

MEGAN BREMER,

Appellant

v.

BALTIMORE CITY BOARD  
OF SCHOOL  
COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-25

## OPINION

### INTRODUCTION

Megan Bremer (Appellant) appeals the decision of the Baltimore City Board of School Commissioners (local board) which denied her grievance related to compensation. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

### FACTUAL BACKGROUND

In August 2016, Appellant and Dr. Ford, Principal of Baltimore School for the Arts (BSA), began discussing Appellant's potential employment as a social studies teacher at BSA. (Motion, Ex.4, Recommendation of the Hearing Officer, p. 5). At the time of these discussions, Appellant held the following credentials: 1) a master's degree in education, 2) a master's degree in public health, and 3) a *juris doctor* degree. *Id.* In addition, Appellant's resume listed the following pertinent teaching experience:

- 08/2002 - 08/2003 Chairperson of the English Dept.—Cathedral High School
- 08/2000 - 08/2002 English Dept. Faculty—Cathedral High School
- 09/1999 - 05/2000 Student Teacher—Madison Park High School
- 09/1998 - 05/1999 Literacy Program Manager—YMCA Youth Center

(*Id.*; Motion, Ex.3, CEO Ex. 3).

Baltimore City Public Schools (BCPS) determines salary for new hires based on education credentials (undergraduate, masters, doctorate) and years of full time K-12 teaching experience. There is a separate scale depending on the type of degree held which classifies the new hires according to a Pathway and Interval. *Id.* (Motion, Ex.4, Recommendation of the Hearing Officer, p. 8). New hires with an undergraduate degree are placed on the Standard Pathway with Intervals ranging from 1 to 5 depending on years of teaching experience. New hires with a master's degree are placed on the Standard Pathway, Interval 3 (S-3) for zero years of experience; Standard Pathway, Interval 4 (S-4) for 1 to 3 years of experience; Professional Pathway, Interval 1 (P-1) for 4 to 6 years of experience; or Professional Pathway, Interval 2 (P-2) for 7 to 10 years of experience. New hires with a doctorate degree are placed on the Professional

Pathway, Interval 1 (0-3 years), Interval 3 (4-6 years), or interval 5 (7-10 years), depending on the years of teaching experience. (Appeal, p. 7-8; Motion, Ex.3, CEO Ex. 6a).

On August 12, 2016, Ms. Mason, the Human Capital Specialist assigned to BSA, advised Appellant that she predicted an offer of compensation at Professional Pathway, Interval 1 on the salary scale, conditioned on the certification unit receiving all of the necessary paperwork. *Id.* at p. 5-6. Professional Pathway, Interval 1 (P-1) yields a ten-month salary of \$60,503. (Motion, Ex.3, CEO Exs.6a & 6b). Appellant verbally objected to this predicted salary,<sup>1</sup> but reserved additional inquiry until a written offer was made. (Motion, Ex.4, Recommendation of the Hearing Officer, p. 6).

On August 16, 2016, Charles Hall, Jr., BCPS's Manager of School Based Staffing, requested that Appellant submit a notarized verification of her previous employment and two professional references in order to complete her application. (Motion, Ex.3, BTU Ex. 3, p. 4). He asked her to email the documents to Ms. Mason. *Id.* Later that day, Appellant responded to Mr. Hall and Ms. Mason that she had already submitted the employment verification form and that she would follow up with her references. *Id.* Appellant states in her appeal that the employment verification form was signed by Appellant's former principal at Cathedral High School in Boston, Massachusetts and that it served as verification of Appellant's three years of prior full-time K-12 teaching experience at Cathedral High School. On August 17, 2016, Ms. Mason emailed the Appellant and told her "I have everything I need for processing. Your folder has been submitted and I will let you know next steps when it is returned to me." *Id.* She later requested that Appellant have her McGill University transcript reviewed by World Education Services. *Id.*

