APPENDIX TABLE OF CONTENTS

APPENDIX A

IN THE APPELLATE COURT OF MARYLAND

E-FILE
Rachel Dombrowski, Clerk
Appellate Court of Maryland
1/27/2025 10:01 AM

ISAAC MULAMBA,
Appellant,

v.

THE BOARD OF EDUCATION OF
BALTIMORE COUNTY,
Appellee.

No. 1656, September Term 2023
MDEC: ACM-REG-1656-2023

(Cir. Ct. No. C-03-CV-23-001611)

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

ORDER

On December 26, 2024, the appellant filed his Motion for Reconsideration En Banc." The Panel that decided the appeal, Judges Shaw, Ripken, and Glenn T. Harrell., Jr., reviewed the request for reconsideration and the request for en banc review was presented to the full Court for consideration. The

request for en banc review failed to garner the concurrence of a majority of the incumbent judges of the entire Court as required pursuant to Maryland Code Ann., Cts. & Jud. Proc. § 1-403(c).

Upon consideration of the foregoing, it is, this 27th day of January 2025,

ORDERED that the appellant's "Motion for Reconsideration En Banc" is denied, and it is further

ORDERED that the Clerk of this Court shall issue the Mandate forthwith.

Judge's Signature Appears on Original Order

/s/
MELANIE M. SHAW, Judge

APPENDIX B

Circuit Court for Baltimore County
Case No. C-03-CV-23-001611

UNREPORTED*

IN THE APPELLATE COURT OF MARYLAND

No. 1656
September Term, 2023

ISAAC MULAMBA

v.

THE BOARD OF EDUCATION
OF BALTIMORE COUNTY

Shaw,
Ripken,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Shaw, J.

Filed: December 13, 2024

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* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Isaac Mulamba, appeals an order of the Circuit Court for Baltimore County granting a motion to dismiss filed by Appellee, the Board of Education of Baltimore County. In 2023, Appellant filed a civil claim against Appellee, alleging that while employed with the Baltimore County Public Schools ("BCPS"), he had been subjected to employment discrimination based on race, national origin, sex, and age; workplace harassment; retaliation; negligent hiring; abusive/constructive discharge; intentional infliction of emotional distress; and abuse of process. Following a hearing, the court issued a memorandum opinion, finding that Appellant failed to state a claim upon which relief could be granted. Appellant timely noted this appeal. Appellant's questions presented have been rephrased[1] as follows:

1. Did the circuit court err in dismissing Appellant's employment discrimination claim based on race, national origin, sex, and age discrimination?

2. Did the circuit court err in dismissing

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[1] Appellant's original questions presented included "i. Whether the Appellee breached laws to the detriment of the Appellant ? (I, II, IV, V, VI)" and "ii. Whether the Appellant stated a prima facie case of retaliation based on constructive termination? (III, VII, VIII)." Appellant labeled Counts I-VIII as the following: Count I The Breach of a Legal Duty, Count II Intentional Misrepresentation, Count III Discrimination and Retaliation, Count IV Breach of Contract, Count V Liability for Intentional Torts, Count VI Negligent Misrepresentation: Breach of an Implied Contract and Gross Negligence, Count VII Hostile Work Environment, and Count VIII Constructive Termination.

Appellant's retaliation claim?

3. Did the circuit court err in dismissing Appellant's workplace harassment claim?

4. Did the circuit court err in dismissing Appellant's constructive termination claim?

5. Did the circuit court err in dismissing Appellant's intentional infliction of emotional distress claim?

We hold that the circuit court did not err, and accordingly, we affirm the judgments.

Appellant, in his brief, requests that we review several additional issues not decided by the circuit court, including Count I The Breach of a Legal Duty, Count II Intentional Misrepresentation, Count IV Breach of Contract, Count V Liability for Intentional Torts, and Count VI Negligent Misrepresentation: Breach of an Implied Contract and Gross Negligence. Maryland Rule 8-131(a) provides that, on appeal, we will not ordinarily "decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." Md. Rule 8-131(a); *see DiCicco v. Balt. Cnty.*, 232 Md. App. 218, 225 (2017). Because the circuit court was not asked to and did not make any rulings on Counts I, II, IV, V, and VI, we decline to consider the additional issues.

In his brief, Appellant, also, did not address the circuit court's dismissal of his negligent hiring or abuse of process claims. He, further, did not address

his claim involving judicial impartiality, his alleged right to counsel, or his challenges to the discovery-related rulings in the questions presented section of his brief. Thus, in accordance with Maryland Rule 8-504(a)(3), we will not address arguments that Appellant failed to "set forth in the 'Questions Presented' section" of his brief. *Peterson v. Evapco, Inc.*, 238 Md. App. 1, 62 (2018) (quoting *Green v. N. Arundel Hosp. Ass'n*, Inc., 126 Md. App. 394, 426 (1999), *aff'd*, 366 Md. 597 (2001)).

BACKGROUND

Appellant, a man of Central African descent in his forties[2], accepted a job with Appellee in January 2022, within the Department of Special Education as a data analyst. Because he resided in Fairfax, Virginia, and his office space was located in Towson, Maryland, he negotiated a work-from-home agreement with the former Executive Director of Special Education. Appellant was allowed to work three days a week remotely and was assigned an office space. Sometime during his employment, Appellant offered to "share his office space with" Catherine Armstrong, a Caucasian woman, who worked part-time as an administrative assistant.

In June 2022, the Executive Director of Special

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[2] The record presents differing statements regarding Appellant's age. The circuit court stated, in its opinion granting the motion to dismiss, that Appellant is in his sixties. Appellant, however, states that he is in his forties.

Education resigned and Allison Myers, a Caucasian woman, became Appellant's supervisor. She scheduled an online meeting with Appellant and Conya Bailey, her Chief Assistant, an African American woman, to discuss the office's post-COVID-19 workplace policy and his return to the office. Appellant was also advised that his workspace had been reassigned to Ms. Armstrong and that he would be moved to a cubicle. Appellant disagreed with a return to the office, stating that his duties did not need to be completed from an office, and he had a long commute to the BCPS office location. Appellant also opposed the reassignment of his workspace. Appellant alleged that his supervisor, Ms. Myers, was dismissive of him and stated that she told him that she preferred that another data analyst, Dan Klinger, a Caucasian male, perform her data requests. Under previous management, Appellant's role as a data manager included monitoring data between BCPS and the Maryland State Department of Education ("MSDE"). Appellant's "employment primarily focused on comprehending the MSDE's business rules, which included state formulas. This knowledge aided in monitoring performance metrics, supporting program evaluations, and implanting corrective actions." This responsibility also provided Appellant with "special access privileges to certain server spaces." Appellant claimed that these duties were based on an interest he shared with his former supervisor regarding the importance of such information in decision-making. For example, Appellant would track the suspension rate among minorities in BCPS schools. However, when Appellant "inquired from the team about how MSDE acquired data from BCPS, no one showed any interest."

Appellant asserted in his complaint that "[t]he previous Executive Director was the only individual who expressed concern about [MSDE] outcomes." Appellant described Ms. Myers as a "typical bureaucrat" who wanted to "maintain the status quo" and did not take an interest in the MSDE data once she became Executive Director. He concluded that the meeting was an attempt "to assert female power/authority in the predominantly female workplace" and a result of Ms. Myers' preference for white employees.

There was no immediate return to work for employees as the office space was not ready. On August 12, 2022, Ms. Bailey sent a departmental email to employees advising them to continue to work remotely until further notice. Neither party indicates in the record exactly when Appellee requested its employees to return to the office. On August 25, 2022, Ms. Bailey contacted Appellant, asking why he had not been reporting to work. He responded that he was waiting for confirmation that the office was ready for in-person work. He was then directed to return to work. Ms. Myers also mailed letters via certified mail to Appellant's residence demanding that he return to work. In response, Appellant sent a cease and desist letter to Ms. Myers asking her to communicate with him only through email.

