

NORTHWOOD APPOLD
COMMUNITY ACADEMY,
INC.,

Appellant,

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 21-01

OPINION

INTRODUCTION

Northwood Appold Community Academy, Inc. (“NACA”) appeals the decision of the Baltimore City Board of School Commissioners (“local board”) not to renew NACA’s charter.¹ We referred the matter to the Office of Administrative Hearings (“OAH”) where an Administrative Law Judge (“ALJ”) issued a Proposed Decision recommending that the State Board uphold the nonrenewal decision. NACA filed Exceptions to the ALJ’S Proposed Decision and the local board responded.

FACTUAL BACKGROUND

The full factual background is set forth in the ALJ’s Proposed Decision at pp. 5 – 9. We have set forth some of the essential facts below for purposes of reviewing the exceptions.

This appeal concerns NACA’s lower school which serves students from kindergarten through 5th grade.² NACA received its charter in 2005, which was renewed in 2013 for three years, and again in 2016 for three years.³ The charter was due for renewal during the 2018-2019 school year.

The Baltimore City Public Schools (“BCPS”) Office of New Initiatives (“ONI”) evaluated NACA for renewal through the charter renewal process. The process involves the Charter and Operator-Led Advisory Board (“Advisory Board”), which reviews the renewal

¹ The local board renewed charters for 6 out of the 10 charter schools that were part of the 2018-2019 renewal process. (OAH Ex. 3). We note that the Baltimore City Public School System currently has 31 charter schools with one more opening in Fall 2021. www.baltimorecityschools.org/charter-schools.

² NACA’s upper school, which serves students in grades 6 through 12, was non-renewed in January 2020.

³ NACA appealed the local board’s January 2013 decision to renew its charter for 3 years instead of 5 years to the State Board. The State Board affirmed, finding that the 3-year renewal was not arbitrary, unreasonable or illegal based on the local board’s concerns about the school’s management. *NACA v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 14-04 (2014). It is our view that when a local board renews a charter but has specific concerns about future improvements or maintenance of the school’s operations and performance, the local board should clearly communicate those issues to the school and advise of possible impact to future charter renewal.

rubric, the application for renewal, the data tables prepared by BCPS, and the School Effectiveness Review⁴ in order to make a recommendation to the Chief Executive Officer (“CEO”) of BCPS. The Advisory Board is a cross-representational group made up of members representing foundations, nonprofit organizations, school choice advocates, school operators, and BCPS district representatives. The CEO then reviews the materials and makes a recommendation to the local board. According to local board policy, the local board may determine that a public school is eligible for a five-year renewal, a three-year renewal, or a nonrenewal.

The areas of review on the evaluation rubric are: (1) Academic Success; (2) School Climate; and (3) Financial Management and Governance Practices. Academic Success counts as 50% of the evaluation. School Climate Counts as 25% and Financial Management and Governance Practices count as 25%.⁵ ONI has specific standards for charter schools and the renewal applications are evaluated based on the notion that the charter school should be performing better than the school system average. To that end, BCPS has employed the following ratings for academic measures: “Highly Effective” rating is scoring in the 80th percentile or above; “Effective” rating is in the 65th to 79th percentile; “Developing” rating is in the 50th to 64th percentile; and a “not Effective” rating is below the 50th percentile.

The Advisory Board looks at all of the data and information, both quantitative and qualitative, in completing its review. As explained in the Renewal Report, “[I]n some instances, the nature or severity of an issue raised during the renewal process is serious enough for the Advisory Board to give it extra weight in formulating its recommendation, especially in instances when the issue affects the wellbeing of students, staff or the district as a whole.” (OAH Bd. Ex. 5). The Advisory Board recommended that NACA’s charter not be renewed.

Here are the results of NACA’s Renewal Ratings Report:

Category 1: Is the School an Academic Success?		
Category	Measure	Rating
1.1 Absolute Student Achievement (comparison to all BCPS schools based on grade band and rate of economic disadvantage)	PARCC average mean score from SY 2017-2018 PARCC data Math (grades 3-5) (52%) English (grades 3-5) (48%)	Developing Not Effective
1.2 Student Achievement Trend (comparison to all BCPS schools based on grade band – assesses change in mean scale score over 4 years – from SY 2014-2015 to SY 2017-2018)	PARCC average mean score Math (grades 3-5) (52%) English (grades 3-5) (18%)	Developing Not Effective

⁴ The School Effectiveness Review score is based on a two and a half day site visit to the school conducted by trained reviewers who collect evidence of school effectiveness through classroom observation, focus groups and document review. (OAH Ex. 5).