Because Mr. Ford realized that the hiring process would not be completed before the start of the school year, he extended a temporary offer to the Appellant for her to begin working at BSA as an independent contractor. (Motion, Ex.4, Recommendations of Hearing Officer, p.6). He arranged for the Appellant to receive compensation through BSA's foundation at a rate of \$288.06 per day, until such time that she was hired by BCPS. *Id.* BSA's foundation is a separate entity that operates independently of BCPS. *Id.* BCPS was not involved in the decision to hire the Appellant as an independent contractor. *Id.* The Appellant accepted the position knowing it would be a temporary placement. *Id.*

On or about October 12, 2016, the Maryland State Department of Education (MSDE) approved the Appellant's Advanced Professional Certificate (APC) and made it retroactive to July 2016. *Id.* With a valid APC, Appellant was no longer subject to conditional certification. However, the change in certification did not cause BCPS to alter the offered compensation. *Id.*

On October 28, 2016, BCPS extended a written offer to the Appellant for a 10-month position as a secondary English teacher at the Baltimore School for the Arts on the Standard Pathway for compensation at Interval 3, which is the equivalent of \$51, 378.00. (Motion, Ex. 3, CEO 2). On October 28, Appellant accepted the written offer, but advised the local board that she intended to appeal the compensation issue. (*Id.*; Motion, Recommendation of the Hearing Officer, p. 7-8). The BCPS Office of Human Capital Compensation Division Salary Recommendation Form reflects that Appellant's offer of employment was based on zero years of

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<sup>1</sup>Appellant contested that her *juris doctor* did not constitute a "doctorate" for the purposes of placement on the Professional Pathway, and that her years of teaching experience qualified her for placement on the P-3 salary interval. (Motion, Ex.3, BTU Ex. 3, p. 10, 17).

K-12 teaching experience and that employment was not verified because there was no verification of employment included with the documents. (Motion, Ex. 3, CEO 4).

On May 17, 2017, Appellant filed a grievance with the local board alleging that BCPS placed her on the incorrect salary Pathway and Interval. (Motion, Ex. 1). On January 24, 2018, a Hearing Officer conducted an evidentiary hearing. On April 3, 2018, the Hearing Officer issued a written recommendation to the local board that it deny Appellant's grievance.

On April 4, 2018, The Baltimore Teachers Union notified Appellant of the Hearing Officer's recommendation, and stated:

The Union does not intend to file any exceptions to the recommendation; however, if you choose to do so, you may file exceptions on your own but it must be file[d] by Friday, April 13, 2018 or you have the option of requesting [an] extension of time to file exceptions from the Board Executive.

(Appeal, Baltimore Teachers Union 04/04/2018 Letter). On April 13, 2018, the deadline for filing exceptions, the Appellant contacted the local board and requested a seven day extension to file her exceptions. Appellant provided no basis for the extension request. (Appeal, Bremer/Moore 04/13/2018 Email). Later that day, the Board Executive denied this request, citing a lack of just cause and lack of union representation. *Id.* On April 16, 2018, Appellant contacted the local board and requested a renewed extension to file her exceptions. (Appeal, Bremer 04/16/2018 Email). On April 19, 2018, the Board Executive denied Appellant's request, again citing a lack of just cause and lack of union representation. (Appeal, Moore 04/19/2018 Email). On April 24, 2018, BCBSC accepted the Hearing Officer's recommendation. (Motion, Ex. 6).

This appeal followed. The transcript of the evidentiary hearing before the Hearing Officer is normally made a part of the record in a case such as this. In a State Board appeal, the Appellant is required to pay the cost of transcription for such an evidentiary hearing, unless the State Superintendent of Schools determines that the individual is unable to pay due to indigence. COMAR 13A.01.05.03E. The Appellant requested a waiver of the transcription costs in this case, but the State Superintendent denied the request because the Appellant did not qualify as indigent. (*Bremer v. Baltimore City Bd. of Sch. Commr's*, OR18-02). The Appellant did not pay to have the record of the hearing transcribed. Nor have the parties submitted a joint stipulation of facts. Accordingly, we will consider the appeal without the transcript of the hearing before the local Hearing Officer.