On August 29, 2022, Appellant returned to the office and sat in his previously designated office. Ms. Armstrong had an exchange with Appellant regarding the space and she later returned with Ms. Myers, Ms. Bailey, and Ms. Claudine Daniel, an administrative

assistant who was an African American woman. The four women demanded that Appellant move to his cubicle. Appellant alleges that "[a]s the commotion continued, several people began to emerge from their offices to see what was happening." Appellant refused to move and remained there for the rest of the day. He described feeling deeply embarrassed by the interaction and that he did not leave his office that day for lunch. Appellant portrayed the incident as "a total display of collective and intimidating female power[,]" and he informed the women that he would be reporting the incident to the internal Equal Employment Opportunity Office ("EEO Office"). The next day, Appellant found his belongings had been removed from the office and placed in his assigned cubicle. Appellant reported the incident to BCPS' EEO Office on September 2, 2022.

Ms. Myers scheduled an in-person meeting with Appellant for September 6, 2022. Appellant was waiting for the meeting in his cubicle when he overheard Ms. Daniel state, "This African guy wants an office! Would he have an office in Africa? He already has a job, he should be content! Instead, he wants an office on the top." The comment was followed by laughter. During the meeting, Ms. Myers informed Appellant that she would be conducting a performance evaluation. Appellant informed Ms. Myers that he had filed a complaint with BCPS' EEO Office.

On September 12, 2022, Ms. Myers emailed Appellant to inform him that she had scheduled a disciplinary meeting for insubordination for the following day. She also informed Appellant that he had

the right to bring union representation with him to the meeting. Appellant refused to attend the meeting, stating that he would not meet with anyone until he obtained an attorney of his choosing. On November 11, 2022, Appellant resigned, contending that he had no choice because of the hostile work environment.

Following his resignation, Appellant alleges that BCPS provided a negative reference to a prospective employer. A BCPS Director, Dr. Monica Hetrick, contacted Appellant regarding a career opportunity within BCPS' Office of Performance Management. Appellant alleges that Dr. Hetrick agreed to call Ms. Myers, "but she never reached back with an update." Appellant indicated that he also applied for a data analyst position with Baltimore City Public Schools in its Office of Human Capital. Appellant, after the interview process, was notified by that office that he was not "a fit for the role[.]"

On April 19, 2023, Appellant filed a complaint in the Circuit Court for Baltimore County, which was amended on May 22, 2023, and July 11, 2023. Appellee did not file an answer to the amended complaint, and on August 4, 2023, Appellee filed a motion to dismiss. Appellant responded with an answer and a request for 244 admissions which were directed at Appellee and certain non-parties. Appellee filed a motion requesting that the court either grant a protective order, stay discovery until the motion to dismiss was ruled upon, or limit the number of requests for admission. The court granted the request for a protective order, in part, holding that the requests for admission from non-parties were not permitted under Maryland Rule 2-

424(a), directing Appellee to respond to the requests for admission within sixty days, and ruling that all other discovery be stayed until the court decided on the motion to dismiss. On August 22, 2023, Appellant submitted a line accusing the court of not being impartial and stating that the sixty-day deadline was an attempt by the court to collaborate against him. Appellant also preemptively asserted that the court would not fairly evaluate Appellee's motion to dismiss. On September 4, 2023, Appellant filed a motion for summary judgment which was denied on September 25, 2023.

The circuit court held a hearing on Appellee's motion to dismiss on September 18, 2023, and, on September 29, 2023, the court issued a memorandum opinion, granting Appellee's motion to dismiss Appellant's claims. Because the court granted the motion to dismiss four days after it denied Appellant's motion for summary judgment, Appellant alleges on appeal that there was "a potential coordination between the judges for a predetermined outcome" during the process of those rulings. Appellant filed this timely appeal.

STANDARD OF REVIEW

On appeal, "[t]he standard for reviewing the grant of a motion to dismiss is whether the trial court was legally correct." *Schisler v. State*, 177 Md. App. 731, 742 (2007). A trial court may dismiss a complaint if it fails to state a claim upon which relief can be granted. *Id.* The central inquiry is whether the facts within the complaint created a legally sufficient cause

of action. *Id.* at 743. This Court will "'presume the truth of all wellpleaded facts in the complaint, along with any reasonable inferences derived therefrom.'" *Id.* (quoting *Fioretti v. Md. State Bd. of Dental Exam'rs*, 351 Md. 66, 72 (1998)). This standard applies equally to an amended complaint. *Id.*

DISCUSSION

I. The circuit court did not err in dismissing Appellant's claim of discrimination on the basis of race, age, sex, and national origin.

Appellant argues that he was discriminated against on the following grounds: racebased discrimination under Title VII of the Civil Rights Act of 1964 ("Title VII"), agebased discrimination under the Age Discrimination in Employment Act ("ADEA"), age and race-based discrimination under the Maryland Fair Employment Practices Act ("MFEPA"), gender-based discrimination under Title VII and MFEPA, as well as national origin-based discrimination under Title VII and MFEPA. Appellant contends that when Ms. Myers revoked his remote work status, he was discriminated against. He further argues that "reassigning a high-ranking employee's office to a low-ranking employee [is] considered a form of a demotion." He asserts that he experienced discrimination when Ms. Myers "omitted him from the department's website, which only featured four female employees." In terms of national origin-based discrimination, he alleges that Ms. Daniel discriminated against him when he overheard her comment referring to him as an "African guy[.]" He

also alleges that Ms. Myers' stated reliance on Mr. Klinger for data requests caused him to lose prestige and established her preference for white employees.

Appellee argues the court did not err. Appellee contends that Appellant did not assert a *prima facie* case of discrimination based on race, age, sex, and national origin. While Appellee does not dispute that Appellant is a member of multiple protected classes, Appellee contends that Appellant's work performance was unsatisfactory, an adverse employment action did not occur, and there were no facts alleged to establish different treatment for those outside the protected classes.

According to Title VII, employers are prohibited from "discriminat[ing] against any individual with respect to [an employee's] compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin[.]" 42 U.S.C.A. § 2000e-2(a). The MFEPA contains nearly identical language to Title VII. Md. Code Ann., State Gov't § 20-606 (2021 Repl. Vol., 2022 Supp.). We are permitted to "interpret the MFEPA consistent with its federal corollary, absent 'legislative intent to the contrary[.]'" *Doe v. Cath. Relief Servs.*, 484 Md. 640, 680–81 (2023) (quoting *Chappell v. S. Md. Hosp., Inc.*, 320 Md. 483, 494 (1990)). Maryland courts have thus applied federal frameworks in evaluating employment discrimination claims under both federal and state discrimination laws. *See Dobkin v. Univ. of Baltimore Sch. of L.*, 210 Md. App. 580, 592–93 (2013) (applying a federal framework to an MFEPA claim based on age discrimination and

collecting Maryland cases that have similarly applied federal frameworks to discrimination claims). Federal cases involving Title VII claims are also "persuasive authority in interpreting Maryland employment discrimination laws, including those that prohibit retaliation." *Romeka v. RadAmerica II, LLC*, 254 Md. App. 414, 442, *cert. granted*, 481 Md. 1 (2022), *and aff'd*, 485 Md. 307 (2023). Accordingly, we refer to federal frameworks and cases throughout this opinion in assessing Appellant's claims that involve Title VII and Maryland discrimination laws.

In order to establish a *prima facie* discrimination claim when direct evidence of discrimination is unavailable, a plaintiff must establish the following elements: (1) membership in a protected class; (2) satisfactory job performance; (3) adverse employment action; and (4) different treatment from similarly situated employees outside of the protected class. *Coleman v. Md. Ct. of Appeals*, 626 F. 3d 187, 190 (4th Cir. 2010); *see also Gaines v. McDonald*, 152 F. Supp. 3d 464, 470 (M.D.N.C. 2015) ("Direct evidence is evidence that the employer announced, admitted, or otherwise unmistakably indicated that the forbidden consideration was a determining factor.") (Cleaned up). We conclude that the evidence of discrimination, in this case, is indirect as Appellee has not directly indicated that its treatment of Appellant is a result of his membership in a protected class. Neither party disputes that Appellant is a member of multiple protected classes as a man of Central African descent in his forties.

