

CEDRIC BROWN,

Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-18

OPINION

INTRODUCTION

The Appellant, Cedric Brown, appealed the non-renewal of his teaching contract with Baltimore City Public Schools (“BCPS”). The Baltimore City Board of School Commissioners (“local board”) filed a Motion for Summary Affirmance maintaining that it appropriately dismissed the Appellant’s appeal because the Appellant failed to file a timely Appeal Information Form as required by local board policy. The Appellant opposed the local board’s Motion and the local board responded.

FACTUAL BACKGROUND

The Appellant was employed with BCPS as a probationary teacher under a regular contract. Appellant began his employment at Coppin Academy High School #432 (“Coppin”) at the start of the 2011-2012 school year, and remained there for three years. (Brown Aff., #5). There was a different principal assigned to Coppin for each of the three years that the Appellant worked there. (*Id.*).

In March 2014, the Appellant was placed on a Performance Improvement Plan (“PIP”). (Appeal, pg. 2). The Appellant received an “ineffective” evaluation at the end of the 2013-2014 school year.

On May 1, 2014, former Interim Chief of Staff for BCPS, Jennifer Bell-Ellwanger, informed the Appellant that his teaching contract would not be renewed for the 2014-2015 school year and that his employment would end on June 30, 2014. (Appeal, Ex. 4).

On May 22, 2014, the Baltimore Teacher’s Union (“BTU”) representative, Clifton Denby, appealed the non-renewal and ineffective performance rating on the Appellant’s behalf. The appeal, addressed to Jerome Jones, Manager of the Office of Employee and Labor Relations, maintained that BCBS failed to assign the Appellant a mentor during the 2013-2014 school year in violation of COMAR 13A.07.01.01 - .06, and thus “no mentor meetings were held to assist the [Appellant] in his development.” (Appeal, Ex. 5). He requested that Appellant’s “ineffective” rating be changed to “effective,” that Appellant’s non-renewal be rescinded, and that Appellant be reinstated to a teaching position (*Id.*).

By letter dated July 11, 2014, the Chief Executive Officer's designee, upheld both the ineffective evaluation and the non-renewal. (Appeal, Ex. 6). Supporting her decision, the designee stated that Coppin's Principal identified the Appellant's mentors and also confirmed that she worked with the Appellant under a PIP to "support his lesson planning and instructional delivery." (*Id.*).

On July 15, 2014, Mr. Denby appealed to the local board stating that "[t]his is a request for a 4-205 appeal hearing on behalf of Cedric Brown . . . a teacher assigned to Coppin Academy High, #432." The appeal requested that the local board office contact Mr. Denby to schedule a date and time for a meeting. Attached to the letter of appeal was the earlier May 22, 2014 letter addressed to Jerome Jones. That letter stated as follows:

This is a request for a 4-205 hearing on behalf of Cedric Brown, a teacher assigned to Coppin Academy High, #432.

Around May 1, 2014, Mr. Brown received notice that he would be rated ineffective for the school year 2013-2014 and would be non-renewed for the 2014-2015 school year.

Mr. Brown was not assigned a mentor at any time during the school year; consequently, no mentor meetings were held to assist the teacher in his development.

This is a violation of ED 4-205, COMAR 13A.07.01-13A.04.04; 13A.07.01.06; 13A.07.02.06, 9.1 Negotiated Agreement.

As a remedy, we are seeking to have the ineffective rating changed to effective for the 2013-2014 school year and to have his non-renewal rescinded and be reinstated into a teaching position in BCPSS.

Please contact my office so that we may schedule a date and time for our meeting.

(Appeal Ex. 7).

On August, 13, 2014, the Chief Executive Officer ("CEO") filed a Motion to Dismiss the appeal based on Appellant's failure to timely file an Appeal Information Form. (Appeal Ex. 8). In support of the motion, the CEO cited local board policy BLA, section II.B.2 which requires §4-205 appeals to be initiated through the filing of an Appeal Information Form within 30 days of the CEO's final decision (*Id.*). The CEO also stated that probationary teachers do not have due process rights attached to the renewal of their contracts, and that the local board does not need to establish cause as a basis for the non-renewal decision. (Appeal Ex. 8).