### 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

#### *Preliminary Matter – Denial of Extension Request to File Exceptions*

As a preliminary matter, we address the Appellant's argument that the local board's decision to deny her request for an extension of time to file her exceptions to the hearing

officer's recommendations is illegal. The local board's "Procedures in Appeals and Hearings Under §4-205" allow a party to file exceptions to the Hearing Officer's recommendations to the local board. (BLA.III.C.6.g). With regard to the extension of timelines, it states as follows:

For good cause, the Board Executive, upon the request of the Presiding Officer or at the request of either party, may at any time shorten or extend the time provided under these [procedures] for filing any document or providing any notice except in those instances where the time is specified by state law.

(BLB.III.H). Appellant's union representative advised her that she had until April 13, 2018 to file exceptions or to file a request for an extension of time. (Appeal, Hendrick's Letter 4/4/18; *See also* Moore Letter, 4/3/18).

The Board Executive denied the request because "just cause was not specified in the requested extension." (Motion, Ex. 5, Email 8/13/19). When the Appellant refiled her extension request on August 17, 2018, she stated that "given that the third quarter ended on Wednesday, April 11, 2018, I have been overwhelmed with my grading workload at school" and "I have been slower to draft the exceptions because I am unfamiliar with the system and its rules." (Motion, Ex.5, Email 8/16/18; Appeal, Motion for Extension of Time). The Board Executive also denied this request, finding that it was untimely and without justification or good cause. (Motion, Ex.5, Email 8/19/18).

The Board Executive had full discretion to determine what facts were sufficient to constitute "good cause" as they pertained to extending the time frame within which the Appellant could file her exceptions to the Hearing Officer's recommendations. In Appellant's first request, she provided no reason at all for the request. Thus, she showed no good cause. In Appellant's second request, she explained that the request was related to her workload and lack of familiarity with the appeal process. Again, it was within the discretion of the Board Executive to find that such a reason was not sufficient to be considered good cause and the Board Executive did not find it to be an adequate reason. Moreover, the second request was untimely as it was filed beyond the April 13 deadline.<sup>2</sup>

Failure to file exceptions does not impair the validity of this appeal.

### *Salary - Years of Teaching Experience*

The appeal of the local board's decision to deny Appellant's grievance focuses on the number of years of teaching experience Appellant had at the time she applied for the job. The Appellant maintains that she had three years of K-12 teaching experience at the time of her hiring, thus, BCPS should have placed her at a higher interval on the salary scale – Interval 4 on the Standard Pathway with a starting salary of \$52,920 or Interval 1 on the Professional Pathway at \$60,503 (if her *juris doctor* degree is considered a doctorate). The K-12 teaching referred to by the Appellant is her work at Cathedral High School during the period August 2000 through

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<sup>2</sup> We point out that the Board Executive also denied the Appellant's first extension request stating that "once union representation is established the union representative should file the request for an extension." (Motion, Ex. 5, Email 8/13/19). He did the same again with her second request, noting that it was without the aid of her representative. (Motion, Ex. 5, Email 8/19/18). The Board Executive apparently was not aware that the union had withdrawn its representation of the Appellant. This error is harmless, however, given that there were other valid reasons to support the decision to deny the extension request.

August 2003, as stated on her resume. Appellant claims that she taught five classes per semester while at Cathedral, including while she was chairperson of the English department during the 2002-2003 school year. In response, the local board argues that because Appellant had no “verified” K-12 teaching experience, she was appropriately placed at Interval 3 with a starting salary of \$51,378.