Satisfactory job performance is defined as

meeting the "employer's legitimate expectations at the time of the adverse employment action." *Giles v. Nat'l R.R. Passenger Corp.*, 59 F.4th 696, 704 (4th Cir. 2023). Central to this inquiry is the perspective of the "decision maker . . . not the self-assessment of the plaintiff." *Id.* (first quoting *Evans v. Techs. Apps. & Serv. Co.*, 80 F.3d 954, 960–61; then quoting *Smith v. Flax*, 618 F.2d 1062, 1067 (4th Cir. 1980)). In *Giles*, the plaintiff engaged in several acts of insubordination, such as refusing to complete his supervisor's requests, refusing to attend mandatory briefings, and arguing with his supervisor in front of customers. *Id.* The Fourth Circuit determined that such acts were insubordinate according to the employer's policies and concluded that the satisfactory job performance prong was unsatisfied. *Id.*

In the case of *Nerenberg v. RICA of S. Md.*, 131 Md. App. 646 (2000), we upheld the grant of an employer's motion for summary judgment in a disability discrimination case. The appellant worked at a pediatric psychiatric facility where she supervised adolescents. *Id.* at 655. Her supervisors cited a number of concerns regarding her job performance, including failing "to supervise the children more closely" after warnings, becoming "overly involved with the children she supervised," fainting spells while supervising the children, "difficulty getting some of the more willful clients to cooperate[,]" arguments with her coworkers, encouraging children to participate in games they felt uncomfortable with, and showing inappropriate movies to the children. *Id.* at 656–59. This Court stated that "[t]he employer's assessment and stated opinions about the discrimination plaintiff, and not the

conflicting and often speculative opinions of the employee, her co-workers, or even her former supervisor, are relevant in determining the legitimacy of a termination decision." *Id.* at 678. We upheld the grant of the motion for summary judgment, finding that the appellant did not meet her job requirements. *Id.* at 679–80.

In the case of *Burnett v. BJ's Wholesale Club*, 722 F. Supp. 3d 566 (D. Md. 2024), the federal district court examined whether an employee had satisfied his employer's expectations of employment in the context of a motion for summary judgment. The court explained that "[i]t is undisputed that [the] [p]laintiff was frequently absent from work, without excuse, in the days leading up to his termination. These unexcused absences, on days when Plaintiff clocked into work, were in violation of BJ's policies[.]" *Id.* at 576. As a result, the court found that "no reasonable jury could conclude that the [p]laintiff's 'performance at the time of the discharge met the legitimate expectations of his employer.'" *Id.* (quoting *Rubino v. New Acton Mobile Inds., LLC*, 44 F. Supp. 3d 616, 623 (D. Md. 2014)).

Here, the trial court dismissed Appellant's employment discrimination claim because "[a]lthough the Second Amended complaint also states that the Plaintiff was completing his required tasks, it is the decision maker's perception, not his self-assessment that is relevant . . . . Therefore, this element is not sufficiently alleged." We agree. In Appellant's amended complaint, he plainly indicated that he engaged in several insubordinate acts, including refusing to report

to work in accordance with the office's in-person policy after multiple requests, refusing to move to his reassigned workspace, and failing to attend a disciplinary meeting. Appellant's perception and self-assessment, however, that he had satisfactorily performed his job duties from home is not controlling. Instead, Appellee's categorization of Appellant's work behavior as insubordinate predominates. Based on the facts asserted in the complaint, Appellant did not establish the element of satisfactory job performance.

Appellant also did not establish a *prima facie* case that he experienced an adverse employment action. An adverse employment action is a discriminatory act on the part of the employer that adversely affects the plaintiff's "compensation, terms, conditions, or privileges of employment." *Muldrow v. City of St. Louis, Missouri*, 601 U.S. 346, 354 (2024). The plaintiff must show that the adverse employment action brought about "some harm respecting an identifiable term or condition of employment." *Id.* "The 'terms [or] conditions' phrase, we have made clear, is not used 'in the narrow contractual sense'; it covers more than the 'economic or tangible.'" *Id.* (quoting *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 78 (1998) and *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986)).

The trial court, in the present case, found that Appellant failed to establish the third element, stating that "having some work responsibilities given to another employee; being reassigned from an office to a cubicle; being 'yelled' and 'screamed' at; being excluded from a department website photo which featured four

women; and being talked about by an employee . . . . are not considered adverse employment actions." We agree that such acts may have made Appellant uncomfortable and/or dissatisfied, however, he did not allege or aver in his complaint a discriminatory act that adversely affected "compensation, terms, conditions, or privileges of employment." As we see it, Appellant's claims do not demonstrate that he experienced some harm regarding his employment status.

Turning to the fourth element, the trial court found that Appellant failed to establish that "similarly situated employees outside the relevant protected classes received more favorable treatment." We agree with the court's ruling. As we can discern from the complaint, the new in-person policy applied to *all* employees, and did not treat Appellant differently. While the return to work policy may have inconvenienced Appellant, it was a measure, developed at the end of the pandemic, to return all persons to the office. As for the office reassignment, Appellee communicated to Appellant that this change was the result of "his office being assigned to another department[.]" In his complaint, Appellant did not provide any facts pertaining to Ms. Daniel's favorable treatment of other similarly situated employees.

Appellant also claims that, under the prior director, he managed certain MSDE data that the new director did not want or request. He asserts that he lost this responsibility due to Ms. Myers' reliance on Mr. Klinger. He asserts that the approach taken by the new director was because she had a "typical

bureaucrat" approach to management which was different than the previous director. Appellant averred that these circumstances establish that he was subjected to an adverse employment action. However, he did not allege that similarly situated employees outside of the protected class received different treatment under his director or as a result of her management style.

In order to establish a *prima facie* case, Appellant was required to aver four elements and he did not. We hold, therefore, that the circuit court did not err in dismissing his employment discrimination claims. The facts, as alleged, did not create a legally sufficient cause of action.

II. The court did not err in dismissing Appellant's retaliation claim.

Appellant argues that Appellee retaliated against him after he filed an internal complaint with BCPS' EEO Office. Appellant claims he experienced retaliation when Ms. Myers "announced she would perform his performance review" and "arranged a disciplinary meeting for him on grounds of insubordination." Appellant argues that Ms. Myers excluded him "from various departmental meetings" and "Ms. Myers and Ms. Bailey limited communication" with him. Appellant also contends that Appellee retaliated against him when it "provided a negative reference for [him] and he was never selected for employment by another school district." Appellant alleges that "[t]he prospective employer had made promises of employment but failed to follow

through; the plaintiff was amply qualified for the role yet they chose to continue searching for another candidate." Appellant further argues that he was retaliated against when Ms. Myers "stripped [Appellant] of some of his responsibilities" in his initial meeting with her.

Appellee argues that Appellant failed to allege a cognizable retaliation claim because none of the aforementioned events are considered materially adverse employment actions. Appellee acknowledges that a negative reference might be considered a materially adverse employment action. However, it contends that Appellant did not plead with specificity the facts establishing that Appellee provided a negative reference.

An employee bearing the burden of establishing a *prime facie* case for retaliation must allege the following: "(1) he/she engaged in a protected activity, (2) the employer took an adverse employment action against him/her, and (3) the adverse employment action was causally connected to the protected activity." *Muse-Ariyoh v. Bd. Of Educ. Of Prince George's Cnty.*, 235 Md. App. 221, 244 (2017). As previously noted, this Court is permitted to refer to federal cases in assessing Appellant's retaliation claims. *Romeka*, 254 Md. App. at 442.

Filing an employment discrimination complaint with an internal EEO department is considered a protected activity. *Edgewood Mgmt. Corp. v. Jackson*, 212 Md. App. 177, 201–02 (2013). We hold that Appellant satisfied the first element because he

engaged in a protected activity when he submitted an employment discrimination complaint to the internal EEO office.

Turning to the second element, in the retaliation context, an employment action is not materially adverse "unless it constitutes an ultimate employment decision which may include acts such as hiring, granting leave, discharging, promoting, and compensating." *Manikhi v. Mass Transit Admin.*, 360 Md. 333, 350 (2000) (cleaned up). Courts find that adverse actions resulting in a modification in salary, benefits, or responsibility generally satisfy this element. *Id.* Actions that do not fit squarely within these categories may still qualify as adverse employment actions. *Lockheed Martin Corp. v. Balderrama*, 227 Md. App. 476, 509 (2016); *Jensvold v. Shalala,* 829 F. Supp. 131, 140 (D. Md. 1993) (holding that an employee experienced an adverse employment action where an employer relinquished daily tasks to another employee and denied her the ability to publish her work); *Holcomb v. Powell*, 433 F.3d 889, 902 (D.C. Cir. 2006) (finding that when an employee experienced "extraordinary reduction in responsibilities that persisted for years" it could lead to "objectively tangible harm").

