insurance claim that arose from an accident that occurred prior to the statute's effective date of October 1, 2001. 376 Md. at 281. That case involved a young child, who, on July 13, 2001, was nestled in his car seat in a motor vehicle being driven by his mother. *Id.* at 283. The child "somehow managed to get out of his car seat in the back and make his way to the front of the car." *Id.* To return the child to his seat, the mother "pulled to the side of the road" but unfortunately failed to place the car in park. *Id.* at 284. Sadly, while the car was rolling forward, the child fell out of the car and was injured. *Id.* The father incurred medical expenses for the treatment of the child's injuries. *Id.* The father then made a claim on his insurance policy, and Allstate filed a declaratory judgement action in circuit court to determine whether, generally, there was coverage, and, specifically, whether a recently enacted statute would apply retroactively to the father's claim. *Id.*. The circuit court entered a declaratory judgment holding, in relevant part, that the statute '"applies retroactively to any claims

filed on or after October 1, 2001, irrespective of whether the cause of action giving rise to such claims arose prior to or after that date[.]'" *Id.* at 285. The Court of Appeals granted *certiorari* prior to any proceedings in this Court to determine whether the statute applied. *Id.*

In affirming that the statute applied retroactively, the Court of Appeals first determined that the plain language of the statute made clear that the General Assembly intended it to have a retroactive application. *Id.* at 292. "Section 2 provided that the Act shall apply to '*any* case for wrongful death, personal injury, or property damage arising out of the operation of a motor vehicle *filed* on or after [October 1, 2001].'" *Id.* at 290 (alteration in original) (emphasis in original). The statute's plain language made clear that, insofar as the action was *filed* on or after the enactment date, regardless of the date of the transpiration of the events forming the basis of the suit, or the accumulation of the cause of action, the statute applied. *Id.* at 292. Second, the Court determined that retroactive application of the statute did not contravene a Constitutional right. *Id.* at 298-300. Specifically, retroactive application did not violate "any vested right enjoyed by Allstate," *id.* at 298, or impair Allstate's contractual rights, *id.* at 300.

Returning to the instant appeal, we hold that PSEWPA applies prospectively to causes of action that accrue on or after the statute's effective date, October 1, 2017. As an initial matter, it is evident that PSEWPA created a substantive right: the right of public school employees experiencing reprisal for their whistleblower activity. *See generally Langston*, 359 Md. at 419 As we noted above, this indicates that PSEWPA should be

applied prospectively unless there is a showing of clear, contrary legislative intent. *Dabbs*, 458 Md. at 362-63.

Our review of the statute and its corresponding legislative history leads us to conclude that the General Assembly did not intend PSEWPA to be applied retroactively. First, the statute itself is devoid of language expressing the possibility of retroactive application. For example, the provision creating the right of action provides: "Any public school employee who is subject to a personnel action in violation of § 6-902 of this subtitle may institute a civil action[.]" EA § 6-904(b). The provision simply creates a right of action without mentioning whether that right is given to individuals who experienced reprisal for whistleblower activity prior to its enactment. For instance, unlike the statute in *Allstate Insurance*, § 6-902 does not provide that a public school employee who was subject to a personnel violation covered by the statute may institute a civil claim on or after October 1, 2017 (potentially allowing claims based on retaliation that occurred during the six months prior). Second, we have uncovered no mention of retroactive application in our review of the proceedings before the House and Senate enacting PSEWPA.

Given our holding that PSEWPA applies prospectively, we next determine whether Ms. Jackson's claims could have accrued after the statute's effective date of October 1, 2017. In support of her PSEWPA claims, Ms. Jackson alleged in the circuit court that BCBSC took the following three actions against her in retaliation for reporting BCPSS grade changing violations: (1) removed her from managing the after-school program in March 2017; (2) removed her from the Aspiring Leader program on June 21, 2017; and (3) eliminated of her position and rendered her status as "surplus" in April 2018, requiring Ms.

Jackson to apply for other open positions within the Baltimore City Public School System. The prospective application of PSEWPA means the first and second actions cannot sustain her claims under PSEWPA—they both took place before the statute was effective.

