

PARENT ADVISORY COUNCIL OF
FRIENDSHIP ACADEMY OF
SCIENCE AND TECHNOLOGY,
Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,
Appellee

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Order No. OR15-01

ORDER

On December 27, 2013, the Baltimore City Board of School Commissioners (local board) decided not to renew the charter for the Friendship Academy of Science and Technology (FAST), a public charter school in Baltimore City that was operated by Friendship Public Charter Schools, Inc. On February 25, 2014, the local board voted to close FAST.

Through an appeal to the State Board filed on March 14, 2014, the Parent Advisory Council of FAST, by and through its President, Donna Coates, challenged the local board's decisions. On July 22, 2014, the State Board issued an Opinion dismissing as untimely the appeal of the non-renewal of the charter, and referring the appeal of the school closing to the Office of Administrative Hearings (OAH) as required by COMAR 13A.01.05.07A(1). *Parent Advisory Council of Friendship Academy of Science and Tech. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 14-44 (2014).

OAH sent a Notice of In-Person Prehearing Conference (Notice) to the parties. The Notice informed the parties that an in-person prehearing conference was scheduled at OAH on September 15, 2014, at 9:30 a.m. and contained instructions for the conference. The Notice advised that failure to appear or give timely notice of the inability to participate in the prehearing conference might result in an adverse decision. Appellant did not respond to OAH's Notice, nor did the Appellant appear at the prehearing conference. On September 25, 2014, the ALJ issued a proposed order recommending that the State Board find Appellant in default and dismiss the appeal.

In light of the Appellant's failure to respond to the Notice or to appear for the prehearing conference, the ALJ properly found Appellant in default. *See Phillips v. Allegany County Bd. of Educ.*, MSBE Order No. OR08-09. Appellant has not filed exceptions to the ALJ's proposed order.

Accordingly, on this 27th day of January, 2015 we adopt the ALJ's Proposed Order finding Appellant in default and dismiss the appeal.

MARYLAND STATE BOARD OF EDUCATION



Charlene M. Dukes, President

PARENT ADVISORY COUNCIL OF
FRIENDSHIP ACADEMY OF SCIENCE
AND TECHNOLOGY

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS

* BEFORE MICHAEL D. CARLIS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH No.: MSDE-BE-16-14-26819

* * * * *

PROPOSED ORDER

STATEMENT OF THE CASE
DISCUSSION
PROPOSED ORDER
EXCEPTIONS

STATEMENT OF THE CASE

On December 27, 2013, the Baltimore City Board of School Commissioners (Local Board) decided not to renew the contract with Friendship Public Charter Schools, Inc., to operate the Friendship Academy of Science and Technology (FAST). On February 25, 2014, the Local Board voted to close FAST.

On March 14, 2014, the Parent Advisory Council of FAST (Parent Advisory Council), by Donna Coates, President, appealed the Local Board's decision to close FAST to the Maryland State Board of Education (State Board).¹

On April 22, 2014, the Local Board filed a Motion for Summary Affirmance (Motion) before the State Board. The Local Board argued that the decision to close FAST was not arbitrary,

¹ Some documents in the case file use March 13, 2014, as the date of the appeal. The appeal, itself, is date-stamped by the Office of the Attorney General on March 14, 2014.

unreasonable, or illegal and specifically addressed allegations contained in the Parent Advisory Council's appeal.

On May 9, 2014, the Parent Advisory Board responded to the Local Board's Motion. The Parent Advisory Board argued that (1) the Local Board's closure decision was arbitrary, lacking of any reason; (2) the Local Board failed adequately to consider the effect of the closure on Latino families; and (3) the Local Board used an incorrect figure for the proportion of Latino students enrolled at FAST when it considered the effects of the closure on the Latino community.

On May 30, 2014, the Local Board filed a reply to the Parent Advisory Board's response to the Motion. The Local Board argued that the response merely explained its disagreement with the decision to close FAST, but failed to offer any evidence "to support issues of material facts to overcome" its burden of proof.