Not every adverse action """that makes an employee unhappy""" will qualify as materially adverse. *Balderrama*, 227 Md. App. at 508 (2016) (first quoting *Montandon v. Farmland Indus., Inc.*, 116 F.3d 355, 359 (8th Cir. 1997); then quoting *Smart v. Ball State Univ.*, 89 F.3d 437, 441 (7th Cir. 1996)). "Ordinary workplace strife . . . cannot constitute

adverse employment action." *Matvia v. Bald Head Island Mgmt., Inc.*, 259 F.3d 261, 272 (4th Cir. 2001). "Reprimands, whether oral or written, do not *per se* significantly affect the terms or conditions of employment." *Lewis v. Forest Pharm., Inc.*, 217 F. Supp. 2d 638, 648 (D. Md. 2002); *Turner v. District of Columbia*, 383 F. Supp.2d 157, 173 (D.D.C. 2005) (quoting *Crady v. Liberty Nat'l Bank & Trust Co.*, 993 F.2d 132, 136 (7th Cir. 1993)) (stating that adverse employment actions "'must be more disruptive than a mere inconvenience or an alteration of job responsibilities'"); *Munday v. Waste Mgmt. of N. Am., Inc.*, 126 F.3d 239, 243 (4th Cir. 1997) (stating that being yelled at, ignored, or spied on by a supervisor is not considered an adverse employment action "without evidence that the terms, conditions, or benefits of . . . employment were adversely affected").

Here, the second element was not satisfied as the facts as averred did not constitute adverse employment actions: "Ms. Myers scheduled a performance review and insubordination meeting; some of his work responsibilities were taken away and given to Mr. Klinger; he had limited communication with Ms. Myers and Ms. Bailey; he was excluded from meetings; and he received a negative reference once he resigned." We agree with the trial court's findings that these events did not result in a change in Appellant's salary, benefits, or ability to advance. Moreover, we note that the reassignment of responsibilities to Mr. Klinger and the change in office space occurred *prior* to the protected activity, and thus, cannot be considered retaliation.

If Appellee did, in fact, submit a negative reference to a prospective employer after Appellant resigned, this would impact Appellant's ability to advance, thus, making it an adverse employment action. Appellant's assertion that Appellee provided negative references is based solely on the fact that he did not receive the position at BCPS or the job opening in Baltimore City Public Schools. However, Appellant did not receive any feedback from the BCPS position, and he was told, following an interview process with Baltimore City Public Schools, that he was not the best fit for the job. Because of the many factors that influence a hiring process, it would be an unreasonable inference to conclude that these rejections were the direct result of a negative reference.

Assuming, *arguendo,* that Appellee did provide a negative reference, Appellant's claim, nevertheless, fails as he did not provide a causal connection between his EEO complaint and the negative reference. A retaliation claim requires a causal connection between the employee's protected activity and the adverse employment action. A claimant must demonstrate that his "'opposition to unlawful harassing conduct played a motivating part in the employer's decision to'" act against that employee. *Belfiore v. Merch. Link, LLC*, 236 Md. App. 32, 52 (2018) (quoting *Ruffin Hotel Corp., Inc. v. Gasper*, 418 Md. 594, 612 (2011)). Here, Appellant did not allege that a negative or inaccurate reference from Appellee was based on his EEO complaint instead of their honest assessment of his work performance. The court did not err in dismissing the retaliation claim.

III. The circuit court did not err in dismissing Appellant's workplace harassment claim.

Appellant argues that he experienced workplace harassment under Title VII and the ADEA. He argues that he was publicly embarrassed when a loud confrontation ensued between him and four of his female colleagues over an office space. In terms of harassment based on national origin, Appellant overheard a derogatory comment made by Ms. Daniel regarding his national origin.

Appellee argues that Appellant did not establish that the harassment was based on his race, age, sex, or national origin. Appellee contends that if there was harassment, it was not sufficiently severe or pervasive to alter his conditions of employment and create an abusive atmosphere.

A hostile work environment claim is based on the following: "(1) the harassment was unwelcome; (2) the harassment was based on his race or age; (3) the harassment was sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere; and (4) there is some basis for imposing liability on the employer." *Wang v. Metro. Life Ins. Co.*, 334 F. Supp. 2d 853, 862 (D. Md. 2004) (quoting *Causey v. Balog*, 162 F.3d 795, 801 (4th Cir.1998)). We reiterate that this Court is permitted to rely on federal cases in assessing Appellant's work harassment claim as it involves Title VII. *Romeka*, 254 Md. App. at 442.

Neither party disputes that the conduct of the

female employees was unwelcome. The second element is not satisfied, however, as it requires proof or a claim of a "direct or inferential connection" to race. *Wang*, 334 F. Supp. at 863 (stating that harassment must go beyond "personal grievances" and cannot be loosely related to race but a result of "racial animus"). To be sure, Appellant and his co-workers had a strained relationship. However, Appellant has not alleged that the strained relationship was due to racial animus or the Appellant's age or national origin. The issues between the parties appear to be more indicative of personal grievances or differences in opinion regarding the in-person work policy and occupancy of the office space.

Assuming, *arguendo,* that Appellant did establish a direct or inferential connection between the hostile events and his race or age, his claim still fails because the harassment was not so "sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere." *Causey*, 162 F.3d at 801. The third element is analyzed under the totality of the circumstances by considering "'"the frequency of the discriminatory conduct, its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance."'" *Manikhi*, 360 Md. at 348–49 (first quoting *Beardsley v. Webb*, 30 F.3d 524, 529 (4th Cir.1994); then quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)). The standard for proving a workplace harassment claim "is intended to be a very high one." *Jackson v. State of Md.*, 171 F. Supp.2d 532, 542 (D. Md. 2001); *Thorn v. Sebelius*, 766 F. Supp.2d 585, 601 (D. Md.

2001) (holding that a disagreement "with the management style or decisions of those who supervise[] . . . is not actionable under Title VII."). *Compare Nicole v. Grafton School*, 181 F. Supp.2d 475, 484 (D. Md. 2002) (dismissing a Title VII claim for a hostile work environment where a group of employees were called a "bunch of African fools" because the treatment was not "continuous and prolonged"), *with Spriggs v. Diamond Auto Glass*, 242 F.3d 179, 185 (4th Cir. 2001) (holding that a racially hostile environment existed where an African American employee was constantly taunted with repugnant racial slurs).

Here, the court found that Appellant did not satisfy the third element because being "embarrassed when he was yelled at one time outside his office" was "not enough [to] establish a severe or pervasive work environment as required by the third element." We agree with the court that Appellant and his co-workers' confrontation over the office space resulted in embarrassment for Appellant. However, as noted by the trial court, there were no physical threats, and the incident was isolated. An uncomfortable but isolated incident resulting from opposition to a management decision does not constitute severe or pervasive harassment.

Appellant relies on *Pennsylvania State Police v. Suders* in asserting that he was harassed on the basis of gender. 452 U.S. 129 (2004). In *Suders*, the plaintiff, a woman, was subject to severe harassment from her male supervisors. *Id.* at 135. Her male supervisors made comments about sex with animals and oral sex, they made obscene gestures with their genitalia in

close vicinity to the plaintiff, they stated that a "village idiot" could do her job, and they hit objects to intimidate her. *Id.* The plaintiff received little assistance in submitting an internal complaint against her male supervisors. *Id.* at 135–36. In an act of retaliation, her male supervisors falsely accused the plaintiff of theft, detained her, and interrogated her. *Id.* at 136. The plaintiff filed a civil action against her employer alleging sexual harassment and constructive discharge. *Id.* at 136–37. The district court dismissed her case following a grant of the defendant's motion for summary judgment. *Id.* at 137. The Court held that the case "in its current posture, presents genuine issues of material fact concerning Suders' hostile work environment and constructive discharge claims." *Id.* at 152. In contrast, Appellant's alleged harassment involves a one-time confrontation with his female colleagues over an office space. We find that *Suders* is factually distinct from Appellant's circumstances.

