

**BEFORE THE
MERIT SYSTEM PROTECTION BOARD
FOR
MONTGOMERY COUNTY, MARYLAND**

IN THE MATTER OF

████████████████████,

APPELLANT,

AND

**MONTGOMERY COUNTY
GOVERNMENT,**

EMPLOYER

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

CASE NO. 19-04

=====

ORDER OF DISMISSAL

On August 6, 2018, ██████████ (Appellant) filed an appeal with the Merit System Protection Board (MSPB or Board), challenging the decision of the Department of Transportation, Division of Transit Services, to suspend him for three (3) days. The discipline was based on the County’s allegation that on March 9, 2018, Appellant was driving a County Ride-On bus and illegally passed a school bus operated by the Montgomery County Public Schools that had its stop sign extended.

On January 16, 2019, a hearing on the merits was held before the Board. Appellant indicated during the hearing that he had requested a trial in District Court to contest the citation issued for a school bus monitoring civil violation under Transportation Article (TR), § 21-706. *See* TR § 21-706.1; Montgomery County Code, § 31-9B. At the end of the January 16 hearing the parties asked that this case be stayed pending resolution of Appellant’s District Court trial. Further, the County represented to the Board that Appellant’s suspension would be rescinded if Appellant was found by the District Court not to have violated TR § 21-706.

On January 17, 2019, the Board issued an order holding this appeal in abeyance pending final adjudication of Appellant’s school bus monitoring citation in the District Court. The order required that within five (5) working days from the date of the District Court’s ruling Appellant was to advise the Board of the outcome of that case, in writing. When over six (6) months had passed

without a satisfactory explanation concerning the status of the District Court case the Board, on August 8, 2019, lifted the stay and ordered a transcript of the hearing.

While the Board was still considering the appeal on the merits it received an October 1, 2019, email from Appellant stating that he had prevailed in District Court. The next week the County advised the Board that it had confirmed that the District Court had found that Appellant had not violated Transportation Article, § 21-706. On November 26, 2019, the County filed a motion to dismiss based on mootness, attesting that Appellant's discipline had been rescinded and providing documentation that he had received full backpay.

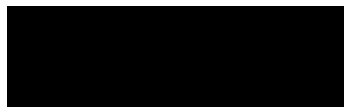
Pursuant to Montgomery County Personnel Regulations (MCPR), § 35-7(d), the Board may dismiss an appeal if the appeal becomes moot. Under longstanding Board precedent, an appeal must be dismissed as moot where an agency completely rescinds the action appealed. *See, e.g.*, MSPB Case No. 17-27 (2017); MSPB Case No. 17-03 (2016); MSPB Case No. 14-45 (2014); MSPB Case No. 14-11 (2014); MSPB Case No. 12-06 (2006); MSPB Case No. 10-12 (2010). The County has demonstrated to the Board that it has fully rescinded the action appealed and made Appellant whole.

Accordingly, the Board hereby **ORDERS**:

1. That within 14 calendar days of this Order the County provide the Board with written certification, copied to Appellant, that it has fully rescinded the disciplinary suspension of Appellant and removed all documents pertaining to Appellant's suspension from his personnel records; and
2. That the appeal in Case No. 19-04 be and hereby is **DISMISSED** as moot;

If any party disagrees with the decision of the Merit System Protection Board, pursuant to Montgomery County Code, §33-15, *Judicial review and enforcement*, and MCPR, §35-18, *Appeals to court of MSPB decisions*, an appeal may be filed with the Circuit Court for Montgomery County, Maryland in the manner prescribed under the Maryland Rules, Chapter 200, Rule 7-202.

For the Board
December 9, 2019

A solid black rectangular redaction box covering the signature of Michael J. Kator.

Michael J. Kator
Chair