

STEVEN O'CONNELL,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-46

OPINION

INTRODUCTION

Steven O'Connell (Appellant) appeals the decision of the Baltimore City Board of School Commissioners (local board) to deny the renewal of his teaching certificate and terminate his regular teacher's contract. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded to the motion and the local board replied.

FACTUAL BACKGROUND

Appellant began working for Baltimore City Public Schools (City Schools) in August 2010 under a regular teacher's contract. He earned tenure in 2013. Teachers are required under the regular teacher's contract to hold certification from the Maryland State Department of Education (MSDE). Appellant most recently held an Advanced Professional Certificate (APC) in the certification areas of Elementary Education grades 1-6 and Middle School Social Studies grades 4-9, with ancillary credits in reading and special education. His teaching certificate was valid from July 1, 2010 to June 30, 2015. (Appeal, Affidavit, Ex. 1).

In order to renew an Advanced Professional Certificate, an individual must submit a professional development plan¹ (which City Schools calls an "Individual 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). Although MSDE has sole authority to issue teaching certificates, City Schools processes these requests for certificates for its employees, including reviewing and deciding whether its employees have met certification requirements.

In April 2012, Appellant received a "Required Reading Course Work Summary" prepared by the City Schools certification office. Although the document itself is an MSDE form, it states that the evaluation of credits was done at the local level. The summary states that Appellant needed to earn 12 credits of Reading in the area of Elementary Education 1-6 and 6 credits of Reading in the area of Middle School 4-9 to renew his teaching certificate. The document states that if a teacher needs to earn more than 6 credits in Reading, the teacher will

¹ A professional development plan is "a plan to describe the employee's continued professional growth." COMAR 13A.12.01.02(26).

have “two full validity periods to complete the requirements,” so long as 6 credits are presented during each validity period. In other words, Appellant would have needed to earn 6 credits by June 30, 2015 in order to renew his certificate and earn another 6 credits during the subsequent five years. As of April 2012, Appellant had earned 3 Reading credits, covering the topic of “Processes and Acquisition of Reading Skills.” (Appeal, Affidavit, Ex. 3).

To fulfill the remaining Reading requirements, Appellant began a course in the fall of 2014 titled “How to Comprehend Literacy and Literature For Current Practitioners,” offered by Grand Canyon University. Appellant completed the 3 credit course in April 2015. (Motion, BTU Response, Ex. 1). According to Appellant, he presented his transcript for this course to the City Schools certification office on April 17, 2015.² (Appeal, Affidavit, Ex. 2).

Towards the end of May 2015, the City Schools certification office informed Appellant that he still needed 3 more Reading credits in order to renew his teaching certificate. Appellant found an online course titled “Reading Fundamentals #3” offered by Andrews University. He received approval from City Schools to use the course towards his Reading renewal requirements, and Appellant completed the 3 credit course on June 25, 2015. The next day, Appellant presented the transcript for the course to the City Schools certification office and asked that his record be updated. (Appeal, Affidavit, Ex. 5, 6). City Schools records show he submitted a request to renew his teaching certificate on June 29, 2015. (Motion, Ex. 2).

On July 21, 2015, the City Schools certification office informed Appellant that his renewal request was rejected because he had failed to submit 6 Reading credits and a page was missing from his Individual Development Plan, another required document. (Motion, Ex. 2). On July 31, 2015, City Schools records show that Appellant re-submitted the renewal request.³ In support of the request, Appellant uploaded three documents. According to Zakia McAllister, manager of the City Schools certification office, these documents were the same as those submitted on June 29, 2015, except that Appellant submitted the full Individual Development Plan, including the page that was missing earlier. (Motion, Ex. 3, 5).

On November 16, 2015, Ms. McAllister sent Appellant an email informing him that his certification lapsed on June 30, 2015 because he had not submitted sufficient documentation required for renewal. In her affidavit, Ms. McAllister explains that the denial was based on Appellant’s lack of Reading credits. The letter informed Appellant that “[u]pon certification lapse, your contract with [City Schools] terminated and, if applicable, your tenure expired.” Ms. McAllister informed Appellant that he would be issued a conditional certificate and that he would need to come to the central office to sign a provisional teacher’s contract. The email stated that if Appellant did not sign the provisional teacher’s contract, he would not be able to

² Appellant includes a receipt that shows he requested City Schools update his certification file with an “official transcript” at some point in 2015. The date, however, is not legible, nor is the section of the document where a City Schools official would have placed his or her initials acknowledging receipt. (Appeal, Ex. 3).

