

MICHAEL MCRAE

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-02

OPINION

INTRODUCTION

The Appellant, a substitute teacher, appealed a decision of the Baltimore City Board of School Commissioners (local board) regarding the amount of pay he is owed by the school system. The local board filed a Motion for Summary Affirmance maintaining that the appeal is moot because the school system paid the Appellant all that was owed to him. The Appellant responded to the Motion and the local board replied.

FACTUAL BACKGROUND

During the 2016-2017 school year, the Appellant worked as a substitute teacher at Bluford Drew Jemison Stem Academy #364 (Bluford). On July 6, 2017, Appellant filed an appeal with the school system to obtain long-term substitute teacher pay for teaching work he performed at Bluford during the 2016-2017 school year. Appellant maintained that he received payment for approximately 70 of the 180 days that he worked at the school.

The Chief Executive Officer (CEO) responded to the appeal. He noted the following:

- Long-term substitute teacher pay is issued to a substitute teacher when the substitute teacher has worked to replace an instructional Baltimore Teachers Union (BTU) position or a vacant budgeted position at the same school for more than 10 consecutive days.
- Throughout the 2016-2017 school year, the Appellant substituted at Bluford for various teachers and for vacant positions with no specific teacher assigned. Baltimore City Public School System (BCPSS) Payroll Director, Jerome Fleishmann, created a payroll spreadsheet report from BCPSS records to demonstrate the days that the Appellant worked, the days he was compensated which included several long-term substitute teacher dates (highlighted in yellow), and the 47 days that the Appellant was not compensated for long-term substitute teaching dates but should have been (highlighted in orange).

- Mr. Fleishman indicated that a check would be made payable to the Appellant for the 47 days of long-term substitute pay owed the Appellant and would be mailed to the Appellant's address on Friday, July 14, 2017, thereby rendering the appeal of the matter moot.

BCPSS sent the Appellant the check for the 47 days of long-term substitute pay. The Appellant received the check, but filed this appeal.

Thereafter, the matter was assigned to Carolyn H. Thaler, Hearing Examiner, who reviewed all of the paperwork submitted by the parties in the appeal. On August 17, 2017, Ms. Thaler issued a written decision recommending to the local board that the appeal was moot because the Appellant had been compensated for all long-term substitute pay owed to him for the 2016-2017 school year. (Motion, Ex. 3).

Appellant filed Exceptions to Ms. Thaler's decision. He claimed that the payroll calculations were not accurate and noted him as substituting for classes that he did not teach. Appellant claimed that he did not teach any classes other than 6th grade biology, 7th grade earth science, and 8th grade math. (Motion, Ex. 4). In support of his position, Appellant submitted various 504 plans for students in his class; course curriculums for the biology and earth science classes; student grades that Appellant submitted for the 2nd, 3rd, and 4th quarters; lesson plans for the school year; the attendance roster for 8th grade math students; and "school climate walk" observation sheets for some of Appellant's classes. *Id.*

On September 26, 2017, the local board affirmed the recommendation of Hearing Examiner Thaler "that this issue is now moot and the Appellant, Michael McRae, has been compensated and there are no further grounds for appeal or review of the matter." The local board's decision did not address any of the alleged discrepancies regarding the classes taught by the Appellant that he raised in his Exceptions.

This appeal followed.

STANDARD OF REVIEW

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

LEGAL ANALYSIS

At issue in this case is whether the Appellant received appropriate compensation for his work as a substitute teacher at Bluford during the 2016-2017 school year. Such a determination invariably includes knowing what days the Appellant actually worked, the classes he taught and the teachers for whom he subbed.

The local board maintains that the appeal is moot because the Appellant has received all compensation that he was due. The local board relies on the payroll spreadsheet report run by Payroll Director Fleishmann to demonstrate the days that the Appellant worked and the classes he taught for purposes of calculating the compensation owed. The local board asserts that the

IEP snapshots, 504 plans, lesson plans and other documents submitted by the Appellant do not refute the payroll spreadsheet report.

On the other hand, the Appellant argues that the payroll spreadsheet report contains errors, and that BCPSS did not compensate him for all of the classes that he actually taught and did not compensate him at the right amount. Appellant maintains that he taught three classes with vacant teaching positions for the entire school year, 6th grade Biology, 7th grade earth science, and 8th grade mathematics, whereas the payroll spreadsheet report reflects him teaching various other classes for various teachers.

This Board has continually affirmed the principle that an appeal on the record can be decided if it “does not involve a dispute of material fact.” *Martin v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 15-41 (2015)(quoting *Brown v. Queen Anne’s County Bd. of Educ.*, MSBE Op. No. 13-37 (2013)). “A material fact is a fact the resolution of which will somehow affect the outcome of the case.” *Williams v. Mayor & City Council of Baltimore*, 359 Md. 101, 113 (2000)(quoting *King v. Bankerd*, 303 Md. 98, 111 (1985)).

While the documents submitted by the Appellant in the appeal are not conclusive regarding each of the days and classes that he taught, we believe that there is sufficient documentation to create a dispute of material fact about the accuracy of the payroll spreadsheet report. The local board’s failure to address the Appellant’s claims (both in Appellant’s Exceptions and the State Board appeal) and to simply state that the matter is moot because Appellant was fully compensated does little to clarify the issue. In addition, the payroll spreadsheet report identifies the subject matter of the courses by number rather than by name, which also does little to clarify the issue. Furthermore, neither party has submitted an affidavit to support the respective “evidence.”

Here, the actual classes taught by the Appellant as a substitute during the 2016-2017 school year at Bluford is a dispute of material fact because it directly impacts our ability to discern the days for which the Appellant should have been compensated and should have received long-term pay. Accordingly, we deny the local board’s Motion for Summary Affirmance and refer this case to the Office of Administrative Hearings pursuant to COMAR 13A.01.05.07(A)(3) in order to resolve the dispute.

CONCLUSION

For the reasons stated above, we deny the Motion for Summary Affirmance and refer this case to the Office of Administrative Hearings for further proceedings.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin Hartings

Stephanie R. Iszard

Rose Maria Li

Michael Phillips

David Steiner

January 30, 2018