⁵ Although neither party introduced the rubric as evidence at the OAH hearing, we take judicial notice of the rubric as it is a publicly available document that is provided to charter school operators at orientation for the renewal process. (Response to Exceptions, Ex. 6).

1.3 Student Achievement Growth (comparison to all BCPS schools based on grade band - if school is improving outcomes for individual students over 4 years by looking at median growth percentile – from SY 2014-2015 to SY 2017-2018)	PARCC average mean score Math (grades 3-5) (81%) English (grades 3-5) (41%)	Highly Effective Not Effective
1.4 Fidelity to Charter	Extent to which school has implemented its mission, delivered high quality programming, gathered data, addressed challenges evident in the data	Developing
Academics Overall Rating		Developing

Category 2: Does the School have a Strong Climate?		
Category	Measure	Rating
2.1 Highly Effective Instruction	School Effectiveness Review (SER) score	Developing
2.2 Talented People	SER score	Effective
2.2 Vision and Engagement	SER score	Effective
2.4 Parent, Staff, Student Satisfaction	Staff survey Student survey Parent survey	Not Effective Developing Highly Effective
2.5 Cohort Retention	Cohort retention rating	Highly Effective
2.6 Attendance, Chronic Absence	Extent to which school has implemented effective strategies to keep student attendance high and chronic absences low, or led to significant decrease in chronic absence	Developing
2.7 Suspensions	Extent to which school has implemented effective strategies that keep suspension low or led to a significant decrease	Effective
2.8 Programming for Students with Disabilities	Extent to which school has shown trajectory of growth, is aware of its data and responsibilities, has no gaps or decreased gaps in data related to performance, consistently implemented processes, interventions, and strategies to support student outcomes	Developing
Overall Rating		Effective

Category 3: Has the School Followed Sufficient Financial Management and Governance Practices?		
Category	Measure	Rating
3.1 Audit Content, Internal Control	Extent to which school's independent auditor's reports offer unqualified opinions and no management points, statement of cash flow and ratio of assets to liabilities indicate the operator has strong performance on short term liquidity measures	Meets Expectations
Financial Management Overall Rating		(Left Blank on Original)
3.2 Operator Capacity	Extent to which school has operated effectively, consistently met all State, federal, and critical District reporting requirements and obligations, and has not received any Notice of Concern or Reprimand during contract period. (Evidence that may be considered include compliance with critical District, State or federal reporting requirements, timely audit and budget submissions, monitoring reports, quarterly reports; whether school has been able to meet financial obligations or needed loans/advances from the District to meet obligations; and the relative number, frequency and severity of Notices of Concern or Notices of Reprimand).	Not Effective
3.3 Strategic Leadership/Governance	SER score	Effective
Governance Overall Rating		Not Effective

The Chief Executive Officer recommended that the local board not renew NACA's charter based on the Not Effective rating in Operator Capacity and the overall Developing rating in Academic Achievement. In a December 21, 2018 memorandum to Dr. Santelises, Chief Executive Officer, the Executive Director of the BCPS Office of new Initiatives, Angela Alvarez, explained that although NACA outperformed both the BCPS average and its economic disadvantage group on the SY 2016-2017 PARCC in both math 3-5 and ELA 3-5, it did not do so for the SY 2017-2018 PARCC.⁶ (OAH Bd. Ex. 4). On the SY 2017-2018 PARCC, NACA received mostly Not Effective and Developing ratings in the student achievement areas of its

⁶ 2016-2017 math 3-5 (NACA 55.2%)(economic disadvantage comparison group 40.3%)(BCPS overall 34%); 2017-2018 math 3-5 (NACA 36.7%)(economic disadvantage comparison group 44.2%)(BCPS overall 33.5%); 2016-2017 ELA 3-5 (NACA 53.3%)(economic disadvantage comparison group 37.6%)(BCPS overall 31.6%); 2017-2018 ELA 3-5 (NACA 40.8%)(economic disadvantage comparison group 41.4%)(BCPS overall 32.4%).

evaluation. (OAH Bd. Ex. 5). In the absolute performance area, NACA scored in the 48th percentile in ELA 3-5 while most of the schools in its comparison group scored higher and had even higher levels of economic disadvantage than NACA. *Id.*

On January 8, 2019, the local board approved the BCPS Final Renewal Report, which set forth the summary of findings of the review process and the recommendation to non-renew NACA's charter. The Report stated:

[T]he operator was rated not effective in Operator Capacity. The rating indicates that the school has “generally operated ineffectively as evidenced by the fact that the operator does not meet state or federal reporting requirements, or critical District or federal obligations or has ineffectively managed grants. During the charter or contract term the operator has received some Notices of Concern and Notices of Reprimand with the number, frequency and severity of such notices indicative of consistent challenges with operations and compliance.”

