

MICHAEL DONALDSON,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-21

OPINION

INTRODUCTION

Michael Donaldson (Appellant) appeals the decision of the Baltimore City Board of School Commissioners (local board) to deny the renewal of his teaching certificate. The local board filed a response maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

Appellant began working for the Baltimore City Public School System (BCPSS) on August 10, 2013. Under the regular teacher's contract, teachers must hold certification from the Maryland State Department of Education (MSDE). At the time of hiring, Appellant held an Advanced Professional Certificate (APC) in the certification areas of English 7-12 and Middle School Mathematics 4-9. His teaching certificate was valid from July 1, 2013 through June 30, 2018. (Motion, Local Board's Ex. 5).

Educators must renew an APC every five years. In order to renew an APC, an individual must submit a professional development plan, verification of three years of satisfactory school-related experience in the preceding five years, and 6 semester hours of acceptable credit. COMAR 13A.12.01.11(B)(5). An educator must earn the 6 semester hours of acceptable credit during the five years in which the certificate is valid. Acceptable credit means "content or professional education course work earned or taught after the conferral of the bachelor's or higher degree." COMAR 13A.12.01.02B(2).

MSDE has authority to issue teaching certificates. BCPSS, however, processes these requests for certificates for its employees, including reviewing and deciding whether its employees have met certification requirements. BCPSS employees act on behalf of MSDE when processing certification requests.

At the time he began working for BCPSS, Appellant had already begun a doctoral degree program at the University of Delaware. Appellant began collecting data for his dissertation in the fall of 2012 and began writing his dissertation in the fall of 2014. He ultimately submitted

the dissertation in the spring of 2016. (Appeal, Ex. E1, Donaldson Affidavit; Ex. L). Appellant earned his Ph.D. in Education on May 28, 2016. (Appeal, Ex. E1).

In June 2017, Appellant spoke with someone in the BCPSS certification office about renewing his certificate. The certification representative informed Appellant that his University of Delaware coursework would not count towards his renewal because his transcripts did not show that he earned 6 credits during the five years in which his certificate was valid (July 1, 2013 through June 30, 2018). Appellant's transcripts reflect that in the spring of 2012, he earned 9 credits for his doctoral dissertation, even though he did not complete the dissertation until the spring of 2016. According to the University of Delaware, the dissertation is graded as "Pass" once the student successfully defends the dissertation, but its transcripts reflect that the credits are earned when a student begins writing the dissertation rather than when a student completes it. (Motion, Local Board Ex. 8, Appellant Response Ex. G1).

Because BCPSS would not accept his dissertation credits, Appellant asked whether he could instead submit proof of courses that he taught, and the BCPSS certification representative told him he could. Appellant also called MSDE about his certificate, but an MSDE employee told him that he would need to work with his local school system on his renewal. (Motion, Local Board Ex. 8, Appellant Response Ex. A).

On June 28, 2017, Appellant submitted the required professional development plan and three years of satisfactory evaluations to renew his certificate. In regards to semester hours of acceptable credit, Appellant submitted a letter dated June 26, 2017, from Carol Vukelich, Dean of the College of Education and Human Development at the University of Delaware. (Motion, Local Board's Ex. 5). The letter stated the following:

To: Baltimore City Public Schools Certification Office

Michael Donaldson was enrolled at the University of Delaware from 2009-2016. During his tenure as a doctoral candidate, Michael taught two courses for the School of Education.

In the 2011-12 and 2012-13 academic school years, Michael taught two courses to undergraduate students for the School of Education. He taught Education 230 (Introduction to Exceptional Children) and Education 390 (Classroom Behavior Management).

In all, he was responsible for teaching a total of 12 credits.

(Motion, Local Board's Ex. 5)

On April 1, 2018, BCPSS sent Appellant an email (not included in the record) that indicated his certificate would be expiring at the end of June. On April 17, 2018, Appellant filed an "incident" report with BCPSS explaining that he had uploaded documents for his renewal to the BCPSS certification office in June 2017 but had still not received a response.

On May 24, 2018, BCPSS informed Appellant by email that his teaching credits could not be used towards his renewal. That same day, Appellant emailed Jeremy Grant-Skinner, the

Chief Human Capital Officer for BCPSS, to seek an explanation for why the certification office would not renew his certificate. Mr. Grant-Skinner replied on May 25, 2018, indicating that he would refer the question to another staff member. No one from BCPSS responded to Appellant. (Motion, Local Board Ex. 8, Appellant Response Ex. E).

On June 15, 2018, Appellant wrote back to Mr. Grant-Skinner, copying another BCPSS staff member, stating that he had not heard back from anyone regarding his certification questions. No one responded. On June 30, 2018, Appellant's certificate expired.