On August 20, 2014, Mr. Denby filed an Opposition to the CEO's Motion to Dismiss and attached a completed Appeal Information Form (Appeal Ex. 10). He provided the following information as requested on the form:

- Name, address, and telephone number of all appellants – Appellant's name, address and telephone number;
- Date of CEO's decision from which appeal is being taken - July 11, 2014 decision;
- Description of the nature of the appeal - violation of COMAR 13A.07.01.01 – 13A.07.01.04, 13A.07.01.06;
- Explanation of legal and factual basis of the appeal – Cedric Brown, a new teacher under a regular contract who was in a probationary status, was not assigned a mentor at anytime (sic) during the school year; consequently, no mentor meetings were held to assist the teacher in his development. This is a violation of above said State Law. The SCO's designee found that Mr. Brown was provided with mentor teachers.
- Remedy being sought – That Mr. Brown's non-renewal be rescinded.
- Attorney's contact information if represented by counsel – Mr. Denby's contact information; and
- Request for oral argument and/or evidentiary hearing – Request for both stating that Appellant's substantial employee right to continued employment under a probationary contract cannot be satisfactorily adjudicated without a hearing in which a finder of fact can determine whether he was provided a mentor as required by COMAR.

He argued that the information provided on the Appeal Information Form was no different from the information that was contained in the letter of appeal to the local board and its attachment, and that the local board should not dismiss the appeal because such a decision would elevate form over substance. (*Id.*).

The local board referred the case to a Hearing Examiner, who heard the matter on October 22, 2014. (Appeal, Ex. 2). The Hearing Examiner recommended that the local board dismiss the appeal, concluding that the Appellant filed the Appeal Information Form beyond the deadline required by the local board's policy. (*Id.*). The Hearing Examiner also recommended that the local board affirm the non-renewal of the Appellant's teaching contract for the 2014-2015 school year, holding that there was no evidence that the decision was based on illegal or discriminatory reasons. (*Id.*).

Mr. Denby filed exceptions to the Hearing Examiner's Recommendations on November 6, 2014 on Appellant's behalf. (Appeal, Ex. 11). He argued that the Hearing Examiner failed to consider the arguments that the substance of the information provided in the letter of appeal to the local board was the same as that provided in the Appeal Information Form, and that the non-renewal was illegal because BCPS did not provide Appellant with a mentor as required under COMAR. (*Id.*). He also argued that the Hearing Examiner ignored the supplemental materials he filed with the Board, including a letter from Mrs. Joan Stukes-Maurice denying that she served as a mentor to the Appellant during the 2013-2014 school year (*Id.* at Ex. A, Attachment

1). He argued that the supplemental materials demonstrated a dispute of fact necessitating an evidentiary hearing.

The CEO responded, reiterating his earlier arguments and adding that BCPS had established a mentoring program for new teachers, that the Appellant received additional support and mentoring as a result of being placed on a PIP, and received other mentoring from specific individuals. (Appeal, Ex. 12).

On December 11, 2014, the local board issued an Order affirming the recommendation of the Hearing Examiner that the appeal be dismissed. This appeal followed.

STANDARD OF REVIEW

In cases involving a local board's policy, or a controversy and dispute regarding the local board's rules and regulations, the local board's decision is considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

Because a probationary teacher has no due process right to the renewal of the teaching contract, the local board does not have to establish cause for the basis of its decision not to renew. *Ewing v. Cecil County Bd. of Educ.*, 6 Ops. MSBE 818 (1995). A local board's decision to non-renew cannot be based on illegal or discriminatory reasons, however. It is the Appellant's burden to prove illegality "with factual assertions, under oath, based on personal knowledge." *Greenan v. Worcester County Bd. of Educ.*, MSBE Op. No. 10-51 (2010); *Etefia v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-03 (2003).