BCPS asks applicants for teaching positions to submit an Employment Verification Form. The Appellant maintains that she submitted the form to the BCPS Human Capital office. Appellant spends a good deal of time in her appeal arguing that there is a dispute of fact regarding whether she provided BCPS the Employment Verification Form. She points to a stream of emails in August 2016, between herself; Charles Hall, Manager of School Based Staffing in the Office of Human Capital; and Nina Mason, Human Capital Specialist. (Motion, BTU Ex. 3, pp. 4-5). Despite these emails, the BCPS Office of Human Capital, Compensation Division, Salary Recommendation Form authorized and dated on September 29, 106, states that the “VOE [is] not included” and that there is “0” for “Years of Experience.” (Motion, CEO Ex. 4).

The issue in the appeal, however, is not whether the Appellant submitted the Employment Verification Form, but if the Appellant is entitled to additional pay because she has K-12 teaching experience. A key point here is the fact that the Appellant had an APC. In order to qualify for an APC, the Appellant had to present verification of 3 years of satisfactory school-related experience. *See* COMAR 13A.12.01.06(E)(1)(c). For a teacher like the Appellant, this means 3 years of K-12 teaching experience. We have confirmed with the Division of Educator Certification and Program Approval at MSDE that the Appellant had an APC, and that her certification file includes an Employment Verification Form verifying that she had three years of K-12 teaching experience at Cathedral High School. We take judicial notice of that fact.

#### *Salary – Effect of Juris Doctor (J.D.) Degree*

The Appellant argues that BCPS should have counted her J.D. from Northeastern University School of Law as a doctoral degree for the purpose of placing her on the Professional Pathway. Both the Hearing Officer and local board have indicated that it is the practice of BCPS to categorize a *juris doctor* as a master level degree for hiring purposes because it is not a doctorate in education. It is for this reason that BCPS did not credit the Appellant with a doctoral level degree, which would have increased her compensation.

The Appellant argues that such a decision is arbitrary, unreasonable or illegal based on her view that the *juris doctor* degree should not be given less credit than a doctorate in education because the *juris doctor* is more like a content area doctorate given its relation to Appellant teaching social studies. We point out that there is no real discussion of this issue by the local board or the Hearing Officer other than acknowledging that this is the BCPS practice. Nevertheless, it is within the discretion of the local board to set the salaries for its teachers. *See* Md. Code., Ann., Educ. §4-103(a)(2). If BCPS chooses not to recognize a *juris doctor* for the purpose of setting its doctoral level salaries, that is certainly one way to view it. We do not find that such a decision is arbitrary, unreasonable or illegal.

#### *Negligent Misrepresentation*

The Appellant attempts to assert a claim of negligent misrepresentation, which is a tort claim for economic damages, arguing that she relied to her detriment on Ms. Mason’s August,

2016 representations regarding the starting salary for the position. This Board is not the proper venue in which to litigate a tort claim.

*Alleged Factual Errors in Hearing Officer's Recommendations*

The Appellant maintains that the Hearing Officer made factual errors in his Recommendations. The Appellant did not provide a copy of the hearing transcript which might have been helpful in determining the validity of her assertions. More importantly, because none of the alleged factual errors are material to the case, we decline to address them herein.

CONCLUSION

For the reasons stated above, we find that the local board's decision regarding the number of years to attribute to the Appellant for K-12 teaching experience was incorrect as a matter of fact and thus arbitrary and unreasonable. Appellant's starting salary should have been at Interval 4 of the Standard Pathway with a starting salary of \$52,920. The local board shall make the appropriate adjustments to the Appellant's salary, including back pay. We affirm the local board's decision, however, with regard to treating the Appellant's J.D. degree as a master's level degree.

Signatures on File:

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Justin M. Hartings  
President

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Stephanie R. Iszard  
Vice-President

\_\_\_\_\_  
Chester E. Finn, Jr.

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Vermelle D. Greene

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Michele Jenkins Guyton

\_\_\_\_\_  
Jean C. Halle

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Rose Maria Li

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Joan Mele-McCarthy

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Michael Phillips

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David Steiner

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Warner I. Sumpter

August 28, 2018