

BRENDA RICHARDSON,

Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-09

OPINION

INTRODUCTION

Brenda Richardson (Appellant) appeals the decision of the Baltimore City Board of School Commissioners (local board) to not renew her teaching 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 (BCPS) in October 1985 under a regular teacher's contract. She earned tenure two years later.¹ During her time with BCPS, her evaluations resulted in either proficient, excellent, satisfactory, or effective ratings. (Appeal, Ex. 3).

Teachers are required under the regular teacher's contract to hold certification from the Maryland State Department of Education. Appellant held an Advanced Professional Certificate (APC) in the area of Special Education K-12 that was valid from January 1, 2009 to December 31, 2013. (Motion, Ex. 1). This case centers on the renewal of that certificate.

In order to renew an Advanced Professional Certificate, an individual must submit a professional development plan² (which BCPS calls an "Individual Development Plan"), verification of three years of satisfactory school-related experience in the preceding five years, and six semester hours of acceptable credit. COMAR 13A.12.01.11(B)(5). Because Appellant qualified for "senior teacher status," she was not required to submit the six semester hours of credit. *See* COMAR 13A.12.01.14B (renewal requirements for any professionally certificated employee may be waived if the employee is 55 years old or older or has been employed for at least 25 years in a public or approved nonpublic school). According to BCPS policy, the "senior teacher status" waiver only excuses employees from completing required credits towards their

¹ State law now requires a three year period before a teacher earns tenure.

² A professional development plan is "a plan to describe the employee's continued professional growth." COMAR 13A.12.01.02(26).

certification renewal, but they still must present an Individual Development Plan and have three years of satisfactory experience.

On October 19, 2012, Appellant submitted three satisfactory annual evaluations and an Individual Development Plan to the BCPS certification office in order to renew her APC. According to Appellant, she was informed by Tamara DeShields-Burns in the certification office that her renewal paperwork would be processed. (Appeal, Ex. 3; Appellant's Reply, Ex. 1).

On December 14, 2012, Appellant received an email from the BCPS certification office. It stated the following:

The Office of Certification is in receipt of your request for renewal dated 10/19/2012. Unfortunately, we cannot not (sic) process the renewal of your certificate at this time because it's too early, your certificate isn't set to expire until 12/31/2013. Please be sure to contact us 90 days prior to the expiration date displayed on your certification to ensure your file has been pulled for review. If you have any questions or concerns please feel free to contact us via email or by phone.

(Motion, Ex. 9, Certification Email).

Per BCPS policy, the Individual Development Plan must be submitted during the same school year in which the certificate is set to expire. Appellant did not respond to this email and did not submit any further materials to the BCPS certification office prior to the expiration of her certificate.. (Motion, Ex. 3).

At the start of the 2013-14 school year, Appellant was assigned to teach at Curtis Bay Elementary/Middle School. Per BCPS policy, teachers must develop Individual Development Plans each year and submit them to their principal by October 15 for review during an initial planning conference. (Motion, Ex. 4). According to Lynnea Cornish, principal of Curtis Bay Elementary/Middle School, Appellant did not submit an Individual Learning Plan to her for review. (Motion, Ex. 5). On January 1, 2014, Appellant's certificate expired.

On February 25, 2014, Appellant received a letter from Kim Lewis, the human capital officer for BCPS, informing her that her certification had lapsed. The letter stated that "upon certification lapse, your regular contract with [BCPS] terminated and your tenure expired." Appellant was informed that her job was in jeopardy and that she needed to renew her certification in order to continue to work for BCPS. The letter explained that if she did become recertified, that Appellant would be considered "nontenured until after having worked three years, beginning the first day of school year 2014-2015." (Motion, Ex.9, Dr. Lewis Letter).