Finally, current case law emphasizes the frequency of offensive comments in determining whether there was harassment and it avoids finding workplace harassment in the event of a "mere offensive utterance." *Manikhi*, 360 Md. at 348–49. Taking into account the totality of the circumstances here, Ms. Daniel's joke to other co-workers referring to Appellant as an "African guy" does not constitute harassment, even though it was an offensive utterance.

Finally, the fourth element is not satisfied as there is no basis for imposing liability against Appellee. "Employers are not automatically liable for

acts of harassment levied by supervisors against subordinates." *Spriggs*, 242 F.3d at 186. However, if "an employee suffers a tangible employment action at the hands of his supervisor (or successively higher authority) as the result of prohibited discrimination, then the employer may be held liable on the premise that the supervisor acted within the scope of his agency." *Id.* Tangible employment actions "fall within the special province of the supervisor . . . . They are the means by which the supervisor brings the official power of the enterprise to bear on subordinates." *Id.* (Cleaned up). Because Appellant has not alleged sufficient facts to prove that Ms. Myers, Appellant's supervisor, subjected him to harassment or discrimination in her capacity as supervisor, there is no basis for imposing liability onto Appellee. The court did not err in dismissing the hostile workplace claim.

IV. The circuit court did not err in dismissing Appellant's constructive discharge claim.

Appellant argues that a constructive discharge occurred because Appellee failed to timely investigate and respond to his internal EEO complaint. Appellant "was concerned that if he continued in this environment, they would ultimately find a reason to terminate him or he himself might eventually snap at some point and be forced to respond to their actions in kind." He alleges that "the work environment turned extremely hostile, there were multiple retaliatory acts, ultimately leading to the plaintiff's resignation for health and safety concerns." Appellant references the following as retaliatory acts: the loss of his remote work status and his office space; the scheduling of an

insubordination meeting; and Ms. Myers and Ms. Bailey's several requests for him to return to the office. He asserts that he "had no choice but to resign for fear of his own mental health or extremely adverse consequence such as dismissal from employment."

Appellee argues that both a hostile work environment and constructive discharge must be satisfied to establish this claim. Appellee further argues that even if a hostile work environment were present, Appellant's working conditions were not so intolerable as to plead a constructive discharge claim.

A constructive discharge occurs when an employer causes working conditions "to become so intolerable that a reasonable person in the employee's place would have felt compelled to resign." *Beye v. Bureau of Nat. Affs.*, 59 Md. App. 642, 653 (1984). Intolerability in the workplace varies depending upon the circumstances of a case; however, it "is more stringent than the 'severe and pervasive' standard for hostile work environment claims." *Nnadozie v. Genesis HealthCare Corp.*, 730 F. App'x 151, 162 (4th Cir. 2018).

In the case of *Moniodis v. Cook*, 64 Md. App. 1 (1985), an employer demanded that its employees "submit to polygraph examinations regarding the inventory shortages and 'shrinkage' at certain Rite-Aid Stores[.]" *Id.* at 6. Employees who refused to complete a polygraph were either terminated or subjected to "working conditions calculated to force the[] employees to resign." *Id.* at 7. The supervisors purposefully enforced a policy that made "hour and location

conditions" so unreasonable that it rendered "continued employment simply fruitless for those who refused polygraphs." *Id.* at 11. A former manager was told in reference to an employee, "'we can't fire her outright, but what I want to do is cut her hours back until there is no longer any value for her to work here. She will become frustrated.'" *Id.* We explained that "it is precisely this subterfuge the constructive discharge doctrine is intended to thwart." *Id.; see also Williams v. Giant Food, Inc.*, 370 F.3d 423, 434 (4th Cir. 2004) (stating that being yelled at or reprimanded in front of others is not intolerable enough for a reasonable person to resign); *Munday*, 126 F.3d at 244 (finding that being ignored is not considered intolerable enough to justify resignation).

The trial court held that Appellant's work conditions did "not [rise] to the level required to meet the objectively intolerable standard." It is undisputed that Appellant experienced a change in commute length because he was required to make a round-trip commute from Fairfax, VA, to Towson, MD, four days a week. However, Appellee's fourday in-person policy applied to all workers as a standard measure at the end of the pandemic. Appellant did not describe how his employer purposefully made his employment "fruitless" as the plaintiffs did in *Moniodis*, and unlike *Moniodis*, it was not applied to a selective group as a consequence. We agree with the trial court that these facts do not establish an intolerable work environment from which Appellant was constructively discharged. The circuit court did not err in dismissing Appellant's constructive discharge claim.

V. The circuit court did not err in dismissing Appellant's intentional infliction of emotional distress claim.

Appellant argues that he experienced intentional infliction of emotional distress ("IIED") because "the daily commute was both exhausting and dangerous, and he felt that his life was being put at risk[.]" Appellant contends that Appellee's change to his remote work status "fail[ed] to factor in simple things like distance to work, family decisionmaking, [and] apartment rental contracts and so forth." He argues that he experienced emotional distress during his confrontation with Ms. Myers, Ms. Bailey, Ms. Armstrong, and Ms. Daniel. He alleges that he experienced "verbal assault, harassment, humiliation, and embarrassment." He also asserts that his removal from the office space to a cubicle "[t]rigger[ed] 30 years of emotional trauma related to space conflicts/territorial disputes." Appellant stated that he sought medical assistance for his mental health after these events.

Appellee argues that there is a significantly high bar in establishing an IIED claim, noting that Maryland courts have rarely upheld such claims. Appellee further contends that Appellant's change in remote work status and the confrontation over office space do not qualify as extreme and outrageous behavior under Maryland's high standard for establishing IIED claims. Appellee argues that Appellant has not alleged with specificity that the emotional distress he experienced was severe.

A claim for IIED must satisfy all of the following elements in order to be successful: "'(1) The conduct must be intentional or reckless; (2) The conduct must be extreme and outrageous; (3) There must be a causal connection between the wrongful conduct and the emotional distress; [and] (4) The emotional distress must be severe.'" *Lindenmuth v. McCreer*, 233 Md. App. 343, 368 (2017) (quoting *Lasater v. Guttman*, 194 Md. App. 431, 448 (2010)). Each element of an IIED claim must be "pled and proved with specificity." *Manikhi*, 360 Md. at 367 (internal quotation marks omitted).

Outrageous conduct is defined as an act "'so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Lindenmuth*, 233 Md. App. at 369 (quoting *Pemberton v. Bethlehem Steel Corp.*, 66 Md. App. 133, 160 (1986)). "[M]ere insults, indignities, threats, annoyances, petty oppressions, or other trivialities" are not sufficient. *Harris v. Jones*, 281 Md. 560, 567 (1977). This Court has cautioned that such claims "should be 'used sparingly and only for opprobrious behavior that includes truly outrageous conduct.'" *Mixter v. Farmer*, 215 Md. App. 536, 548 (2013) (quoting *Hines v. French*, 157 Md. App. 536, 558 (2004)).

Turning to the first element, it is plausible that a group of employees could recklessly cause emotional distress to another employee during a confrontation about vacating an office space. However, Appellant has failed to plead the remaining elements with any degree of specificity. The trial court found that Appellant's

allegations "that he was yelled at, humiliated, embarrassed, health policies were ignored, and that BCPS failed to consider the distance to work, family decision making, and rental contracts . . . . cannot be said to be extreme or outrageous." While we agree that being yelled at during a dispute over an office space can be humiliating, it is not the sort of extreme and outrageous behavior that Maryland recognizes. It was an isolated event that clearly was embarrassing and is more akin to an "annoyance" or "indignit[y]" rather than an event that "go[es] beyond all possible bounds of decency." *Harris*, 281 Md. at 567; *Lindenmuth*, 233 Md. App. at 369. We further note that Appellee's alleged lack of consideration for Appellant's personal circumstances is not extreme or outrageous conduct.