On August 8, 2018, Appellant again wrote to Mr. Grant-Skinner expressing his concern that he be able to resolve the certification issue prior to the start of the new school year. No one responded. (Motion, Local Board Ex. 8, Appellant Response Ex. E).

On October 8, 2018, Zakia McAllister, the Employee Engagement Analyst for Certification, wrote to Appellant. She explained that his certificate lapsed on June 30, 2018 because he "did not submit to City Schools timely and sufficient documentation required for renewal." As a result, his contract ended with BCPSS and he lost his tenure. Ms. McAllister informed Appellant that he would need to sign a provisional teacher's contract and that she would issue him a Conditional Certificate. BCPSS ultimately issued Appellant a Conditional Certificate, valid from July 1, 2018 through June 30, 2020.¹ (Motion, Ex. 3).

On November 8, 2018, Appellant appealed the decision not to renew his certificate. He argued that he submitted all required coursework and that BCPSS did not understand the way the University of Delaware awarded him credit. BCPSS referred the matter to a hearing examiner for a proposed decision. (Appeal, Ex. G; Motion, Ex. 6).

On November 16, 2018, counsel for BCPSS filed a response to the appeal by email and copied Appellant's union representative. Appellant's representative, however, did not receive the email until January 8, 2019, after the hearing examiner had already issued a decision. Appellant's representative did not therefore respond to BCPSS's filing. (Appeal, Ex. G; Appellant Response, Ex. A; Local Board Reply, Ex. A).

Because the hearing examiner found no disputes of material fact, she did not hold an evidentiary hearing or allow for oral argument, but instead reviewed the case based on documents submitted by the parties. In this case, it was the original appeal filed by Appellant and the CEO's response, without any further reply from the Appellant. (Motion, Ex. 6).

On December 21, 2018, the hearing examiner issued her proposed decision recommending that the local board affirm BCPSS's decision. The hearing examiner found that Appellant taught during the 2011-12 and 2012-13 school years, but did not teach courses during the five year validity period of his certificate (July 1, 2013-June 30, 2018). In addition, Appellant failed to explain how many credits he taught and when during that time period. The decision did not address Appellant's dissertation course credits. The hearing examiner concluded that Appellant failed to meet his burden to show that he submitted the required documentation to BCPSS within the required timeframes. (Motion, Ex. 6).

¹ A local school system may issue a Conditional Certificate to an individual who fails to meet the requirements for a professional certificate. The Conditional Certificate is valid for two years. COMAR 13A.12.01.02B(6).

On January 11, 2019, Appellant filed exceptions to the hearing examiner's proposed decision. Included was a letter dated November 7, 2018, from Dr. Marty Martin, Associate Vice Provost for Graduate and Professional Education at the University of Delaware. The letter explained that a student receives 9 credits for a dissertation at the University of Delaware after the dissertation is defended and submitted for the degree. Appellant argued that he had, therefore, earned the required amount of credits during the time when his certificate was valid. In addition, Appellant argued that courses he taught at the University of Delaware should have been accepted because the university calendar runs through the summer of 2013, which would have included two months during which he held his APC. Finally, Appellant maintained that he made every attempt to reach out to BCPSS to ensure he met the renewal requirements, but that the school system failed to respond to his messages. (Appeal, Ex. J).

On January 22, 2019, the local board adopted the hearing examiner's recommended decision. The local board did not address any of Appellant's exceptions. (Motion, Ex. 10).

This appeal followed.

STANDARD OF REVIEW

This case involves the application of teacher certification regulations. The State Board exercises its independent judgment on the record before it in the explanation and interpretation of State Board regulations. COMAR 13A.01.05.06E.

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.01.05.06A.

LEGAL ANALYSIS

Appellant focuses much of his appeal on whether the local board violated his right to due process before the hearing examiner. He maintains that BCPSS's counsel never sent a copy of her response to the appeal to his union representative. Appellant's union representative, therefore, did not get to respond to BCPSS's arguments or provide additional evidence for the hearing examiner to consider. Faced with evidence about how the University of Delaware awarded its credits, Appellant contends that the hearing examiner would have concluded he met the certification renewal requirements.

The Hearing Examiner Process

After BCPSS informed him that his certificate lapsed, Appellant filed an appeal with the local board using an "appeal information" form. On that form, Appellant stated that he submitted all required documents and that his certification lapsed only because BCPSS did not understand "the way his course work was graded." BCPSS rules provide the CEO with 10 days to respond to an appeal, after which an appellant has seven days to file a reply (if the CEO sends the response by email). *See* BCPSS Policy BLA. The CEO responded in writing to Appellant's appeal, but Appellant never filed a reply. The hearing examiner then issued a decision recommending that the local board uphold BCPSS' decision to deny Appellant's renewal.