(OAH Bd. Ex. 5). The report identified other operator capacity problems as follows:

- Failure to follow federally mandated guidelines and District requirements for Title I funding:
 - Upon exiting Title I status following the 2016-2017 school year, failed to submit required documentation showing targeted assistance supports had been delivered to students and that Title I funds were being used for that purpose;
 - Failed to submit time sheets for 2016 summer program for staff who worked under Title I grant, which resulted in forfeiture of portions of funding;
 - After re-entering Title I status for 2018-2019 school year, inability to hire a qualified Title I teacher prior to the school year resulted in failure to implement Title I services for students until 3 months into school year;
- Notices of Concern and/or Reprimand for non-compliance with key District and contractual requirements:
 - Notice of Concern for failure to properly log specialized transportation services provided to vulnerable student populations such as students with IEPs or 504 Plans or homeless students, which can affect student attendance and achievement and put the school and BCPS at risk of violating federal laws;
 - Notice of Concern and Notice of Reprimand for failure over multiple years to enter student application and lottery information, making it difficult for BCPS to fulfill its role of monitoring charter schools to ensure they are following State law requiring fair and equitable access for all students;
 - Concerns regarding adherence to BCPS procedures regarding identification and provision of supports to behaviorally challenged students. Despite BCPS support beyond the level normally required by charter schools, NACA demanded the removal of students to

- more restrictive environments prior to properly following the school support team process, which includes identifying concerns, providing behavioral supports and evaluating their efficacy;
 - Consistent violations of the Family Educational Rights and Privacy Act (“FERPA”) by including unauthorized individuals on messages containing personal student information and improper disclosure of employee information;
- Violations of Human Capital requirements:
 - Operator attempted to bar an employee from collecting personal belongings after releasing the employee during the budget adjustment process and staff from Human Capital, School Police, and the Chief of Staff’s Office had to intervene (2016-2017);
 - Operator violated the Family Medical Leave Act (“FMLA”) by attempting to have staff on FMLA leave continue to perform work functions (2017-2018);
 - Operator improperly barred an employee from returning to work after their FMLA leave had ended (2017-2018);
 - In 2017-2018, NACA received a Notice of Concern from Chief of Staff due to complaints from school-based employees and other BCPS staff regarding improper treatment by the school operator.

Id.

On January 8, 2019 the local board voted not to renew NACA’s charter. On February 7, 2019, the local board issued a written decision on the nonrenewal. (Local Bd. Response Ex. 20).

On February 23, 2019, NACA appealed the local board’s nonrenewal decision to the State Board. We transmitted the case to OAH for review by an ALJ. The ALJ conducted a hearing on August 19, 20, and 21, 2019.

On August 27, 2019, BCPS issued a press release discussing BCPS student progress on the MCAP (formerly called PARCC) and notes that there were increases in English language arts (“ELA”) and math scores from 2018-2019 in students scoring at Level 4 or 5. NACA is listed among the schools as having a 10.6 % point increase in Level 4 or 5 ELA (5th place) and a 9.3 % point increase in Level 4 or 5 math (4th place).

NACA submitted this document to the ALJ after the record was closed but prior to issuance of the Proposed Decision. The ALJ declined to grant leave to reopen the record and did not consider the evidence. (Proposed Decision at 5). The local board explained in its Post Trial Memorandum that if the 2018-2019 data were used in NACA’s renewal (instead of the 2017-2018 data), the noted increase would not have elevated NACA’s overall “Developing” rating in academics. Despite the increases, NACA’s rating would have dropped from “Developing” to “Not Effective on Absolute Performance in Math 3-5 and remain “Not Effective” for ELA 3-5. (Post Trial Memorandum and Ex.2 - Jones Affidavit).