³ In an affidavit submitted with his appeal, Appellant claims he met in person with Zakia McAllister, manager of the City Schools certification office, to discuss his certification. Appellant claims that Ms. McAllister initially told him that City Schools did not have his credits from Andrews University, but after searching her records, she found the transcript. He also states that Ms. McAllister informed him that he had met all certification requirements. Appellant’s affidavit was signed in August 2016 and was not available to the local board at the time it made its decision. Accordingly, we decline to consider the affidavit and shall base our decision on the materials in the record that were available to the local board.

stay employed. (Appeal, Affidavit, Ex. 7)

On November 17, 2015, Appellant responded to the email, writing “I have completed all the required course work and have turned in all my transcripts within the deadline. I have all my receipts. I have also updated all documentation into the system. Can you please advise on next steps.” Appellant never received a response to the email. In the meantime, Appellant did not sign the provisional teacher’s contract. (Motion, Ex. 3).

Appellant contacted his representative for the Baltimore Teachers Union in early January 2016. On April 8, 2016, Appellant’s union representative filed an appeal of the decision to the local board. The matter was referred to a hearing examiner who issued a decision on June 1, 2016 recommending that the appeal be denied as untimely. The hearing examiner found that Ms. McAllister’s November 16, 2015 email was a final appealable decision and that Appellant waived his right to challenge the decision by waiting until April 2016 to appeal. (Appeal, Ex. 1).

On July 14, 2016, the local board adopted the hearing examiner’s decision and dismissed the appeal as untimely. (Appeal, Ex. 1).

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

Appellant presents two primary arguments. First, he maintains that the local board’s decision was arbitrary, unreasonable, and illegal because City Schools violated its policies by not informing him of his appeal rights in the November 16, 2015 email. Second, Appellant argues that he met all of the requirements to renew his teaching certificate and submitted the necessary documentation on time.

Timeliness of the appeal

City Schools Policy BLA governs appeal procedures under Educ. §4-205. The pertinent provision states:

All appeals to the [local] Board under Code Section 4-205(c)(3) shall be from a final action or decision of the CEO or the CEO’s designated representative that adversely affects the person or persons who seek the appeal. The CEO or the CEO’s designated representative shall indicate in writing when a decision is “final” and shall also advise the parties of their right to file an appeal to the Board within thirty (30) days of the date of the final decision. Included with this written decision shall be a copy of the Board’s Appeal Information form.

Policy BLA III.B.

The *Accardi* doctrine requires that a government agency “scrupulously observe rules, regulations, or procedures which it has established.” *Glover v. Baltimore City Bd. Of Sch. Comm’rs*, MSBE Op. No. 15-25 (2015) (citing *Accardi v. Shaughnessy*, 347 U.S. 260 (1954)). In order to strike down an agency’s decision under *Accardi*, a complainant must show that he or she was prejudiced by the agency’s failure to follow its rules, regulations, or procedures. *Id.* (citing *Pollack v. Patuxent*, 374 Md. 463, 504 (2003)).

The local board, citing *Pollock*, argues that its policy is merely a procedural rule designed for the “orderly transaction of business” and cannot support an *Accardi* violation. Under *Pollock*, however, even a procedural rule can be subject to the *Accardi* doctrine if an individual is able to show he was prejudiced as a result of the agency’s failure to follow the rule. *See Pollock*, 347 Md. at 481-82, 501. Therefore, Appellant has the burden to demonstrate that (1) City Schools failed to follow its policies and (2) he was prejudiced as a result.

On the first point, City Schools does not dispute Appellant’s claim that Policy BLA III.B was not followed. The policy requires that “The CEO or the CEO’s designated representative shall indicate in writing when a decision is “final” and shall also advise the parties of their right to file an appeal to the Board within thirty (30) days of the date of the final decision.” City Schools did neither of these things. The November 16, 2015 email from the City Schools certification office does not state that it is a “final” decision of the CEO or advise Appellant of his appeal rights. On the day after this decision, Appellant requested that the City Schools certification office advise him about his available “next steps.” At that point, the City Schools certification office could have cured its failure to follow its policy by informing Appellant of his appeal rights. The City Schools certification office did not respond to this email. In our view, this was not merely a small procedural misstep. Failing to inform Appellant of his appeal rights deprived him of the ability to challenge City School’s certification decision. Accordingly, we conclude that City Schools did not follow its policy.