The facts surrounding the April 2018 elimination of Ms. Jackson's position also fail to support her PSEWPA claims. As the circuit court found, the record does not show that the elimination of her position meant termination of her employment or caused any adverse effect, be it monetary or otherwise, to her station in the public school system. In fact, in the summer of 2018, Ms. Jackson participated in the New Leaders Aspiring Principals Program and is now a principal.[4] But more significantly—as we address in the next section of our discussion—Ms. Jackson did not file an administrative complaint following the April 2018 event, and she had no prior claims cognizable under the PSEWPA to amend.[5]

D. Administrative Exhaustion

The doctrine of exhaustion of administrative remedies requires "a grievant to invoke and pursue the administrative process until he or she receives a final decision from the agency at the utmost level of the administrative hierarchy." *Priester v. Baltimore Cnty.*,

[4] Apart from the fact that the statute does not apply retroactively to Ms. Jackson's prior claims, we note that the circuit court found that Ms. Jackson never alleged, in any of her three complaints dated March 6, 2017, March 23, 2017, and November 6, 2017, that the actions taken by the BCBSC were taken in retaliation for her reporting grade changing policy violations within BCBSC. In other words, Ms. Jackson did not file a complaint at the administrative level alleging that she was removed from managing the after-school program or removed from her from the Aspiring Leader program in retaliation for whistleblowing.

[5] Because we determine that the PSEWPA statute does not apply to Ms. Jackson's claims, we need not consider whether Ms. Jackson's action is time-barred.

232 Md. App. 178, 194 (2017); *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 (bolded emphasis added).

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 the PSEWPA codified at EA § 6-901-906.

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, after PSEWPA was enacted, the Baltimore City Public Schools adopted

an administrative regulation entitled "Disclosure of Financial Impropriety and Improper Conduct (Whistleblower Policy)" on February 13, 2018. The regulation states, in pertinent part:

> **I. Purpose**
>
> To provide procedures for implementing the policy on staff reporting fraudulent or improper conduct. City Schools management has a responsibility to investigate and correct any and all financial improprieties and improper conduct reported pursuant to Policy EAB, and to protect those whistleblowers who come forward to report such activities. This administrative regulation provides necessary reporting information to whistleblowers making a protected disclosure, as well as the procedures that govern the ensuing investigation. The procedures in this administrative regulation are intended to provide the whistleblower, and any additional individuals who participate in the investigation process, with full confidence that the protected disclosure will be considered appropriately and resolved in a timely manner.
>
> **II. Guidelines**
>
> A. Reporting and Investigation
>
> 1. Any Board employees and/or other persons who suspect, believe or have knowledge that a Board employee has engaged in financial improprieties or improper conduct are strongly encouraged to report the activity to their supervisor or the Fraud Hotline (1-800-679-0185). The whistleblower may remain anonymous. However, anonymous reporting may impede the ability of the City Schools to conduct a comprehensive and prompt investigation.
>
> 2. The Board employee and/or other persons shall report the activity, policy, or practice to a supervisor or an administrator of the employer in writing and afford the employer a reasonable opportunity to correct the activity, policy, or practice.
>
> 3. If the Board employee's Principal/Supervisor is the person under suspicion of financial improprieties or improper

conduct, the Board employee should call the Fraud Hotline to file a report.

* * *

C. Filing a Complaint of Retaliation

1. There shall be no reprisal, disciplinary action, involuntary reassignment, loss of pay or harassment of a Board employee as a result of reporting suspicious behavior in accordance with Policy EAB.

2. Engagement by Board employees in any of these prohibited activities may result in the initiation of disciplinary action by City Schools up to and including (1) termination of employment, (2) loss of certification, and/or (3) notification to law enforcement officials.

3. Anyone who is concerned that retaliation has occurred should file a complaint with:

    a. The CEO or any member of the Board; or
    b. Upon request, the Office of Human Capital will attempt to reassign the whistleblower[; or]
    c. Board employees may directly contact the Office of Staff Investigations or use the Fraud Hotline to provide the appropriate information.