On November 19, 2019, the ALJ issued a Proposed Decision recommending that the State Board affirm the local board. The ALJ stated:

I am persuaded that the School’s act of statutory and regulatory noncompliance with FERPA and IDEA [confidentiality provisions]

alone is sufficient to make the School Board's decision to non-renew neither an arbitrary, unreasonable, or illegal act. Although it is unnecessary to proceed further in the analysis, this conclusion is further supported by other governance and management issues, established on the record before me, including the failure to return laptops borrowed from the School System; refusing to return a former kindergarten teacher's personal effects; requiring Dr. Felton to work while on FMLA and preventing her return to employment after her leave ended, without going through the proper steps to terminate her employment with the School and in contravention of a collective bargaining agreement. I am unpersuaded that it is contrary to sound educational policy or that a reasoning mind could not have reasonably reached the decision to non-renew a charter school that has repeatedly failed to comply with federal and State law and School Board policies. (Citations omitted). NACA filed exceptions to the ALJ's proposed decision and the local board responded.

Oral argument on the exceptions was held on December 8, 2020.

STANDARD OF REVIEW

For decisions of the local board involving a local policy, the local board's decision is 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.01.05.06A; *See also Northwood Appold Community Academy Pub. Charter Sch. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 14-04 (2014).

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.06E.

The State Board transferred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify or remand the ALJ's proposed decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications or amendments to the proposed decision. *See* Md. Code Ann., State Gov't §10-216. In reviewing the ALJ's proposed decision, the State Board must give deference to the ALJ's demeanor based credibility findings unless there are strong reasons present that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

LEGAL ANALYSIS

Operator Capacity - Rubric

Although not specifically raised in NACA's exceptions, at the outset we address one of NACA's primary arguments in the appeal that centers on the manner in which the local board counted the Not Effective Operator Capacity rating in the review scheme. NACA contends that averaging the ratings in the Overall Governance category, of which Operator Capacity is one

component, should not have resulted in the Overall Governance Not Effective rating. The local board maintains that the renewal decision is not a simple mathematical computation, but rather is one that allows discretion as part of the deliberative and evidence-based process. The ALJ notes the positions of the parties and states that Ms. Alvarez, the witness for BCPS, credibly testified that the decision “is based on a thorough review of the components of the renewal process and the educational judgment of the Advisory Board, the CEO, and the School Board.” (Proposed Decision at 13). The ALJ, however, does not elaborate on the interplay of the evaluation components and how they support the nonrenewal decision here.

Based on our review of the nonrenewal evaluation rubric it appears that a portion of the renewal process is a mathematical problem and a portion of the process is based on judgment. The rubric is clear that the various sections of the evaluation comprise a specific mathematical portion. The rubric sets forth that 50% of the evaluation is based on Academic Performance, 25% on School Climate, and 25% on Finance and Governance. The Finance and Governance Section is broken down into 3 sections, (1) Audit, Content, Internal Control; (2) Operator Capacity; and (3) Strategic Leadership/Governance.

With regard to the actual ratings for each category, some are quantitative and some are qualitative. For example, some of the Academic Performance ratings are based on quantitative data (PARCC scores). There is no judgment involved. If the PARCC score falls in a certain range the result is a specific rating. Other ratings in the three main categories are qualitative and rest on the judgment of those doing the evaluation.

We recognize that the local board based its nonrenewal decision on a combination of the Developing rating for Overall Academic Performance and the Not Effective Rating for Operator Capacity. The two ratings comprise more than 50% of the evaluation. In light of the combination of quantitative and qualitative rubric factors we find that the local board had a rational basis for how it viewed the evaluation as supporting nonrenewal.

As this Board stated in NACA’s prior appeal, MSBE Op. No. 14-04, “[b]ased on our standard of review, the State Board does not decide whether the school system’s evaluation process is the best method for considering charter school renewals, or whether BCPS should have given more or less weight to the [evaluation] factors. . .” It is not for this Board to dictate such a process.⁷ BCPS has a rubric it uses for evaluating charter schools. It does not appear that BCPS used the rubric in an arbitrary, unreasonable or illegal manner.⁸

Operator Capacity – Merits

The ALJ found that NACA’s act of statutory and regulatory noncompliance with the confidentiality provisions of FERPA and IDEA alone was sufficient to support the local board’s nonrenewal decision. (ALJ Proposed Decision at 15). The ALJ then stated that, although not necessary to proceed further in the analysis, the conclusion is supported by the other governance and management issues established in the record and lists several of them. *Id.* Some of those issues included the failure to return laptops borrowed from BCPS; refusing to return a former kindergarten teacher’s personal effects; requiring Dr. Felton to work while on FMLA and

⁷ Although we do not dictate the process, we take this opportunity to signal that we find greater relevance to evidence of improvement in student performance over absolute performance and urge the local board to consider that fact in the event it reevaluates its renewal rubric.