LEGAL ANALYSIS

Appeal Information Form

The Appellant argues that the local board's decision dismissing the appeal based on Appellant's untimely filing of the Appeal Information Form is arbitrary and unreasonable because it elevates form over substance. The Appellant points out that he had already filed the necessary information with the local board on July 15, 2014, within the requisite 30 day window, albeit not on an Appeal Information Form. The local board maintains that its dismissal was appropriate because local board policy BLA requires that an appeal to the local board be initiated by filing the form.

Policy BLA, section III.B.2 states:

Each appeal to the Board under Code Section 4-205(c) shall be initiated by filing a written notice of appeal with the Board within thirty (30) days after written notice of the final action or decision of the CEO or his designee. The appellant shall utilize the Board's Appeal Information form when noting an appeal. Facsimile and email requests for an appeal are acceptable. If the notice of appeal

under Code Section 4-205(c)(3) is not filed within the time period set forth in this paragraph, the appeal will be dismissed.

Appellant's 30 day appeal window ended on August 11, 2014. Mr. Denby submitted the Appeal Information Form to the local board on August 20th.

Given the facts of this case, we find that dismissal of the appeal based on the late filing of the Appeal Information Form was arbitrary and unreasonable. To find otherwise "would be inconsistent with the well established principle 'that the substance rather than the form of the pleading is the controlling consideration.'" *In re Deontay J*, 400 Md. 152, 160 (2009); *Green v. Green*, 188 Md. App. 661, 677 (2009). The governing rule is that, "in applying statutes, other enactments, pleadings, or legal principles, 'courts must ordinarily look beyond labels . . . and make determinations based on . . . substance.'" *See In re Nicole B.*, 410 Md. 33, 65 (2009) and cases cited therein.

We turn to the substance of the appeal submitted to the local board by Mr. Denby on July 15, 2015, prior to the expiration of the appeal period. The information from both submitted letters contained essentially the same information that was requested on the Appeal Information Form. That information made clear that Cedric Brown was seeking an appeal of his non-renewal based on a claim of illegality in that BCPS had not provided him with mentors as required by specific COMAR provisions, which in turn prevented him from improving his work performance. The information also made clear that he was seeking a §4-205 appeal hearing, was represented by union counsel, and sought to have the non-renewal decision reversed. In our view, there could be no mistake about what issue was being raised in the appeal and the remedy being sought. Neither the Hearing Officer nor the local board identified any substantive deficiencies in the letter of appeal that would have precluded the local board from understanding what the appeal was about. In fact, neither the Hearing Officer nor the local board provided any analysis of the form over substance issue, despite the fact that the Appellant had raised it. The substance of the information provided is what matters here and there was sufficient information to trigger the appeal.

We note that the local board cites to one of its own cases in which it upheld a hearing officer's recommendation that an appeal to the local board be dismissed because the Appeal Information Form was not timely filed. (Local Bd. Motion, Ex. E., Case No. 13-25). In that case, the union representative filed a letter of appeal requesting a §4-205 hearing, maintaining that the CEO's termination of a school system employee was arbitrary and unreasonable because the termination was without cause. That case had different facts, was not appealed to the State Board and is not binding precedent here.

Appellant also argues that Policy BLA's requirement that the appeal to the local board be initiated by the filing of an Appeal Information Form is inconsistent with §4-205(c)(3) of the Education Article. Section 4-205(c)(3) states that "[a] decision of a county superintendent may be appealed to the county board if taken in writing within 30 days after the decision of the county superintendent." Based on the plain language of the statute and policy, we find no inconsistency between the two. The provisions can be harmonized as compliance with both is possible. *See, e.g. Syndicated Publications, Inc. v. Montgomery County*, 921 F. Supp. 1442, 1448 (D. Md.