On a date that is not indicated in its decision or clear from the documents in the file of this case, the State Board treated the Parent Advisory Council's appeal as an appeal of the Local Board's decision both (i) not to renew the contract with the Friendship Public Charter Schools, Inc., to operate FAST and (ii) to close FAST. The State Board dismissed the decision not to renew the contract with Friendship Public Charter Schools, Inc., as untimely. In regard to the decision to close FAST, the State Board transferred the appeal to the Office of Administrative Hearings for a hearing, with the following instruction:

The issue before the ALJ [administrative law judge] must be limited to whether the local board's decision to close the school was arbitrary, unreasonable, or illegal. The ALJ shall submit a proposed decision containing findings of fact, conclusions of law, and recommendations and the parties shall be afforded an opportunity to file exceptions before this Board issues a final decision.

On August 1, 2014, the OAH used the United States Postal Service to mail a Notice of In-Person Pre-Hearing Conference (Notice) to the parties at their addresses of record. The Notice

informed the parties that an in-person pre-hearing conference was scheduled at the OAH, at 11101 Gilroy Road, Hunt Valley, Maryland, on September 15, 2014, at 9:30 a.m. With the Notice, the OAH sent an In-Person Pre-Hearing Conference Instructions form that instructed that “[a]ll parties shall file with the Office of Administrative Hearings and shall serve on each party, no later than 15 calendar days before the scheduled prehearing conference, the following information [responses to a list of nine requests for specific information].” The Postal Service did not return either Notice to the OAH.

On September 8, 2014, the Local Board filed a Pre-Hearing Conference Report that addressed the nine requests for specific information contained in the In-Person Pre-Hearing Conference Instructions. The Local Board certified that a copy of its Pre-Hearing Conference Report was mailed to the Parent Advisory Council on September 4, 2014.

The Parent Advisory Council did not respond to the In-Person Pre-Hearing Conference Instructions and provided no explanation of its failure to comply with the OAH’s instructions.

On September 15, 2014, I convened the in-person pre-hearing conference as scheduled. The Local Board was present through its legal counsel, Robert E. Johnson, Jr., Associate Counsel with the Baltimore City Public Schools. Neither the Parent Advisory Council nor any individual representing the Parent Advisory Council appeared at the conference. After waiting at least fifteen minutes after the scheduled start time for the conference without either the Parent Advisory Council or a representative appearing, Mr. Johnson moved for the issuance of a proposed default order.

DISCUSSION

Code of Maryland Regulation (COMAR) 28.02.01.23 states as follows:

.23 Failure to Attend or Participate in a Hearing, Conference, or Other Proceeding; Default.

A. If, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other state [sic] of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated to the agency, issue a final or proposed default order against the defaulting party.

...

C. *Proposed Default Orders.* A proposed default order is reviewable in accordance with the delegating agency's governing review of proposed decisions.

COMAR 28.02.01.05 regulates proper notice in regard to a **hearing** before the OAH.

"Reasonable written notice" is required. COMAR 28.02.01.05A. There is no specific regulation that addresses notices in regard to conferences.

The OAH-provided Notice that was served on the Parent Advisory Council identified the date, time, and location of the conference. In addition, the Notice contained the following: "Failure to appear or give timely notice of your inability to appear for the prehearing conference may result in a decision against you." I find that the Notice provided to the Parent Advisory Council was reasonable written notice of the pre-hearing conference.

As discussed above, the Parent Advisory Council failed both (i) to submit to OAH and the Local Board the information requested in the prehearing conference instructions and (ii) to attend the prehearing conference as scheduled on September 15, 2014. Furthermore, the Parent Advisory Council did not ask for a postponement of the conference or contact the OAH to explain its absence. Accordingly, I find that the Parent Advisory Council failed to attend the prehearing conference without explanation after it had received reasonable written notice of the date, time, and location of the conference.

PROPOSED ORDER

I PROPOSE the following:

- A. The Parent Advisory Council is found in **DEFAULT**; and
- B. All further proceedings in the above-captioned matter are **DISMISSED**.

EXCEPTIONS

Either party who objects to this proposed order may file exceptions with the State Board within fifteen days from the receipt of this order. A party who opposes the exceptions may respond to the exceptions within fifteen days from receipt of the exceptions. Both the exceptions and the responses shall be filed with the Maryland State Department of Education, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any exception process.

September 25, 2014
Date Proposed Order Issued

MDC/da
#151742



Michael D. Carlis
Administrative Law Judge

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