⁸ We emphasize the need for school systems to set clear expectations for charter schools regarding charter renewal that are communicated well in advance of the renewal decisions.

preventing her return to employment after her leave ended, without going through the proper steps to terminate her employment and in contravention of the collective bargaining agreement. *Id.*

Based on the rubric, a Not Effective rating in the Operator Capacity category means that during the charter or contract term, the school has “generally operated ineffectively as evidenced by the fact that the operator does not meet state or federal reporting requirements, or critical District or federal obligations or has ineffectively managed grants.” Further during the charter or contract term “the operator has received some Notices of Concern and Notices of Reprimand with the number, frequency and severity of such notices indicative of consistent challenges with operations and compliance.” (OAH Ex. 4). The record contains sufficient documentary evidence and testimony to support the rating. We find this based on the totality of the evidence of incidences of NACA’s noncompliance and failures to meet requirements and its receipt of multiple Notices of Concern and Notice of Reprimand, not just on noncompliance concerns with FERPA and IDEA confidentiality provisions.⁹

In its exceptions, NACA argues generally, without citation to evidence or testimony admitted at the OAH hearing, that the ALJ did not rely upon emails or other evidence that was part of the record. This is essentially an argument that the ALJ should have given weight to certain evidence. “Hearing officers are not required to give equal weight to all of the evidence.” *Hoover v. Montgomery County Bd. of Educ.*, MSBE Op. No. 19-03, *citing Karp v. Baltimore City Bd of Sch. Comm’rs*, MSBE Op. No. 15-39 (2015). As the fact finder, it is the ALJ’s job to examine the evidence and reach factual conclusions based on the weight the ALJ assigns to that evidence. It is also not necessary for an ALJ to cite to every piece of evidence or testimony given in a case. *Id.* NACA has the burden of proof in this matter. The mere existence of contrary evidence or testimony does not lead to a conclusion that the findings of fact are erroneous. *Mobley v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. Mo 15-09 (2015). The ALJ noted that to the extent the supporting and opposing evidence is evenly balanced on an issue, the finding must be against the party who bears the burden of proof. *See Proposed Decision at 11 (citing Coleman v. Anne Arundel Cty. Police Dep’t.*, 369 Md. 108, 125 n. 16 (2002) and *Mathis v. Hargrove*, 166 Md. App. 286, 310 n.5 (2005)). The ALJ found that the governance and management issues established in the record supported the local board’s nonrenewal decision. We concur.

Support for School

NACA maintains that the Proposed Decision did not focus on the love, dedication, and commitment the NACA community members and leadership have for the school. It is admirable that NACA had such support in the community. The local board has never disputed that NACA has individuals who support the school and are deeply committed to it. To a certain extent these attitudes are considered in the renewal decision as part of the School Climate category of the evaluation. This category considers parent, students, and staff satisfaction through surveys completed by parents, students and staff during the renewal process. To the extent such support was reflected in those surveys, they do not negate the other findings in the evaluation.

⁹ We believe that it is best practice for the school system to not only advise the charter school of deficiencies in performance throughout its operation under the charter, but also to provide reasonable follow up to the charter school to indicate whether the deficiencies have been satisfactory resolved. This puts the charter school on notice of matters that could affect its renewal in a timely fashion.

Student Academic Performance

In its exceptions, NACA asserts that its students outperform BCPS students. In the December 21, 2018 memorandum, Ms. Alvarez, explained that while NACA outperformed both the BCPS average and its economic disadvantage group on the 2016-2017 PARCC in both math 3-5 and ELA 3-5, it did not do so for the 2017-2018 PARCC.¹⁰ (OAH Ex. 4). NACA received mostly Not Effective and Developing ratings in the student achievement areas of its evaluation. (OAH Ex. 5). In the absolute performance area, despite having one of the lowest economic disadvantage rates in its comparison group, NACA scored in the 48th percentile in ELA 3-5 with most of the school scoring higher having higher levels of economic disadvantage. *Id.*

Press Release

In its exceptions, NACA states that the Proposed Decision fails to consider an August 27, 2019 BCPS press release which discusses student progress on the MCAP (formerly PARCC) and notes that there were increases in BCPS English language arts (“ELA”) and math scores from SY 2018-2019 in students scoring at Level 4 or 5. NACA is listed among the schools as having a 10.6 % point increase in Level 4 or 5 ELA (5th place) and a 9.3 % point increase in Level 4 or 5 math (4th place).

