

K [REDACTED] N.,

Appellant,

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-10

OPINION

INTRODUCTION

K [REDACTED] N., (“Appellant”), appeals the decision of the Baltimore City Board of School Commissioners (“local board”) upholding the local board’s decision denying Appellant’s request to withdraw the student from [REDACTED] Elementary/Middle School (“[REDACTED]”). The local board filed a response to the appeal maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellant responded.

FACTUAL BACKGROUND

The student is in third grade and attends [REDACTED]. Appellant and the student’s mother, [REDACTED], are divorced and have engaged in extensive litigation pertaining to the custody of the student. Appellant argues that the student’s mother and numerous staff members from Baltimore City Public Schools (“City Schools”) conspired to fraudulently enroll the student in [REDACTED] and deprived Appellant of his parental rights by refusing his school transfer request and limiting his right to visit the student at [REDACTED].¹

Initial court orders granted sole physical custody to [REDACTED] and joint legal custody to both [REDACTED] and Appellant, with visitation for Appellant at least one time per week. (Local Board Response, Exs. 2 & 4). A November 14, 2017 Interim Order provided in part that “[REDACTED.] shall continue to have primary physical custody of [the child]” and “Appellant was granted the opportunity to have a visit with [the child] every weekend from 5:00 p.m. on Saturday until 5:00 p.m. on Sunday” with exchanges to be made at a Baltimore City Police Department. (Appellant’s Response, First Exhibit).

Appellant and [REDACTED] appeared before the Circuit Court for Baltimore City on January 17, 2018. The Court found that Appellant did not demonstrate that [REDACTED] engaged in fraud, extortion, child welfare endangerment, conspiracy, or deprivation of Appellant’s rights; Appellant failed to

¹ In the appeal materials, Appellant refers to his request to transfer the student out of [REDACTED] to a school in Baltimore County. In actuality, the request is a request to withdraw the student from City Schools in order for Appellant to enroll the child in school in Baltimore County. Enrollment in Baltimore County Public Schools is not within the purview of City Schools.

investigation of Appellant's September 27, 2018 Complaint, including interviews with various witnesses and Appellant. *Id.*

On January 8, 2019, Karen L. Lawrence, CEO Ombudsman for City Schools, wrote to Appellant and advised that the student's placement at ██████████ was appropriate based on ██████████'s residence and physical custody. (Local Board Response, Ex. 9). She further advised that City Schools recognized Appellant had joint legal custody, but joint legal custody did not provide a parent with the right to unilaterally withdraw the student from school. Ms. Lawrence also advised Appellant that he would need a court order or permission from ██████████ to withdraw the student from school. *Id.* She also advised that his allegation that ██████████ does not live in Baltimore City had been investigated and that the student's residency had been sufficiently established pursuant to City Schools' policies. *Id.*

On January 10, 2019, Ms. Hawkins shared her investigation results of Appellant's Complaint and informed Appellant that his allegations were unsubstantiated. (Local Board Response, Ex. 10). In response to Ms. Hawkins's email, Appellant stated "you did not investigate nothing, so f**k you. I'll go to the school and get my daughter myself with the police. State Law and I'm going to subpoena school files myself. F**k you." (Local Board Response, Ex. 10).

On January 10, 2019, Tamal A. Banton, Esq., legal counsel for City Schools, issued a notification to Appellant of his ban from City Schools' Central Office and required that Appellant refrain from contact with Ms. Lawrence or Ms. Hawkins. (Local Board Response, Ex. 11). The ban was based on the belief that Appellant engaged in behavior that posed a threat of harm to City Schools employees. *Id.*

On January 14, 2019, Ms. Hawkins issued a report finding that the evidence did not support Appellant's allegations of incorrect residency. She noted that Mr. Tilghman, Whole Child Services Manager, had reviewed the file and every document including, "mom's license, grandma's license, mom's payroll stub, mom's W-2, notarized address certifications, grandma's BGE bill, grandma's water bill and [student's] health documents" confirmed residency at the Baltimore City residence. (Local Board Response, Ex. 12). Further, Ms. Hawkins found that City Schools' policies and Maryland law permitted the Principal to restrict or exclude Appellant's access to school and such restriction was in place for Appellant due to his behavior toward the Principal and the school secretary, and that the allegation of neglect of duty was unsubstantiated. *Id.*

On February 7, 2019, Appellant provided a copy of a credit application showing a Baltimore County address signed by ██████████ on February 10, 2016. Appellant alleged he received the document in response to a subpoena issued to Bank of America. (Local School Response, Ex. 15 and Appeal, pgs. 10-13). That same day, Mr. Tilghman advised Appellant the address and documentation was shared with the City Schools investigation unit. *Id.*

On February 3, 2020, Appellant filed a court Complaint against the Principal alleging claims of damages in the amount of \$30,000.00 and alleging that the Principal engaged in fraud by upholding the enrollment of the student in City Schools. (Local Board Response, Ex. 13).