Appellant fails to satisfy the third element because he did not clearly indicate the causal connection between the workplace events and his emotional distress aside from stating that it was related to space and territory conflicts. Turning to the fourth element, the trial court found that Appellant's assertion that "the alleged conduct triggered emotional trauma that he suffered while living in Africa" failed to establish "emotional distress severe enough to support a claim for IIED." We agree that, while Appellant experienced stress and embarrassment from these events, that, alone, does not establish severe emotional distress. After noting this appeal, Appellant described his experience at BCPS as "an extraordinary disturbance on [his] life." He stated that the "misery and losses" were so great that he would never recover. He specifically indicated that "uncompensated research" efforts and "ongoing certainty" were among

his emotional harms. However, these specific instances were not included in his second amended complaint. They were a part of his appellate brief. The circuit court did not err in dismissing the intentional infliction of emotional distress claim.

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

APPENDIX C

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

E-FILED: Baltimore County
Circuit Court Docket:
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ISAAC MULAMBA
Plaintiff

v.

BOARD OF EDUCATION OF
BALTIMORE COUNTY
Defendant

Case No. C-03-CV-23-001611

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

MEMORANDUM OPINION AND ORDER

This matter is before the Court for consideration of The Board of Education of Baltimore County's ("Defendant") Motion to Dismiss Second Amended Complaint.

On April 19, 2023, Isaac Mulamba ("Plaintiff") filed a Complaint with the Circuit Court for Baltimore

County, and on July 11, 2023, the Plaintiff filed a Second Amended Complaint. On August 4, 2023, the Defendant filed a Motion to Dismiss the Second Amended Complaint and an accompanying memorandum. The Plaintiff filed his response to the Motion to Dismiss on August 7, 2023.

The Court heard arguments for the Defendant's Motion to Dismiss on September 18, 2023, and for the reasons stated below, the Defendant's Motion to Dismiss is hereby GRANTED.

I. Background

The Plaintiff, who is a Black male, originally from Africa, and who is in his sixties, was a data analyst and data manager for the Baltimore County Public School's Department of Special Education. The Defendant operates the Baltimore County Public Schools system and was the Plaintiff's employer beginning on or about January 1, 2022, when the Plaintiff was hired.

Before accepting the position, the Plaintiff contacted Human Resources to request an office and flexibility to work from home and these requests were granted by his supervisor, the Executive Director of Special Education. The Plaintiff later agreed to share his office with a part-time, administrative assistant, Ms. Armstrong, a white female, since he only occasionally worked in the office.

In June 2022, the Plaintiff's current supervisor retired, and Ms. Myers, a white female, was appointed

as the new Executive Director of Special Education. A virtual meeting between the Plaintiff and Ms. Myers was scheduled, and was also attended by Ms. Myer's Chief Assistant, Ms. Bailey, a black female. During that meeting, the Plaintiff alleges that Ms. Bailey was very dismissive of him, and she informed Ms. Myers of her dependence on another data analyst, Mr. Klinger. Mr. Klinger is white and only a data analyst, therefore the Plaintiff who is also a data manager had more responsibilities than Mr. Klinger. It was also during this initial meeting that Ms. Myers informed the Plaintiff that she wished him to return to the office in compliance with the new workplace policy and that he would be relocated to a cubical. The Plaintiff later discovered that his former office had been assigned to Ms. Armstrong.

The Plaintiff alleges that following the initial meeting, Ms. Myers and Ms. Bailey began to harass the Plaintiff by sending daily emails and phone calls instructing the Plaintiff to return to the office. The Plaintiff maintains that while working from home he was completing all of his required tasks.

On August 25, 2022, Ms. Bailey contacted the Plaintiff to inquire why he had not returned to work in-person and that he was to report to his assigned cubicle. Ms. Myers, then began to send certified mail to his residence to which the Plaintiff responded with a "Cease and Desist" letter and a request that all future correspondence be conducted by email.

On August 29, 2022, the Plaintiff returned to work in-person and reported to his old office where he

spoke briefly to Ms. Armstrong before she left. Ms. Armstrong then returned with Ms. Myers, Ms. Bailey, and Ms. Daniel (a black female), who according to the Plaintiff shouted and screamed at him to leave the office immediately. The Plaintiff refused to leave and remained in the office the rest of the day because he was too embarrassed to leave. The Plaintiff also informed the four women of his intentions to report the occurrence to the Equal Employment Opportunity ("EEO") Officer. The following day, the Plaintiff arrived to work and found his belongings had been relocated to his assigned cubicle.

On September 2, 2022, the Plaintiff filed an EEO complaint, and on September 6, 2022, the Plaintiff had a performance review with Ms. Myers where he informed her that he had filed the EEO complaint. From the Plaintiff's initial return to the office through early to mid-September the Plaintiff took several days off to avoid further altercations and continued to work from home on his approved days off.

On September 12, 2022, Ms. Myers scheduled a disciplinary meeting for insubordination with the Plaintiff and suggested he bring representation. The Plaintiff failed to attend the disciplinary meeting and claims that he resigned due to the "hostile work environment." After the Plaintiff's resignation, the Plaintiff contends that the Defendant wrote him a negative reference.

II. Questions Presented

1. Did the Plaintiff state a claim upon

which relief could be granted?

2. If the Plaintiff did state a claim upon which relief could be granted, should the Plaintiff's claims for damages be capped?

III. Legal Standard

A motion to dismiss may be granted when, viewing the well-pleaded facts, and inferences that may be drawn from them, in the light most favorable to the non-moving party, "the allegations do not state a cause of action for which relief may be granted." *Gomez v. Jackson Hewitt, Inc.*, 427 Md. 128, 142 (2012); *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 173 (2015). "'[T]he facts comprising the cause of action must be pleaded with sufficient specificity. Bald assertions and conclusory statements by the pleader will not suffice.'" *Id.* (quoting *Bobo v. State*, 346 Md. 706, 708–09 (1997)). "'Dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff.'" *Id.* (quoting *Bobo*, 346 Md. at 709).

IV. Discussion

In response to the Plaintiff's Second Amended Complaint, the Defendant alleges that each of the Plaintiff's nine counts fail to state a legal cause of action, and therefore the Motion to Dismiss should be granted with prejudice. The substantive claims contained in the Second Amended Complaint are addressed as follows.

1. Counts I, II, and III are dismissed for failing to establish a *prima facia* claim for race, national origin, sex, and age discrimination

In count one the Plaintiff alleges race and age discrimination in violation of Title VII of the Civil Rights act of 1964, as amended, 42 U.S.C.A § 2000e, *et seq.* ("Title VII"), the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.* ("ADEA"), and the Maryland Fair Employment Practices Act, Md. Code Ann., State Gov't § 20-601, *et seq.* ("FEPA"). Count two alleges sex discrimination in violation of Title VII and FEPA. Count three alleges national origin discrimination in violation of Title VII and FEPA. In the absence of direct evidence, the plaintiff must allege facts that establish all the elements of a *prima facie* case of discrimination which include: (1) membership in protected class; (2) satisfactory job performance; (3) adverse employment action; and (4) different treatment from similarly situated employees outside of the protected class. *Coleman v. Md. Court of Appeals*, 626 F.3d 187, 190 (4th Cir. 2010); *Simmons v. McGuffey Nursing Home, Inc.*, 619 F.2d 369, 371 (5th Cir. 1980).

The Defendant argues that the second, third, and fourth elements of a *prima facie* case of discrimination are not sufficiently alleged because the Second Amended Complaint fails to allege facts that would support these elements.

The second element, satisfactory job performance, requires that the plaintiff allege that

they were performing their duties at a level that met their employer's legitimate expectations. *Rodgers v. Eagle Alliance*, 586 F. Supp. 3d 398, 438 (D. Md. 2022). When determining whether the employee/plaintiff has met their job expectations, it is the decision maker's perception that is generally relevant. *Id.* (quoting *King v. Rumsfeld*, 328 F.3d 145, 149 (4th Cir. 2003). However, the Plaintiff need not show he was a model employee. *Warch v. Ohio Cas. Ins. Co.*, 435 F.3d 510, 517 (4th Cir. 2006). The Defendant argues that the Plaintiff admits this element is not met because the Second Amended Complaint states several instances where the Plaintiff was insubordinate. Although the Second Amended Complaint also states that the Plaintiff was completing his required tasks, it is the decision maker's perception, not his self-assessment that is relevant. *Rodgers*, 586 F. Supp. 3d at 438 (quoting *King*, 328 F.3d at 149). Therefore, this element is not sufficiently alleged.