NACA submitted this document to the ALJ after he closed the record of the case but prior to issuance of the Proposed Decision. Because he had already closed the record, the ALJ did not consider the document. (Proposed Decision at 5). The local board addressed the press release in its Post Trial Memorandum explaining that if the 2018-2019 data were used in NACA’s renewal (instead of the 2017-2018 data), the noted increase would not have elevated NACA’s overall “Developing” rating in academics. The local board explained that despite the increases, NACA’s rating would have dropped from “Developing” to “Not Effective on Absolute Performance in Math 3-5 and remain “Not Effective” for ELA 3-5. (Post Trial Memorandum and Ex.2 - Jones Affidavit). Based on this information, we find that the press release would not impact the nonrenewal decision and it is, therefore, not material to the case. *See Shervon D. v. Howard County Bd. of Educ.*, MSBE Op. No. 17-10 (2017). We decline to consider it now.

Maryland Public School Report Card

NACA also states in its exceptions that the Proposed Decision also fails to consider the 2018-2019 Maryland Public School Report Card (December 4, 2019) in which NACA received a 3 out of 5 star rating, which means that it earned at least 45% but less than 60% of the total points earned. Although this document was not available at the time of the OAH hearing, the local board’s nonrenewal decision is based on the school system’s renewal evaluation process which considers a variety of components as part of its evaluation rating, and which is applied to other charter schools seeking contract renewal. Given the process that exists, it would be arbitrary to consider the Report Card, which utilizes a different evaluation process and different rating system than that which is utilized for all BCPS charter schools seeking renewal.

¹⁰ 2016-2017 math 3-5 (NACA 55.2%)(economic disadvantage comparison group 40.3%)(BCPS overall 34%); 2017-2018 math 3-5 (NACA 36.7%)(economic disadvantage comparison group 44.2%)(BCPS overall 33.5%); 2016-2017 ELA 3-5 (NACA 53.3%)(economic disadvantage comparison group 37.6%)(BCPS overall 31.6%); 2017-2018 ELA 3-5 (NACA 40.8%)(economic disadvantage comparison group 41.4%)(BCPS overall 32.4%)

Video Footage

NACA maintains that the Proposed Decision does not appear to have considered a video it submitted concerning a teacher who was released from the NACA staff due to enrollment adjustments which rendered her services unnecessary. NACA did not introduce the video as evidence at the OAH hearing. The video captures the teacher's retrieval of her property from her classroom, during which time a school police officer and Dr. Gray were present. Although we recognize that the rationale for the nonrenewal refers to the incident with the teacher as one of several bases for the decision, we find nothing noteworthy about the video that would make it material to the nonrenewal decision. The rationale states that "in 2016-2017 the operator attempted to bar an employee from collecting personal belongings after releasing the employee during the budget adjustment process. Staff from Human Capital, School Police, and the Chief of Staff's Office had to intervene." (OAH Ex. 5). The video is not material as it sheds no new light on this incident. Furthermore, the ALJ essentially found that the incident involved school system police after Dr. Gray refused to allow the teacher to collect her belongings without first reimbursing the school for school property that she had destroyed. (Proposed Decision at 7). Although NACA disagrees with this finding, the video does not lend its position any support.

Affidavits

NACA claims that the Proposed Decision fails to consider affidavits from NACA Board Members, staff, parents, and students. Although not specified, we presume NACA is referring here to Appeal Exs. 17 – 21. These "affidavits" are not in proper form as they fail to comply with Maryland Rule 1-304 and were not signed under penalty of perjury. They are mostly irrelevant to the nonrenewal decision. Moreover, NACA did not submit them as evidence at the OAH hearing. NACA had the opportunity to call these individuals as witnesses to testify and to be subject to cross-examination at the full OAH hearing and did not do so.

CONCLUSION

In our view, the record supports the conclusions reached by the ALJ, and NACA's exceptions do not require a different result. We do not find the local board's nonrenewal decision to be arbitrary, unreasonable or illegal. We adopt the ALJ's Proposed Decision, except to the extent specified in this Opinion.

Signatures on File:

Clarence C. Crawford
President

Jean C. Halle
Vice-President

Charles R. Dashiell, Jr.

Susan J. Getty

Rose Maria Li

Rachel McCusker

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Dissent:

Shawn D. Bartley

Gail Bates

Vermelle Greene

Joan Mele-McCarthy

January 26, 2021