On June 17, 2020, Judge Kendra Ausby dismissed Appellant's claims of fraud and issued an Order ruling in part, that the denial of Appellant's request to transfer his daughter to ██████████ Academy and the denial of his request to visit his daughter in school shall be considered a decision of a county superintendent appealable pursuant to §4-205 of the Education Art. *Id.*

On July 6, 2020, Appellant filed an appeal to the local board claiming the Principal falsely enrolled the student in City Schools by falsifying student registration, the Principal deprived him of his parental rights and refused to put him on the student registration. (Local Board Response, Ex. 15). The CEO of the City Schools filed a response. (Local Board Response, Ex. 16). The local board appointed a Hearing Examiner, who recommended that the local board deny Appellant's request for appeal, an oral argument, and an evidentiary hearing. (Local Board Response, Ex. 1). On December 8, 2020, the local board voted to accept the Hearing Examiner's recommendation. (Local Board Response, Ex. 17).

On December 16, 2020, Appellant filed the instant appeal with the State Board alleging the following issues:

- The student is incorrectly placed in City Schools because neither parent resides in the school zone.
- Appellant's parental rights were deprived because he was denied access to the student at school and was denied the right to transfer the student.
- Baltimore City Board of Education gave no reason to deny the request for hearing and oral argument.

On January 19, 2021, the local board filed its response to the appeal. Appellant replied on January 25, 2021.

STANDARD OF REVIEW

Because this is an appeal of a decision of the local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board, the local board's decision is considered *prima facie* correct. The State Board will 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

Residency

A bona fide residency requirement is a condition of free attendance at Maryland's public schools. *See* Md. Code Ann., Educ. §7-101, §7-301 and COMAR 13A.08.01.01A. Section 7-101(b) of the Education Article provides in relevant part that each child in Maryland "shall attend a public school in the county where the child is domiciled with the child's parent, guardian, or relative providing informal kinship care." The bona fide residency requirement has

district in which the bona fide residency requirement has been established. As discussed above, the local board reasonably determined that [REDACTED], and the student are bona fide residents of Baltimore City.

A review of the record confirms that the City Schools' denial of Appellant's request to withdraw the student from [REDACTED] was consistent with Maryland law and School Board Policy and Regulation. School system personnel advised Appellant that due to the custody orders in place he needed a court order or permission from [REDACTED] to withdraw the student from [REDACTED]. The undisputed facts in the record establish that it was not arbitrary, unreasonable, or illegal for City Schools to conclude that Appellant could not unilaterally withdraw the student without joint consent and cooperation with [REDACTED].

Appellant further argues that his parental rights were violated because he was denied access to the student while she was at school. It is undisputed that Appellant reviewed the school records and visited the student at school. Due to the custody orders limiting Appellant's visitation rights, City School sought the permission from [REDACTED] to permit Appellant to visit the student at school and he was granted access to visit the student during class and at lunch. Appellant's access to the student at school was then limited due to his disruptive behavior.

State law provides that a person may not willfully disturb or otherwise willfully prevent the orderly conduct of the activities, administration, or classes of an institution of elementary, [or] secondary ... education." See Md. Code, Educ., Art §26-101. City Schools is authorized to exclude, or ban, visitors from the school premises, pursuant to Md. Code Ann., Educ., §§ 26-101 to 102, and Board Policy KIA (Visitors to Schools), which states, in relevant part that "[t]he Chief Executive Officer, principals, and school police officers shall have complete authority to exclude from the school premises any person who . . . acts in a manner that disrupts or disturbs the normal educational functions of the school." The record supports the local board's finding that City School's decision to temporarily ban Appellant from [REDACTED], ban Appellant from Central headquarters and limit his contact with certain City School employees was due to his disruptive conduct and was justified to avoid disruption of the educational process protecting the safety and welfare of City Schools' students and staff.

Appellant further argues that his rights were violated because the local board denied his request for an oral argument or an evidentiary hearing. Due process does not require a hearing on issues that do not involve a genuine dispute of material fact. See *Lessie B. v Caroline County Bd. of Educ.* MSBE Op. No. 11-16 (2011), citing *Hethman v. Prince George's County Bd. of Educ.*, 6 Ops. MSBE 646, 648-49 (1993). The State Board has held there also is no right to an evidentiary hearing when there is no constitutional or statutory basis to provide one. *Id.* The State Board has "consistently held that the Appellant bears the burden of supporting allegations of illegality with factual evidence." See *Brown v Queen Anne's County Bd. of Educ.*, MSBE Op. No. 13-37 (2013), citing *Breedon v. Prince George's County Bd. of Educ.*, MSBE Op. No. 08-34 (2008).

Appellant's reasoning for requesting oral argument was for, "correction of fraud committed and [to] establish a suitable resolution, to assure proper measures are taken and court orders are upheld, and father receives proper representation". (Local Board Response, Exs. 1 &

15). The Hearing Officer found that “Appellant does not present once scintilla of evidence to support a claim of fraud.” (Local Board Response, Ex. 1). Appellant’s vague assertions of fraud do not satisfy the legal standard for an oral argument and evidentiary hearing. Rather, Appellant appears to disagree with the interpretation of the custody orders in place. Such an argument does not create a factual dispute. Similarly, the record is devoid of any credible assertions of a constitutional or statutory basis to provide a hearing.

CONCLUSION

For the reasons stated above, we do not find the local board’s decision to be arbitrary, unreasonable or illegal. Accordingly, we affirm.

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 Greene

Rose Maria Li

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Absent:
Holly C. Wilcox

March 23, 2021