In response to the letter, Appellant submitted a new Individual Development Plan on March 14, 2014. After Appellant's renewal paperwork was processed, her APC was renewed

with a validity date of January 1, 2014 to December 31, 2018.³

On August 26, 2014, BCPS informed Appellant that because her certification had lapsed, she needed to sign a new regular teacher's contract in order to teach during the 2014-15 school year. The letter reminded Appellant that she had lost her tenure with BCPS and that she would remain non-tenured until after having worked three years. (Motion, Ex. 6). Appellant signed the contract on September 2, 2014 and was assigned to Walter P. Carter Elementary/Middle School. (Motion, Ex. 7).

On May 1, 2015, BCPS informed Appellant that her contract would not be renewed for the following year. (Motion, Ex. 8). She appealed the decision and BCPS referred the matter to a hearing officer who issued a decision based on the documents submitted by the parties. Appellant argued that she was a tenured teacher who could only be terminated for cause under Md. Code, Educ. §6-202 and that her non-renewal was illegal. (Motion, Ex. 9, Appeal Information Form).

On August 13, 2015, the hearing officer issued a decision recommending that Appellant's nonrenewal be upheld. The hearing officer found that Appellant ceased to be a tenured teacher after her contract expired and that she became an untenured, probationary teacher after signing a new contract in September 2014. Because Appellant was not tenured, BCPS could decide not to renew her contract for any reason at the end of the 2014-15 school year. The hearing officer found that Appellant bore the responsibility for ensuring her certification was valid, noting that the certificate itself states that the holder has responsibility "to know the current certification requirements and to renew the certificate prior to the expiration date." According to the hearing officer, Appellant's probationary status did not entitle her to an evidentiary hearing. (Motion, Ex. 9, Hearing Officer Recommendation).

On September 22, 2015, the local board adopted the hearing officer's recommendation to uphold Appellant's nonrenewal. (Motion, Ex. 9). 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 argues that the non-renewal of her contract was illegal because she should have been treated as a tenured employee who could only be terminated for cause. Appellant maintains that she submitted her renewal materials on time and that her certification lapse was solely the fault of BCPS. Appellant contends that had BCPS not erred, her certification would not have

³ Under Maryland regulations, certificates are given a validity date of either January 1 or July 1, depending on when the request for certification is submitted. COMAR 13A.12.01.10D. If a request is submitted prior to July 1, the certificate is valid beginning on January 1 of that year.

lapsed and she would have continued to be tenured and entitled to the associated protections.

Certification lapse

Before her certification lapsed on January 1, 2014, Appellant was a certificated employee who could only be terminated for cause based on immorality, misconduct in office, insubordination, incompetency, or willful neglect of duty. *See* Md. Code, Educ. §6-202. Certificated employees are entitled to significant due process protections prior to being terminated. Specifically, the Appellant would have been entitled to an evidentiary hearing and given the opportunity to be heard before the local board. *Id.* In order to be considered a “teacher” entitled to the protections of §6-202, one must be certified to teach in Maryland. Once Appellant’s certification lapsed, however, she was no longer entitled to the protections of §6-202.

Appellant did not appeal the February 25, 2014 decision that found her certification lapsed and her tenure expired. Instead, Appellant submitted new documentation to BCPS in March 2014 in order to renew her certificate. At the start of the 2014-15 school year, Appellant signed a new regular teacher’s contract with the understanding that she would be considered non-tenured and would need to complete the three-year probationary period to again earn tenure. It was not until her contract was non-renewed on May 1, 2015 — more than a year later — that she challenged BCPS’s initial decision that the lapse of her certification resulted in her loss of tenure.

Appellant argues that the decision not to renew her certificate without providing her with full due process rights under Md. Code, Educ. §6-202 was illegal because the underlying decision of February 25, 2014 eliminating her tenure rights was a wrong decision. The right to appeal the February 25, 2014 decision existed for 30 days from that date. Md. Code, Educ. §4-205(c)(3). Appellant did not exercise her appeal rights at that time. She waited, having signed a probationary contract that made clear that she had no tenure and that offered minimal due process rights if the contract were not renewed. She cannot now resurrect her right to appeal the correctness of the February 25, 2014 decision by piggybacking onto it as the reason the non-renewal decision is illegal. In our view, the Appellant forfeited her right to challenge the February 25, 2014 decision by failing to appeal it to the local superintendent or the local board within 30 days.