Here, Ms. Jackson urges us that she either exhausted administrative remedies or that her case falls under one of the exceptions to administrative exhaustion. Because PSEWPA is clearly within the jurisdiction of the State and County Board, and the regulatory scheme offered an avenue to adjudicate these issues, we conclude that Ms. Jackson's claims

surrounding the April 2018 elimination of her position fell under the primary jurisdiction of BCBSC.[6]

We conclude that Ms. Jackson's PSEWPA claims are barred because she failed to exhaust her administrative remedies. As referenced above, the applicable regulations require a whistleblower to either report the activity through the "Fraud Hotline," their supervisor, or in writing. Regarding the filing of a complaint for retaliation, a whistleblower "should file a complaint" with the "CEO or any member of the Board" or "directly contact the Office of Staff Investigations or use the Fraud Hotline to provide the appropriate information." The Office of Staff Investigation then investigates the complaint and, among other things, may "request[] from the whistleblower, including but not limited to: the identity of the alleged perpetrator, what took place, how the whistleblower obtained the information, when the impropriety or improper conduct occurred, the value of assets at issue (if any), [and] whether the supervisor or anyone is authority was previously made aware of such occurrence[.]" Then, after completion of its investigation, the Office of Staff Investigations files a written report. If improper conduct is substantiated, the Office Labor Relations "conduct[s] a hearing at which the Board employee shall have the opportunity to respond[.]" At the conclusion of that hearing, the Office of Labor Relations prepares a

[6] Ms. Jackson asserts that the BCBSC "explicitly conceded that Ms. Jackson filed a grievance and two complaints in its statement of undisputed facts" because BCBSC only filed a general denial of liability. As we explained above, the actions challenged in these complaints cannot sustain Ms. Jackson's claims under PSEWPA because they took place before the statute was effective.

written recommendation, and the Discipline Committee determines the appropriate remedy.

Ms. Jackson did not pursue these remedies. Instead, she chose to amend the underlying complaint before the circuit court and not pursue any administrative action following the elimination of her position in April 2018. Ms. Jackson contends that she is excused from exhausting administrative remedies because there was no remedy that could have afforded her relief. However, the applicable Whistleblower Policy provides an avenue for filing a complaint of retaliation, an investigation by the Office of Staff Investigation, hearings, and written recommendation from the Office of Labor Relations. There is no indication that, through this process, Ms. Jackson would not have an adequate remedy, and Ms. Jackson has not asserted how this procedure is inadequate. Accordingly, even if we assume Ms. Jackson had asserted a viable claim under PSEWPA, she has failed to demonstrate that no adequate remedy was available to her; therefore, her claim is barred for failing to exhaust her administrative remedies.

Finally, relying on *Monarch Academy Baltimore Campus, Inc. v. Baltimore City Board of School Commissioners*, Ms. Jackson asserts that the circuit court should have stayed the action rather than dismiss her complaint so that she could "obtain a final administrative determination as to the issue in dispute." 457 Md. 1, 13 (2017) (citation and quotation marks omitted). In some instances, the disposition Ms. Jackson urges is entirely

appropriate.[7] In *Monarch Academy*, for example, in reviewing the circuit court's *sua sponte* entry of a stay order "in lieu" of dismissing the Charter School Operators' breach of contract complaints, *id.* at 40, the Court noted, "in this appeal, . . . we are confronted with a rare and unique set of circumstances in which there is a strong likelihood that the Charter School Operators would not be able to obtain an administrative ruling on their breach of contract claim."[8] *Id.* at 9-10.

[7] We refuse to believe that the General Assembly intended PSEWPA to be a Catch-22 for complainants: they either file within six months and lose by failing to meet the exhaustion element, or file after exhausting remedies and lose under the time bar. Accordingly, our appellate courts have recognized, in certain circumstances, that a party may file for judicial review before its administrative remedies are final to prevent a party from being frozen out of its appeal rights. *See McCullough v. Wittner*, 314 Md. 602, 612-13 (1989) (noting under "circumstances like these, . . . it is appropriate for the trial court to retain, for a reasonable period of time, jurisdiction over the independent judicial action pending invocation and exhaustion of the administrative procedures").