1996); *Massey v. Galley*, 392 Md. 634, 650 (2006); *Weller v. Maryland Bay Co.*, 176 Md. 59, 71 (1939) (statutes should be harmonized where possible to give effect to both). Policy BLA simply clarifies the form of the written appeal allowed by §4-205. The Appeal Information Form requests the type of information that is necessary for the local board to understand what the appeal is about in order to conduct an appropriate review of the case.

Non-renewal Decision

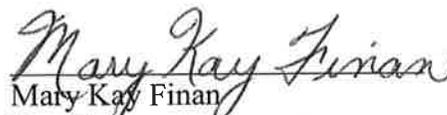
The local board's decision on the merits states, in full, "[u]pon consideration and review of the case, and relying upon the Findings of Fact, Conclusions of Law, and Recommendations made to the Board by the hearing examiner . . . the recommendation of the hearing examiner "that the Board dismiss the appeal" is hereby affirmed." (Appeal, Ex. 1). Therefore, we looked to the Hearing Examiner's decision on the merits of the non-renewal to determine the reasoning that supports the dismissal of the case on the merits. The Hearing Examiner in her decision recited the arguments of the parties and in one conclusory sentence addressed the merits. The Hearing Examiner stated, "there is no evidence of illegality, discrimination or other due process violation in the letter sent by the [Interim Chief of Staff] to Appellant notifying him of the non-renewal of his teaching contract." (Appeal, Ex. 2). Yet, the Appellant did raise an issue of illegality at the hearing. The Hearing Examiner did not address the sufficiency of the evidence presented. He focused only on the letter sent by the Interim Chief of Staff.

In its filings, the local board presented a rationale for the appropriateness of the non-renewal. But those arguments and explanations have no grounding in the local board's or the Hearing Examiner's decision. Therefore, because we cannot ascertain the grounds for the decision to dismiss the case on the merits, we cannot determine if that decision was arbitrary, unreasonable or illegal. See *Valenzia v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 12-26 (2012); *Mohan G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-15 (2008). For this reason, we will remand the case to the local board for issuance of a decision explaining the grounds for dismissal on the merits.

CONCLUSION

As stated above, we find the decision of the Baltimore City Board of School Commissioners dismissing the appeal based on the late filing of the Appeal Information Form to be arbitrary and unreasonable. We find that the appeal was timely filed.

With regard to the merits of the appeal, we remand the case to the local board for the issuance of a decision within 60 days explaining the grounds for dismissal on the merits.

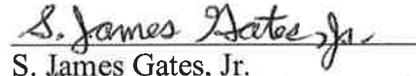

Mary Kay Finan
President



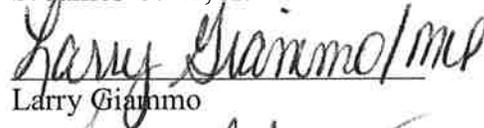
James H. DeGraffenreidt, Jr.



Linda Eberhart



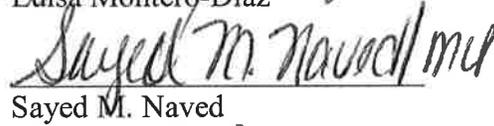
S. James Gates, Jr.



Larry Giammo



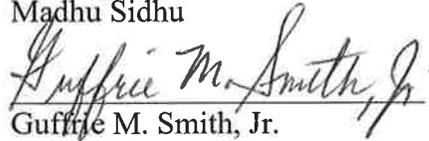
Luisa Montero-Diaz



Sayed M. Naved



Madhu Sidhu



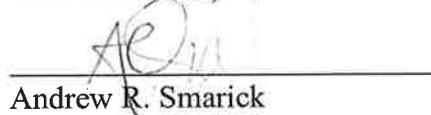
Guffie M. Smith, Jr.

June 23, 2015

Dissent:



Chester E. Finn, Jr.



Andrew R. Smarick