The third element required for a *prima facie* case for discrimination is adverse employment action. For something to be considered an adverse employment action it must affect the terms, conditions, or benefits of the plaintiff's employment. *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007). The Defendant contends that that the facts the Plaintiff plead in the Second Amended Complaint do not constitute adverse employment actions. The facts in the Complaint include having some of his work responsibilities given to another employee; being reassigned from an office to a cubicle; being "yelled" and "screamed" at; being excluded from a department website photo which featured four women; and being

talked about by another employee as a guy from Africa who should not be complaining about losing his office. *See James v. Booz-Allen & Hamilton, Inc.*, 368 F.3d 371, 375-76 (4th Cir. 2004) (reassignment of responsibilities is not an adverse employment action, however, a demotion is); *Cepada v. Bd. Of Educ. Baltimore County*, 814 Supp. 2d. 500, 515 (D. Md. 2011) (being yelled at and criticized for complaining about discriminatory treatment is not materially adverse); *Mallik v. Sebelius*, 964 F. Supp. 2d 531, 542 (D. Md. 2013) (failure to be included in a photo is not an adverse action because it does not affect compensation, career opportunities, or responsibilities). The facts contained within the Second Amended Complaint are not considered adverse employment actions.

The last factor was also not satisfied because the Plaintiff failed to allege facts that established similarly situated employees outside the relevant protected classes received more favorable treatment. Therefore, the court will grant the Defendant's Motion to Dismiss as to Counts I, II, and III.

2. Count IV is dismissed for failure to state a claim of workplace harassment

Count four of the Plaintiff's Second amended Complaint alleges a claim for workplace harassment under Title VII and ADEA. To state a claim for hostile work environment the plaintiff must show: "(1) the harassment was unwelcome; (2) the harassment was based on his race or age; (3) the harassment was sufficiently severe or pervasive to alter the conditions

of employment and create and abusive atmosphere; and (4) there is some basis for imposing liability on the employer." *Causey v. Balog*, 162 F.3d 795, 801 (4th Cir. 1998).

The Defendant contends that the Plaintiff has failed to allege the second and third elements of workplace harassment. To allege that the harassment was sufficiently severe or pervasive so that it falls within the scope of Title VII, "a court must examine 'all the circumstances, [including] the frequency of the discriminatory conduct, its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'" *Magee v. DanSources Tech. Servs., Inc.*, 137 Md. App. 527, 561 (2001) (quoting *Manikhi v. Mass Transit Admin.*, 360 Md. 333, 348-49 (2000)). Here, the Plaintiff alleged in his Second Amended Complaint that he was embarrassed when he was yelled at one time outside his office, that is not enough establish a severe or pervasive work environment as required by the third element. Therefore, the Court will grant the Defendant's Motion to Dismiss Count IV.

3. Count V is dismissed for failure to state a claim for retaliation

Count five of the Plaintiff's Second Amended Complaint alleges a claim for retaliation. To plead a retaliation claim, the plaintiff must allege that: (1) they were engaged in a protected activity; (2) that a materially adverse employment action was taken by their employer; and (3) there is a causal link between

the protected expression and adverse action. Magee, 137 Md. App. at 563-64 (citing *Manikhi v. Mass Transit Admin.*, 360 Md. 333, 349 (2000)). The Plaintiff's Second Amended Complaint sufficiently alleges the first element of retaliation because filing an internal EEO complaint is a protected activity. *Edgewood Mgmt. Corp. v. Jackson*, 212 Md. App. 177, 201-02 (2013) (a complaint about an employer's alleged discriminatory conduct constitutes as a protected activity).

For an employment action to be sufficiently adverse as to satisfy the second element of a retaliation claim the action must involve an "ultimate employment decision," such as to reassign, demote, discharge, or grant leave. *Magee*, 137 Md. App. at 565 (citing *Manikhi*, 360 Md. at 350- 51). The Supreme Court requires "material adversity" to distinguish significant from trivial harms. *Burlington Northern & Santa Fe Ry. v. White*, 548 U.S. 53, 68, 126 S. Ct. 2405, 2415 (2006). Generally, actions that do not result in a change of salary, benefits, or responsibility are not considered materially adverse employment actions. *Id.* Additionally, the employee must be made "worse off" by the employer's action. *Lockheed Martin Corp. v. Balderrama*, 227 Md. App. 476, 509 (2016).

The Plaintiff's Second Amended Complaint alleges that after he filed or threaten to file the internal EEO complaint several adverse employment actions were taken by the Defendant in retaliation, including that: Ms. Myers scheduled a performance review and insubordination meeting; some of his work responsibilities were taken away and given to Mr.

Klinger; he had limited communication with Ms. Myers and Ms. Bailey; he was excluded from meetings; and he received a negative reference once he resigned. The performance review and insubordination meeting are not adverse employment actions because they did not make the Plaintiff worse off. Similarly, the Plaintiff's allegations of diminished communication and exclusion from meetings, are also not adverse employment actions because they do not result in a change of salary, benefits, or responsibility and are therefore not meeting the materially adverse standard.

As to the Plaintiff's responsibilities being reassigned. To be actionable, the plaintiff must allege that the change in responsibilities must "impede her ability to advance, or had any tangible impact on her career." *Bailey v. Ares Grp., Inc.*, 803 F. Supp. 2d 349, 357 (D. Md. 2011). Additionally, the change in responsibilities must be substantial to be considered an adverse employment action. *Jones-Davidson v. Prince George's Cty. Cmty. Coll.*, Civil Action No. 13-cv-02284-AW, 2013 WL 5964463, at *4 (D. Md. Nov. 7, 2013). The Plaintiff alleges in his Second Amended Complaint that certain responsibilities and tasks were reassigned to Mr. Klinger, but he still had his routine work. The sole act of reassigning some of the Plaintiff's responsibilities is insufficient to constitute adverse employment action because it did not cause "a significant change in employment status." *Lockheed Martine Corp.*, 227 Md. App. at 510.

As to the Plaintiff's allegation of a negative job reference, a negative job reference can constitute an adverse employment action supporting a retaliation

claim. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 345-46, 117 S. Ct. 843, 848 (1997); *Lytle v. Housing Mfg., Inc.*, 494 U.S. 545, 110 S. Ct. 1331 (1990). The Defendant argues that the Plaintiff has failed to allege sufficient facts to support this claim because the Second Amended Complaint simply states that after the EEO complaint was filed "BCPS provided a negative reference to an inquiring prospective employer." The Defendant contends in their Memorandum in Support of its Motion to Dismiss Plaintiff's Second Amended Complaint that the Plaintiff should have alleged when the reference was made, who made the reference, whether the reference was untrue, and whether it was motivated by retaliatory intent. To survive a motion to dismiss the Plaintiff must provide facts with sufficient specificity that plausibly support their claim. *Advance Telecom Process LLC*, 224 Md. at 173 (*Bobo*, 346 Md. at 709). Sufficient facts were not alleged here because simply stating a negative reference was made to a prospective employer does not support a retaliation claim because there must be a causal link between the protected activity and the adverse action. *Magee*, 137 Md. at 563-64 (citing *Manikhi*, 360 Md. at 349). The Court will therefore grant the Defendant's Motion to Dismiss Count V because the Plaintiff failed to allege facts of a materially adverse employment action.

4. Count VI is dismissed for failure to state a claim for negligent hiring

Count six of the Plaintiff's Second Amended Complaint alleges that the Defendant negligently hired Ms. Myers. A negligent hiring claim has five

elements that must be established by the plaintiff: "(1) the existence of an employment relationship; (2) the employee's incompetence; (3) the employer's actual or constructive knowledge of such incompetence; (4) the employee's act or omission causing the plaintiff's injuries; and (5) the employer's negligence in hiring, supervising, or retaining the employee as the proximate cause of plaintiff's injuries." *Mitchell v. Rite Aid of Maryland, Inc.*, 257 Md. App. 273, 333 (2023) (quoting *Latty v. St. Joseph's Soc. Sacred Heart, Inc.*, 198 Md. App. 254, 272 (2011).