Even if Appellant’s challenge to that decision were timely, the record indicates that Appellant was squarely to blame for the certification lapse. Although Appellant submitted her renewal materials early, BCPS informed her on December 14, 2012, that she needed to contact the certification office 90 days before her certificate’s expiration date. (Motion, Ex. 9, Certification Email). According to her principal and the certification office, she never did so. Moreover, by signing a new regular teacher’s contract in 2014, Appellant acknowledged that her certification had lapsed and that she needed to begin the process of acquiring tenure anew.

Appellant argues that the Code of Maryland Regulations does not specify when an Individual Development Plan must be created in order to qualify for renewal and that she should not be penalized for submitting one early. BCPS’s policy requires that an Individual Development Plan be submitted in the same year as the renewal request. In our view, this policy

is not unreasonable and does not conflict with the certification regulations.

In addition, Appellant argues that BCPS failed to timely submit her renewal materials in the past and that this had never before impacted her tenure. She cites to three specific occasions when BCPS was late in submitting paperwork to the State; all three times, Appellant contends that her tenure remained valid. None of those situations, however, involved *Appellant* submitting her materials late. Based on Appellant's affidavit, it appears that BCPS allowed Appellant's tenure to continue uninterrupted when the *school system* was to blame for the delay. But the facts of this case are different. Appellant, not BCPS, was to blame for the delay in submitting the certification paperwork. In our view, this is an important distinction and it was not unreasonable for BCPS to decline to extend Appellant's tenure when the failure to timely renew was her fault, not the fault of the school system.

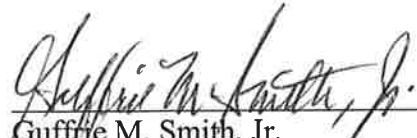
Nonrenewal of the contract

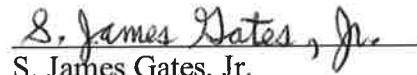
After Appellant signed a new regular teacher's contract, she was considered a probationary employee. The probationary period for new teachers in a school system lasts for three years. Md. Code, Educ. §6-202(b). During this probationary period, a certificated teacher is hired under a one year contract that automatically terminates at the end of the school year and must be renewed again the following school year. *Id.* School systems have a great degree of flexibility in deciding not to renew a probationary teacher's contract so long as the reason for the nonrenewal is not illegal or discriminatory. See *Anker v. Harford County Bd. of Educ.*, MSBE Op. No. 11-17 (2011). No such assertions were made in this case.

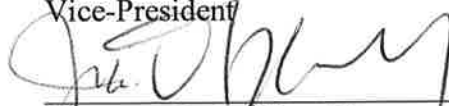
As stated previously, Appellant waived her ability to challenge BCPS's decision that her certification lapse resulted in a loss of tenure, and she, not BCPS, was to blame for the late submission of the certification materials. Appellant offers no other reason why her nonrenewal was illegal. Accordingly, we affirm the local board's decision not to renew her certificate.


CONCLUSION

For all of these reasons, we affirm the decision of the local because it was not arbitrary, unreasonable, or illegal.


Guffie M. Smith, Jr.
President

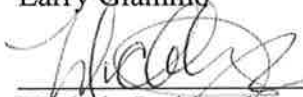

S. James Gates, Jr.
Vice-President

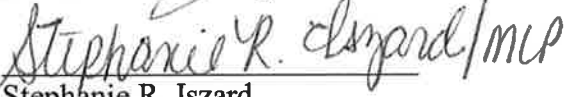

James H. DeGraffenreidt, Jr.

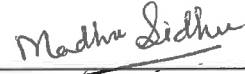

Linda Eberhart
Absent

Chester E. Finn, Jr.
Absent

Larry Giammo


Michele Jenkins Guyton


Stephanie R. Iszard


Madhu Sidhu


Andrew R. Smarick


Laura Weeldreyer

March 22, 2016