

TURNING POINT
FOUNDATION, INC.,

Appellant,

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION (III)

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 21-09

OPINION

INTRODUCTION

Turning Point Foundation, Inc., ("TPF") a charter school operator, filed this appeal, or in the alternative, a Petition for Declaratory Ruling on a matter concerning transportation funding. TPF seeks to appeal to the State Board an April 17, 2020 letter from legal counsel for the Prince George's County Public Schools ("PGCPS") responding to a demand from TPF's attorney for transportation cost reimbursement. In the alternative, TPF seeks to have the State Board declare that except during the 2018-2019 school year, the per pupil charter school allocation formula used by the Prince George's County Board of Education ("local board") from 2007 through the 2017-2018 school year, was inconsistent with Maryland law and that TPF is entitled to reimbursement of \$1.6 million in transportation costs. The local board filed a Motion to Dismiss. TPF filed an Opposition and the local board filed a Sur Reply.

FACTUAL BACKGROUND

The local board granted TPF a charter in 2005 to operate Turning Point Academy ("TPA"). The local board renewed TPF's charter in 2012, 2014, and 2018. Annually, the local board prepared a per pupil allocation calculation for charter schools beginning in 2006. (TPF Ex. 14 and 15). TPA provided bus transportation to its students during this time. (TPF Exs. 1, 2). The 2011-2012 and 2014-2017 charter renewals expressly excluded transportation costs from the local board's per pupil allocation. For the 2018-2019 school year, the local board included transportation in TPF's per pupil funding. (TPF Appeal at 3 and Ex. 14).¹

On May 9, 2019, the local board voted not to renew TPF as the operator of TPA, and TPF appealed the decision to the State Board. (Local Board Motion at 2). That matter is a separate appeal and is limited to the nonrenewal decision. It does not address the transportation funding issue in any substantive way.

¹ On July 14, 2017, the Maryland Court of Appeals issued an opinion that local boards of education are required to include funds for transportation services when calculating a charter school's per-pupil funding allocation. *See, Frederick Classical Charter Sch. v. Frederick Cnty. Bd. of Educ.*, 454 Md. 330, 392 (2017).

On February 26, 2020, Timothy Maloney, attorney for TPF, wrote a letter to Dr. Monica Goldson, PGCPS Chief Executive Officer, and Dr. Alvin Thornton, Chair of the local board, and demanded payment of transportation costs. The letter argued that TPF was owed \$1.6 million in transportation costs from 2007 until the 2018-2019 school year. The letter demanded that the local board render a final decision within 30 days on reimbursement to TPF for the transportation costs. (TPF Ex. 11).

On April 17, 2020, Diana Wyles, legal counsel for PGCPS, responded to Mr. Maloney's February 26, 2020 letter. She stated, "It is the Prince George's County Public Schools' ("PCGPS") position that no additional transportation costs are owed to TPF for school years prior to the 2018-2019 school year." Ms. Wyles signed the letter. It was not signed by any members of the local board. (TPF Ex. 12).

On May 13, 2020, Mr. Maloney again wrote to Ms. Wyles, stating, "we firmly disagree with the Board of Education's refusal to pay Turning Point Foundation the transportation costs that it is owed. . ." and argues that TPF is entitled to payment based on the *Frederick Classical Charter School* decision. He concludes the letter by stating, "Turning Point requests that the Board reconsider its position." (TPF Ex. 13).

TPF filed this appeal to the State Board on May 18, 2020. TPF claims that Ms. Wyles' April 17, 2020 letter serves as a decision of the local board.

STANDARD OF REVIEW

Decisions of the 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 of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. The State Board may dismiss an appeal if the local board has not issued a final decision in the case. Education Art. § 4-205(c)(3) and COMAR 13A.01.05.03B(1)(a); the *See Victor and Sandra B. v. Anne Arundel County Bd. of Educ.*, MSBE Order No. OR20-11 (2020). The State Board may also dismiss an appeal if it has not been filed within the time prescribed. COMAR 13A.01.05.03B(1)(e).

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. A party may file a petition for a declaratory ruling on the interpretation of a public school law that is material to an existing case or controversy. COMAR 13A.01.05.05; *Baltimore City Bd. of Sch. Com'r's v. City Neighbors Charter Sch.*, 400 Md. 324, 345 (2007).

LEGAL ANALYSIS

A. April 17, 2020 Letter and Local Board Decision

The local board requests dismissal of the appeal because there is no local board decision to review. TPF argues that its appeal to the State Board is consistent with the requirement of COMAR 13A.01.05.02B(1)(a) that "an appeal shall be filed within 30 days of the decision of the local board

or other individual or entity which issued the decision on appeal” because Ms. Wyles’ April 27, 2020 letter serves as the decision of the local board.

Ms. Wyles serves as an attorney for the school system. In that capacity, on April 27, 2020, she responded to TPF’s February 26, 2020 demand letter stating that “[i]t is the Prince George’s County Public Schools’ (“PGCPS”) position that no additional transportation costs are owed.” Ms. Wyles was the only person who signed the letter. There is no indication that her letter was presented to the local board, that the board deliberated, or that it voted on a motion with a sufficient affirmative vote to pass, as required by Education Art. §3-1004(b). The letter does not state that it is the decision of the local board.

