

CHARLENE STAFFORD,

Appellant,

v.

BALTIMORE CITY
BOARD OF SCHOOL
COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-37

OPINION

INTRODUCTION

Charlene Stafford, (“Appellant”), appeals the decision of the Baltimore City Board of School Commissioners (“local board”) affirming the Chief Executive Officer’s decision to terminate her employment as a substitute teacher. Appellant alleges a lack of due process and wrongful termination. The local board filed a response to the appeal maintaining that Appellant was an at-will employee who could be terminated without cause and that its decision upholding her termination is not arbitrary, unreasonable or illegal.

FACTUAL BACKGROUND

The Appellant was employed as a non-certificated substitute teacher by the Baltimore City Public Schools (“BCPS”) for the 2019-2020 school year. Appellant participated in a pool of substitute teachers within the BCPS who were assigned to a school when the school required the services of a substitute teacher.

According to Appellant, on October 22, 2019 at approximately 7:00 a.m., she accepted an assignment for a substitute teacher at William Paca Elementary School through “AESOP.” AESOP is an automated system that allows teachers to schedule absences and place substitutes by phone or online. When Appellant checked her AESOP account later that morning, she discovered that her assignment at William Paca had been cancelled at 7:30 a.m. and there was no need for her at the school. Appellant maintains that the William Paca Elementary School assistant principal “lied” to her about the date that Appellant’s substitute assignment was cancelled. Although the record is not clear, there appears to have been a dispute between Appellant and the assistant principal at the school.

Thereafter, by letter and email dated October 25, 2019, Jerome Jones, Director of the Office of Employee and Labor Relations for BCPS, in his capacity as designee of the Chief Executive Officer (“CEO”), advised Appellant that her that her employment with the BCPS would be terminated effective October 26, 2019. (Local Bd. Ex. 1). He stated that Appellant was being terminated because she “engaged in practices inconsistent with ordinary, reasonable, and common-sense rules of conduct necessary for the mutual welfare of the school system and

its employees.” *Id.* The letter also informed the Appellant that as a substitute teacher, she was “subject to termination at any time, with or without cause.” *Id.*

On November 22, 2019, Appellant filed an appeal of her termination with the local board denying any issues with her conduct and arguing that her October 22, 2019 substitute assignment had been improperly cancelled because the assistant principal did not want to pay her. (Local Bd. Ex. 2). Appellant requested an oral argument and evidentiary hearing in order to prove her “innocence through facts and evidence” and requested that the local board reinstate her employment as a substitute teacher. *Id.*

The local board assigned a hearing examiner to review the case, who issued a recommendation on February 28, 2020. As an at-will employee, the hearing examiner noted that Appellant’s rights were governed by Education Art. § 4-205(c), which entitled her to appeal her termination to the local board but did not require an evidentiary hearing or oral argument.¹ *Id.* Consequently, the hearing examiner issued recommendations based solely on the documents presented. *Id.* The hearing examiner noted that Appellant failed to dispute that she was an at-will employee whose employment could be terminated at any time with or without cause. (Local Bd. Ex. 5). The hearing examiner also determined that the Appellant had failed to allege a factual or legal ground that would require an evidentiary hearing or oral arguments. *Id.*

As to the merits, the hearing examiner documented that Appellant had failed to cite any statutory or constitutional authority that would prohibit her termination, and had failed to present any evidence that her termination was based on illegal or discriminatory grounds. *Id.* Accordingly, the hearing examiner recommended that the local board affirm the CEO’s decision to terminate the Appellant. *Id.*

On March 31, 2020, the local board entered an Order adopting the recommendation of the hearing examiner and affirming the decision of the CEO to terminate the Appellant’s employment without the need for further oral argument or an evidentiary hearing. (Local Bd. Ex. 6).

This appeal followed.

STANDARD OF REVIEW

A non-certificated employee is entitled to administrative review of a termination pursuant to Education Art. § 4-205(c). *See Goines v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 17-16 (2017). A decision of the local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board is considered *prima facie* correct. COMAR 13A.01.05.06A. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. *Id.* Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

¹ The hearing examiner noted that, unlike employees whose termination rights are governed by Education Art. § 6-202 (governing the suspension or dismissal of certificated employees, such as teachers, principals, supervisors, assistant superintendents or other professional assistants), at-will employees such as Appellant are not entitled to an evidentiary hearing or oral argument.

LEGAL ANALYSIS

In the State Board appeal, Appellant argues that her “[r]ights have been violated” due to false allegations made about her conduct and that she was wrongfully terminated due to “Retaliation, Disability, and Age,” therefore rendering the local board’s decision illegal.²

At-Will Employment

Appellant does not dispute that as a substitute teacher, she qualified as an “at-will employee.” An employer “can terminate an at-will relationship for any reason – good or bad, fair or unfair, and at any time – so long as the motivation for the termination does not violate some clear mandate of public policy or some statutory prohibition against the termination.” *King v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 14-19 (2014) (quoting Maryland Employment Law § 3.03 (2013)). In *King*, the State Board held that because the substitute teacher was an at-will employee, BCPS was not required to provide her a reason for her termination, conduct an investigation, collect police or medical reports, or hold an evidentiary hearing or oral argument. *Id.* An at-will employee, such as the Appellant in this case, “[can] be fired with or without cause so long as the reason for her termination [is] not illegal, discriminatory, or against Maryland public policy.” *Id.* (citing *Coleman v. Baltimore City Bd. of School Comm’rs*, MSBE Op. No. 11-25 (2011)).