[8] In *Monarch Academy*, under circumstances very different from the present case, the Court of Appeals held that the circuit court abused its discretion by entering a stay order without allowing the parties to take discovery and "without a clear path forward to obtain an agency or judicial resolution of their breach of contract claims[.]" 457 Md. at 65. The Court reversed and remanded with instructions to the trial court to issue a new stay order, following discovery, that would allow the Charter School Operators to file a declaratory petition with the State Board in order to obtain a declaratory order on commensurate funding pursuant to the Board's primary jurisdiction. *Id.* at 66. The Court further instructed,

> Presumably, one of the parties will appeal from the State Board's ruling to the circuit court. *See* COMAR 13A.01.05.11. That appeal should be consolidated with the breach of contract action. Then, the circuit court may proceed to review the State Board decision under the more deferential substantial evidence standard of review for agency decisions. *See* Md. Rule 7–201. Afterwards, the circuit court may resume proceedings on the breach of contract actions, applying the State Board decision.

Id.

Here, Ms. Jackson has not explained what efforts she made to satisfy her exhaustion requirements relating to alleged April 2018 elimination of her position, nor has she explained why the administrative procedure available to her is inadequate. When a claimant "neglects to pursue administrative relief within a reasonable time, then [the claimant's] judicial claim may not progress and, in all likelihood, would be dismissed." *Carter v. Huntington Title & Escrow, LLC*, 420 Md. 605, 638 (2011); *see also Priester*, 232 Md. App. at 218 (instructing circuit court to dismiss civil action because the claimant had "not exhausted his administrative remedies, and received a final administrative decision"). For instance, in *Public Service Commission of Maryland v. Wilson*, a management service employee was required, pursuant to Maryland Code (1993, 2004 Repl. Vol.), State Personnel and Pensions Article, § 11-113, "to file a written appeal within 15 days of [her notice of re-termination] if she desired to contest the action taken against her" under the permissible grounds in section 11-113. 389 Md. 27, 93 (2005). Rather than following the statutory directive, the employee "opt[ed] instead to file in the pending court action . . . a petition to hold the Commission in contempt of court" and allowed her time period to appeal her disciplinary action to expire. *Id.* The Court of Appeals determined that "[a]pplication of the doctrine of exhaustion of administrative remedies bars [the employee's] effort to seek alternative redress in the Circuit Court[.]" *Id.*

Based on the record before us, Ms. Jackson did not pursue any administrative action contesting the 2018 elimination of her position. Accordingly, we conclude the circuit court did not err in determining that she failed to exhaust her administrative remedies and then granting the motion for summary judgment.

II.

Breach of Contract

Ms. Jackson contends that the grant of summary judgment was "inappropriate because disputes of material fact existed" with regard to her breach of contract claim. Specifically, she avers that she "produced a copy of the contractual terms" and that BCBSC breached those terms and violated the "implied duty to operate in good faith and fair dealing" when BCBSC removed her from the after-school program and reduced her salary upon removing her from the New Leaders Aspiring Principals Program.

To the contrary, BCBSC asserts that Ms. Jackson "failed to produce any evidence that she had a contract with [BCBSC] entitling her to 'supplemental employment'" in the after-school program. Further, BCBSC contends that "[t]he material facts in this case . . . are without dispute, as [Ms. Jackson] has admitted that she maintained her employment with [BCBSC] without interruption, that she has maintained her employment salary . . ., and that she has never been terminated . . . and was, in fact, promoted to a higher position with a pay raise[.]"

In reply, Ms. Jackson avers that "all evidence produced suggests that Ms. Jackson's performance of all her duties, including the after school program, and New Leaders Internship program was conducted as part of her employment contract." Ms. Jackson does not point to the contract provision that supports her claim. Instead, she attempts to shift the burden of proof on this point by alleging that BCBSC "produced no supplemental contract during discovery to demonstrate that the terms of Ms. Jackson's employment in the after school program was unrelated to the terms of her employment with [BCBSC]."

"To prevail in an action for breach of contract, a plaintiff must prove that the defendant owed the plaintiff a contractual obligation and that the defendant breached that obligation." *Taylor v. NationsBank, N.A.*, 365 Md. 166, 175 (2001). Nothing in the record memorializes that Ms. Jackson was contractually entitled to a stipend for work in the after-school program. Indeed, Ms. Jackson acknowledges that the stipend that she received was not a part of her salary. Instead of presenting a dispute of material fact regarding a reduction in her salary, Ms. Jackson admitted that she never received a reduction in salary and maintained her employment without interruption. Accordingly, we conclude that the trial court correctly found no evidence of a breach of contract and properly granted summary judgment on the breach of contract claim.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.