As to the second point, the local board maintains that Appellant was not prejudiced by any failure to follow City Schools’ policies because he was “not adversely affected by Ms. McAllister’s decision.” In the view of the local board, because Appellant had the ability to continue his employment through a provisional teacher’s contract, he “received the benefit of continued employment.”

The November 16, 2015 decision resulted in the loss of Appellant’s Advanced Professional Certificate, the end of his regular teacher’s contract, and the loss of his tenure. These losses are significant because a tenured teacher can only be terminated for cause based on immorality, misconduct in office, insubordination, incompetency, or willful neglect of duty. *See Md. Code, Educ. §6-202*. Non-tenured teachers do not have these same rights. In our view, this constitutes significant prejudice. For this reason, we shall overturn the decision of the local board finding that Appellant’s appeal was untimely.

Merits of the appeal

Although the hearing examiner recommended dismissing the appeal based on untimeliness, the hearing examiner’s decision also found that Appellant failed to timely submit

all of his required materials before his certificate expired. Because the local board adopted the hearing examiner's recommendation in full, we shall review the merits of the underlying decision.

Appellant submitted his request for the renewal of his teaching certificate to City Schools on June 29, 2015. On July 21, 2015, City Schools rejected the request because Appellant did not have 6 Reading credits and a page was missing from his Individual Development Plan. Appellant made a second renewal request on July 31, 2015, which was rejected on November 16, 2015 because City Schools concluded Appellant had not met the 6 Reading credit requirements.

According to the record, Appellant had earned 3 of the 6 Reading credits he needed in order to renew his certification as of April 2012. After that point, he earned an additional 6 credits: 3 from Grand Canyon University and 3 from Andrews University. It is unclear whether City Schools received the Grand Canyon University credits or if they would have counted towards his Reading credit requirements. It does not matter, however, whether the Grand Canyon University credits were counted because the record is clear that City Schools approved, and received, the 3 credits from Andrews University prior to the June 30, 2015 deadline to renew Appellant's certification. Together with the 3 credits previously recognized on Appellant's 2012 "Required Reading Course Work Summary," the record shows Appellant had the required 6 Reading credits at the time of his renewal.

The hearing examiner's report points out that Appellant did not take the Andrews University course until the final month before his certificate expired and that he submitted his renewal request on the day before the deadline. Although Appellant can certainly be faulted for not acting sooner, the fact remains that Appellant timely submitted his Reading credits.

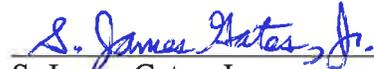
That leaves only the Individual Development Plan, which was missing a single page when uploaded by Appellant. Appellant does not explain this mistake, but he did later submit the missing page. According to Ms. McAllister's affidavit, her decision to deny his renewal request was based on the missing Reading credits, not the missing page from the Individual Development Plan. In our view, then, the failure to initially upload the first page of his Individual Development Plan does not justify the local board's decision to deny Appellant's certification renewal.

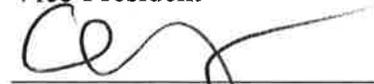
Based on our review of the record, we conclude it was unreasonable for City Schools to deny Appellant's certification renewal request and we reverse the decision of the local board. In accordance with this opinion, MSDE shall issue Appellant an APC teaching certificate with a validity period beginning on July 1, 2015 and City Schools shall rescind its decision to terminate Appellant's regular teacher's contract. In addition, we are aware that City School's actions may have ultimately affected Appellant's employment status. The local board shall report back to us within 30 days regarding whether City Schools currently employs the Appellant.

CONCLUSION

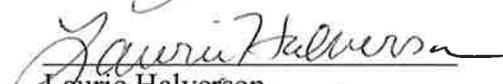
For all of these reasons, we reverse the decision of the local board.


Andrew R. Smarck
President


S. James Gates, Jr.
Vice-President

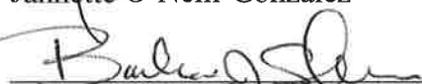

Chester E. Finn, Jr.


Michele Jenkins Guyton


Laurie Halverson

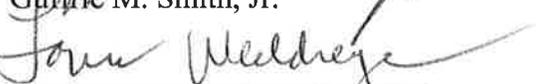

Stephanie R. Iszard


Jannette O'Neill-González


Barbara J. Shreeve


Madhu Sidhu


Guffie M. Smith, Jr.


Laura Weeldreyer

October 25, 2016