Lack of Due Process

Appellant argues that her termination was illegal because she was fired based on false allegations about her conduct, that there was no “clarification of why [she] was terminated,” and that she was denied the opportunity for evidentiary hearing or oral argument. These arguments can be characterized as a claim that the Appellant was not afforded due process.

Due process protections are “based on a deprivation of a liberty or property interest protested by the Fourteenth Amendment by State action.” *Dozier v. Dep’t of Human Resources*, 164 Md. App. 526, 538 (2005). Maryland courts have held that at-will employment does not constitute a property interest for the purposes of due process. *Id.* (citing *Elliott v. Kupferman*, 58 Md. App. 510, 520 (1984)). Because at-will employees may be terminated with or without cause, employers are not required to provide the type of due process protections sought by the Appellant. Thus, BCPS was not required to “clarify” the reason for Appellant’s termination, hold an evidentiary hearing, or provide oral argument. The reasons for the termination are simply not relevant in such cases. The local board appointed a hearing officer to review the appeal and make recommendations. A hearing was not required for at-will employees who can be terminated with or without cause because there was no constitutional or statutory basis to provide one. *Robinson v. Charles County Bd. of Educ.*, MSBE Op. No. 11-21 (2011). Appellant has not demonstrated, nor does the record support, a statutory or constitutional basis for an evidentiary hearing in this case. Thus, we find no due process violation occurred.

² Appellant submits additional issues for consideration that are not part of the termination decision. These include whether the William Paca Elementary School assistant principal improperly cancelled the October 22, 2019 substitute teacher assignment and whether Appellant is entitled to back pay for the cancelled assignment. Thus, this Board will not consider these issues in this appeal.

Retaliation

Appellant argues that the allegations about her conduct and her subsequent termination were retaliatory actions taken by the Baltimore City Public Schools due to her complaints about not receiving payment for the October 22, 2019 assignment, which was cancelled.

The State Board has recognized retaliation as an illegal reason for terminating an employee if the termination occurs in response to an employee engaging in the protected activity of reporting harassment or illegal activity based on protected categories, such as gender or race. See *Young v. Prince George's County Board of Education (Young II)*, MSBE Op. No. 17-39 (2017). In order to establish a prima facie case of retaliation, an Appellant must show that (1) he or she engaged in a protected activity; (2) that the school system took a materially adverse action against her or him; and (3) that a causal connection existed between the protected activity and the materially adverse action. *Id.* (citing *Burling N. & Santa Fe Ry. Co. v. White*, 584 U.S. 53, 68 (2006)). The school system may then rebut the *prima facie* case by showing that there was a legitimate and legal reason for the adverse action. *Id.* The burden then shifts back to the Appellant to show that the reasons given by the school system are a pretext. *Id.*

In her appeal materials, Appellant maintains that the William Paca Elementary School assistant principal “lied” about the date that Appellant’s substitute assignment was cancelled and that when Appellant inquired as to whether she would be paid for the cancelled assignment, the assistant principal “angrily stated to [her], ‘Did you sign in? If you sign in, you will get paid!!!!’” The Appellant points to this conversation as the basis for Baltimore City Public School’s retaliation resulting in her termination.

The Appellant’s inquiry to the assistant principal about the cancellation of her substitute assignment and her pay for the cancelled day does not constitute a protected activity of reporting harassment or illegal activity based on protected categories, such as gender or race. While the Appellant may feel that her termination was unfair or unjustified, that does not make the local board’s decision retaliatory, illegal or against Maryland public policy.

Discrimination

In her appeal to the State Board the Appellant raises two claims of discrimination related to age and disability that she failed to raise in her appeal to the local board. It is the longstanding policy of this Board to consider arguments not previously raised before the local board to be waived on appeal. See *Murphy v. Prince George's County Bd. of Educ.*, MSBE Op. No. 16-19 (2016); *Lessie B. v. Caroline County Bd. of Educ.*, MSBE Op. No. 11-16 (2011) (citing *Etefia v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-03 (2003)); *Craven v. Bd. of Educ. of Montgomery County*, 7 Op. MSBE 870 (1997). Thus, the Appellant waived these issues and they are not properly before this Board for consideration.

CONCLUSION

For the reasons stated above, we find that the local board’s decision is not arbitrary, unreasonable or illegal. Accordingly, we affirm the local board’s decision upholding the termination of Appellant’s at-will employment.

Signatures on File:

Clarence C. Crawford
President

Jean C. Halle
Vice-President

Shawn D. Bartley

Gail H. Bates

Charles R. Dashiell, Jr.

Susan J. Getty

Vermelle D. Greene

Rose Maria Li

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

September 22, 2020