The Plaintiff's Second Amended Complaint alleges that: (1) Ms. Myers was not experienced enough to assume the executive director position; (2) that Ms. Myers was biased and she disproportionately suspended minority students; and (3) a data analysis would have excluded her as a candidate for the position in a school where minorities are a majority.

A plaintiff may not pursue a negligent hiring claim if the basis for such claim was not actionable under the common law in Maryland (such as Title VII, ADA, and the Civil Rights Act). *Bryant v. Better Bus. Bureau of Greater Maryland, Inc.*, 923 F. Supp. 720, 751 (D. Md. 1996). Therefore, the allegations that Ms. Myers was biased, disproportionally suspended minority students, and a data analysis would have excluded her from a position in a school where minorities are a majority are not actionable for a claim of negligent hiring.

As to the Plaintiff's first allegation, that Ms. Myers was not experienced enough. It is required that

the defendant's negligent hiring be the proximate cause of the plaintiff's injuries. *Mitchell v. Rite Aid. Of Md. Inc.*, 257 Md. App. 273, 333 (2023). The Plaintiff's Second Amended Complaint does not allege that Ms. Myer's inexperience was the proximate cause of the injury. Therefore, the Court will grant the Defendant's Motion to Dismiss Count VI.

5. Count VII is dismissed for failure to sustain a cause of action for abusive discharge/constructive termination

Count seven of the Plaintiff's Second Amended Complaint alleges abusive discharge/constructive termination. An abusive discharge claim and constructive termination claim are two separate causes of actions.

In Maryland, a claim for abusive discharge occurs when "an employer's discharge of an at-will employee 'contravenes some clear mandate of public policy.'" *Randolph v. ADT Sec. Servs., Inc.*, 701 F. Supp. 2d 740, 746-47 (D. Md. 2010) (quoting *Makvoi v. Sherwin-Williams, Co.*, 316 Md. 603, 609 (1989)). A claim for abusive discharge requires that the plaintiff was discharged, the discharge violated clearly mandated public policy, and there is a nexus between the employee's conduct and employer's decision to discharge them. *Randolph*, 701 F. Supp. at 747. Here, the Plaintiff was not discharged by the Defendant and therefore the Plaintiff has failed to state a claim for abusive discharge.

Constructive discharge occurs "when an

employer deliberately causes or allows the employee's working conditions to become 'so intolerable' that the employee is forced into an involuntary resignation." *Williams v. Maryland Dep't of Hum. Res.*, 136 Md. App. 153, 178 (2000) (quoting *Beye v. Bureau of Nat'l Affairs*, 59 Md. App. 642, 650 (1984). The courts use an objective standard when determining intolerability that is very high and requires more than unpleasant conditions, and sometimes even awful working conditions will not suffice. *Blakes v. City of Hyattsville*, 909 F. Supp. 2d 431, 438 (D. Md. 2012); *Evans v. Int'l Paper Co.*, 936 F.3d 183, 193 (4th Cir. 2019).

The Defendant contends that the Plaintiff's constructive discharge claims fails because the facts in the Plaintiff's Second Amended Complaint are not objectively intolerable. The Plaintiff's Second Amended Complaint alleged that he was yelled and shouted at, that his office was given to another employee, he was required to return to work in-person, a performance review and insubordination meeting were scheduled, and he was harassed by email, mail, and phone calls. These facts do not raise to the level required to meet the objectively intolerable standard. The Court will grant the Defendant's Motion to Dismiss the Count VII.

6. Count VIII is dismissed for failure to state a claim of intentional infliction of emotional distress

Count eight in the Plaintiff's Second Amended Complaint alleges a claim of intentional infliction of emotional distress ("IIED"). A claim for IIED requires

the plaintiff to prove that: "(1) [t]he conduct must be intentional or reckless; (2) [t]he conduct must be extreme and outrageous; (3) [t]here must be a causal connection between the wrongful conduct and the emotional distress; [and] (4) [t]he emotional distress must be severe." *Lasater v. Guttmann*, 194 Md. App. 431, 449 (2010). For a claim of IIED to survive a motion to dismiss the "plaintiff must plead facts which could plausibly support [all] four elements." *Craig v. Yale Univ. Sch. Of Med.*, 838 F. Supp. 2d 4, 9 (D. Conn. 2011).

A claim for IIED requires that the alleged conduct be both extreme and outrageous and it must "go beyond all possible bounds of decency and is to be regarded as atrocious and utterly intolerable in a civilized society." *Haines v. Vogel*, 250 Md. App. 209, 230 (2021) (quoting *Laster*, 194 Md. App. At 448). As of 2021, a claim for IIED has only been sustained in Maryland four times and "the tort has been found to exist in only the most extreme circumstances." *Haines*, 250 Md. App. at 230. The Defendant contends that the conduct alleged in the Second Amended Complaint does not raise to the level of extreme or outrageous as required for a claim of IIED. The Plaintiff alleges that he was yelled at, humiliated, embarrassed, health policies were ignored, and that BCPS failed to consider the distance to work, family decision making, and rental contracts. These facts cannot be said to be extreme or outrageous.

A claim for IIED also requires that the emotional distress experienced by the plaintiff must be so severe that "no reasonable person could be expected

to endure it." *Haines*, 250 Md. App. At 232 (quoting *Leese v. Balt. Cnty.*, 64 Md. App. 442, 471 (1985); *Harris v. Jones*, 281 Md. 560, 570-71 (1977)). The Plaintiff's Second Amended Complaint alleges that the alleged conduct triggered emotional trauma that he suffered while living in Africa. The Plaintiff therefore fails to allege emotional distress severe enough to support a claim for IIED. The Court will grant the Defendant's Motion to Dismiss Count VIII.

7. Count IX is dismissed for failure to state a claim for abuse of process

The ninth count contained in the Plaintiff's Second Amended Complaint alleged an abuse of process claim. To sustain a cause of action for abuse of process the plaintiff must show: (1) the defendant willfully used process after it has been issued in a manner not contemplated by law; (2) that the defendant acted with an ulterior motive; and (3) that damages were suffered as result of the defendant's use of process. *One Thousand Fleet Ltd. Pshp. V. Guerriero*, 346 Md. 29, 38 (1997). An abuse of process claim requires a comparison between the "lawful purpose for which the process in question was intended and the improper purpose for which it was actually employed." *Metro Media Entertainment, LLC v. Steinruck*, 912 F. Supp. 2d. 344, 350 (D. Md. 2012). An abuse of process claim also requires more than "bad motive alone." *One Thousand Fleet*, 346 Md. at 38. The Plaintiff has failed to allege in his Second Amended Complaint any issuance of process not contemplated by law, nor has he alleged that the Defendant acted with an ulterior motive.

Additionally, a civil abuse of process claim "requires that the plaintiff establish an arrest of the person or seizure of property of the plaintiff resulted from the abuse of process." *One Thousand Fleet*, 346 Md. at 39-40 (citing *Bartlett v. Christhilf*, 69 Md. 219, 231 (1888)). The Plaintiff has failed to allege an arrest o the Plaintiffs person or property. The Court will grant the Defendant's Motion to Dismiss Count IX.

V. Conclusion

The Plaintiff has failed to allege facts in the Second Amended Complaint that state a cause of action for which relief can be granted. It is for the reasons stated *supra,* that the Defendant's Motion to Dismiss the Second Amended Complaint is hereby GRANTED.

VI. Final Ruling

WHEREFORE, it is by the Circuit Court for Baltimore County,

ORDERED, that Defendant's Motion to Dismiss is hereby GRANTED.

/s/
Judge Michael J. Finifter
Circuit Court for Baltimore County
09/27/2023 4:19:04 PM

APPENDIX D

[SUPREME COURT OF MARYLAND LETTERHEAD]

April 25, 2025

NOTICE OF ORDER

Isaac Mulamba v. Board of Education of Baltimore County
Petition No. 474, September Term, 2024

On April 25, 2025, the Court entered an order[1] denying the petition for writ of certiorari in this Court.

/s/ Gregory Hilton
Clerk

Copy to: All counsel of record
Any unrepresented parties
Clerk, Appellate Court of Maryland
Clerk, Circuit Court

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[1] The Court's order can be viewed online at https://www.mdcourts.gov/scm/petitions.