In *Messick and Moses v. Wicomico County Bd. of Educ.*, MSBE Order No. OR13-07 (2007), we dismissed an appeal from a letter by the local board’s legal counsel. We concluded that a letter from board counsel does not constitute a final decision of the local board. TPF appears to recognize that the local board has not issued a decision when it states in its Opposition that the local board had plenty of time to issue a decision regarding its demand for payment from March to June 2020, but did not.

Since the time TPF sent its February 26 letter, the County Board has held five board meetings: March 27, April 15, May 14, June 11, and June 25. The County Board has held two work sessions since that time (March 5 and April 2), and there have been nine meetings of the County Board’s Policy and Governance Committee or the Operations, Budget, and Fiscal Affairs Committee (March 10, April 14, April 28, May 11, May 18, June 8, June 15, June 16, June 22). After TPF sent its May 13 letter demanding the County Board reconsider its decision, there was a County Board meeting on May 14, in which the request could have been considered, but was not.

(Opposition at 7-8). It is clear to us that Ms. Wyles’ letter is not a decision of the local board and the local board has not issued a decision. Accordingly, we conclude that the April 17, 2020 letter does not demonstrate a decision of the local board that can be appealed to the State Board.

The State Board has consistently declined to address issues that have not been reviewed initially by the local board. See *Harvest Foundation Group v. Baltimore County Bd. of Educ.*, MSBE Order No. OR19-11 (2019); *Lakesha w. v. Howard County Bd. of Educ.* MSBE OR 08-12 (2008); *Craven v. Bd. of Educ. of Montgomery County*, 7 Op. MSBE 870 (1997); *Hart v. Bd. of Educ. of St. Mary’s County*, 7 Op. MSBE 740 (1997). Because the local board has not issued a final decision in the TPF’s case, there is nothing for the State Board to review.

Further, TPF did not timely challenge PGCPS’s funding decisions. PGCPS annually determined the per pupil funding allocation for TPF. (TPF Exhibit 1). At no time from 2007 through 2018 did TPF challenge the allocations by engaging in the appeal process. Any dispute TPF had with those funding decisions had to be appealed to the State Board within 30 days of a local board decision. See COMAR 13A.01.05.02B(1)(b). TPF cannot now retroactively attempt to revive those determinations in an appeal based on a letter from the local board’s attorney in

response to a demand letter from TPF. Although we understand TPF would like reimbursement of those monies based on the *Frederick Classical* case, just like Frederick Classical challenged its allocation through the appeal process in a timely manner, it was up to TPF to challenge its allocations at the time they were awarded.

Pursuant to 13A.01.05.03B(1)(a) and (2), we dismiss the appeal.

B. Declaratory Ruling

TPF filed a Petition for Declaratory Ruling regarding the local board's responsibility for paying it \$1.6 million related to transportation expenses from 2007 until 2018. COMAR 13A.01.05.05 allows a party to file a petition for a declaratory ruling on the interpretation of a public school law that is material to an existing case or controversy. Declaratory rulings are designed to resolve existing specific controversies that emanate from a dispute over the meaning of a State public school law or SBE regulation. *Baltimore City Bd. of Sch. Com'rs v. City Neighbors Charter Sch.*, 400 Md. 324, 345, 929 A.2d 113, 126 (2007).

A request for a declaratory ruling must present a "justiciable controversy, rather than abstract, hypothetical or contingent questions." The question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. *Miller v. Augusta Mut. Ins. Co.* 157 F. App'x 632, 637 (4th Cir. 2005). Past exposure to conduct does not in itself show a present case or controversy. *City of Los Angeles v. Lyons*, 461 U.S. 95, 96 (1983); *Sterling v. Ourisman Chevrolet of Bowie Inc.*, 943 F. Supp. 2d 577, 601 (D. Md. 2013).

In both *Frederick Classical Charter Sch., Inc. v. Frederick Cty. Bd. of Educ.*, 454 Md. 330, 164 A.3d 285 (2017), reconsideration denied (Aug. 24, 2017) and *Baltimore City Bd. of Sch. Comm'rs v. City Neighbors Charter Sch.*, 400 Md. 324, 929 A.2d 113 (2007), the charter schools challenged a local school board's proposed annual funding allocation in an administrative adjudicatory proceeding before the State Board. In *Monarch Acad. Baltimore Campus, Inc. v. Baltimore City Bd. of Sch. Comm'rs*, 457 Md. 1, 8, 175 A.3d 757, 762 (2017), the City Board filed a petition for declaratory relief before the State Board, requesting that the State Board declare that its funding formula complies with Education Art. § 9–109 and has resulted in commensurate funding.

Here, unlike the charter schools in *Frederick Classical*, *City Neighbors*, and *Monarch Academy*, TPF is not seeking a declaration by the State Board on the interpretation of the present commensurate funding under Education Art. §9-109. Its Petition for Declaratory Ruling seeks a review of the past conduct of the local board not to include transportation costs as part of its annual commensurate funding from 2007 through 2018. TPF did not challenge the annual per pupil allocation in any of those years. Thus, there is no present case or controversy subject to the declaratory relief TPF seeks. *Sterling*, 943 F. Supp. 2d at 601. Accordingly, we dismiss the Petition.

CONCLUSION

For all the reasons stated above, we dismiss the appeal and the Petition for Declaratory Ruling.

Signatures on File:

Jean C. Halle
Vice-President

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

Absent:
Clarence C. Crawford, President

Abstain:
Shawn D. Bartley

February 23, 2021