In a sworn affidavit, Appellant’s union representative claims she never received the CEO’s filing and did not know there was anything to respond to until she received the hearing examiner’s proposed decision. She does not explain why she did not reach out to the CEO after failing to receive a response within the required 10 days. Regardless, counsel for the CEO maintains that she did send Appellant’s representative a copy of her filing by email, presents a print-out of the email as proof that she sent it, and accuses the union representative of committing perjury by claiming that she did not receive the filing. Both parties provide strong evidence – one in the form of an affidavit, the other in the form of documentary evidence – to suggest that they are correct. We do not need to resolve this factual dispute, though, because it is not material to our decision in this case. To explain why, it is necessary to look at what occurred *after* the hearing examiner issued a proposed decision.

The Local Board Decision

Appellant filed exceptions to the hearing examiner’s proposed decision and included various documents in support of his case, including copies of the emails he sent to BCPSS seeking guidance on his certification and letters from the University of Delaware verifying his teaching experience and explaining how the university awards dissertation credits. Specifically, Appellant presented evidence showing that the University of Delaware awards its credits to doctoral students when they complete a dissertation. In Appellant’s case, that occurred in the spring of 2016. Appellant argued that either the teaching experience or the dissertation credits should meet the required 6 credits for renewal of his teaching certificate. This information is what Appellant claims he would have presented to the hearing examiner, if given the chance to respond to BCPSS’s filing.

Although the hearing examiner did not receive Appellant’s evidence for review, the local board had all of this information before it when it decided Appellant’s case. Appellant therefore had an opportunity to present his case to the local board and no due process violation existed. *See Brown v. Queen Anne’s County Bd. of Educ.*, MSBE Op. No. 14-11 (2014) (finding it unnecessary to consider additional evidence Appellant might have presented to the local board, in part because the substance of the additional information was already in the record).

A different problem exists, however. The local board summarily adopted the hearing examiner’s proposed decision without addressing any of Appellant’s exceptions, which included new information not reviewed by the hearing examiner. As we stated in a previous case, the “local board presumably rejected all of Appellant’s contentions, but without any explanatory rationale, it is impossible for us to determine whether the local board acted in an arbitrary, unreasonable, or illegal manner by doing so.” *Young v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 17-12 (2017). We have long held that a local board must convey a basis for its decision in order for the State Board to conduct a meaningful review on appeal. *Id.* When, as here, an Appellant files exceptions to a hearing examiner’s decision that raise issues or evidence not addressed by the hearing examiner, a local board must address those exceptions.

Renewal of the APC

Ordinarily, we would remand this case back to the local board in order for it to issue a new decision explaining its rationale. Having reviewed the record as a whole, however, we

believe that remand is unnecessary because the record before the local board establishes that Appellant earned the necessary credits in order to renew his certificate. *See O'Connell v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 16-46 (2016) (ordering issuance of an APC to an educator who timely presented all of his renewal materials to BCPSS rather than remanding the case). Appellant presented the local board with his transcripts and a letter from the University of Delaware explaining that it awarded Appellant 9 credits when he completed his dissertation in the spring of 2016. In our view, it would be unreasonable for the local board to deny Appellant's certificate renewal based on the record before us.²

We remain unconvinced by the local board's argument that Appellant failed to provide BCPSS with the type of supporting documentation it needed to process his renewal request. The local board does not address the failure of BCPSS to respond to Appellant's multiple documented attempts to reach out to it for assistance before his certificate expired. BCPSS did not respond to these messages and, in fact, waited nearly three months after Appellant's certificate expired before communicating with him. Had BCPSS communicated in a timely fashion with Appellant, he could have presented the additional materials needed to demonstrate he earned the required credits. Accordingly, we conclude it was unreasonable for BCPSS to deny Appellant's certification renewal and we reverse the decision of the local board. In accordance with this opinion, MSDE shall renew Appellant's APC with a validity period beginning July 1, 2018, and BCPSS shall allow Appellant to return to his previous status as an educator under the regular teacher's contract.

CONCLUSION

For all of these reasons, we reverse the decision of the local board.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Gail H. Bates

Vermelle D. Greene

Jean C. Halle

² While the record indicates that the University of Delaware offers summer courses, Appellant did not provide sufficient evidence to show he taught 6 credits in the summer of 2013. We base our decision solely on the credits earned as part of Appellant's dissertation.

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

Warner I. Sumpter

Absent:
Clarence C. Crawford
David Steiner

May 21, 2019