

IN THE MATTER OF

* BEFORE THE
*
* BOARD OF EDUCATION OF
*
* CARROLL COUNTY
*

* * * * *

DECISION OF THE BOARD OF EDUCATION OF CARROLL COUNTY

This matter is before the Board of Education of Carroll County (the "Board") pursuant to Section 4-205(c) of the Education Article of the Annotated Code of Maryland ("Section 4-205") pursuant to an appeal filed by _____ contesting the decision of Jonathan O'Neal, Assistant Superintendent of Administration, acting as the Superintendent's designee, denying request to be appointed to a full-time clerical position without being selected through the typical hiring process.

The Board has reviewed all of the written material submitted by _____ as well as the documentation submitted on behalf of the Superintendent in response to _____'s appeal. The Board has determined that this appeal may be decided under its rules of procedure without an evidentiary hearing or oral argument.¹ For the reasons set forth below, the Board has determined that the Superintendent's decision should be affirmed.

FINDINGS OF FACT

_____ has most recently been employed within the Carroll County Public Schools ("CCPS") as a part-time clerical secretary at _____ since August 2017.

¹ The State Board has long held that there is no need for an evidentiary hearing or oral argument when, as in this case, the appeal does not involve an alleged liberty or property interest deprivation thereby invoking the protections of the Fourteenth Amendment Due Process Clause. See *Bricker v. Frederick County Board of Education*, 3 Op. MSBE 99 (1982); *Anderson and Blake v. Board of Education of Prince George's County*, 5 Op. MSBE 415, 417 (1989). For this reason, and because we do not believe that a hearing would aid us in the decision-making process, we decline to conduct an evidentiary hearing or oral argument on this appeal but shall render a decision based upon the written record presented to us.

Prior to her current position, [REDACTED] worked in a number of different capacities within CCPS as detailed below:

- August 2016 – June 2017: Hourly resource room assistant at [REDACTED]
- October 2015 – May 2016: Substitute instructional assistant
- August 2005 – December 2012: Data clerk
- August 2001 – August 2005: Instructional assistant
- August 1998 – July 2001: Instructional assistant

Of note, [REDACTED] was not employed by CCPS between December 2012 and October 2015; according to the resume she attached to her appeal to the Board, she worked as an administrative assistant in Texas during much of this time.

Between January 2018 and April 2018, [REDACTED] applied for seven clerical positions within the CCPS, but she was not selected for any of them.² On April 16, 2018, [REDACTED] through her union, the Carroll Association of School Employees (“CASE”), filed an appeal with then Superintendent Stephen H. Guthrie pursuant to Section 4-205, arguing that she was “overly qualified for all of these positions,” that “she also has seniority that should have increased her viability for these positions,” and that her “performance record with the school system is also exemplary and she has consistently received positive evaluations from her principals and supervisors.” As relief, [REDACTED] requested that she “should be offered an administrative transfer to the next vacant available position she is qualified for.”

² [REDACTED] appeal characterizes her applications for these positions as applications for “voluntary transfer positions.” However, the negotiated Master Agreement between the Board and CASE that governs employment provides that, with respect to voluntary transfers, “[c]lerical or LPN employees may apply for any vacant position through established application procedures.” See Master Agreement at Article 7, Section C, Paragraph 6. In any event, any difference in nomenclature is irrelevant to the legal standard applied to this appeal.

On April 26, 2018, Assistant Superintendent O’Neal, serving as Superintendent Guthrie’s designee, met with _____ and her CASE UniServ Director to discuss her appeal. On May 3, 2018, Mr. O’Neal informed _____ by letter that he was denying her appeal for several reasons. Among the reasons Mr. O’Neal provided for his decision were that employment files with CCPS prior to her departure to Texas had been purged under CCPS’ record retention procedures, and thus he was unable to review _____ performance evaluations or other records regarding her job performance for the approximately fifteen years prior to that departure. Mr. O’Neal also noted that _____ employment history with CCPS “has crossed different job categories,” and “[g]iven the array of experiences, as opposed to several successive years in the same clerical role,” he was “uncomfortable with the proposed remedy.”³

_____ thereafter timely appealed the Superintendent’s decision to the Board. As grounds for her appeal, _____ argued that she “consistently received positive evaluations from her principals and supervisors”; that she had “dedicated years of service to CCPS completing tasks that are substantially similar to the duties” relevant to the positions for which she applied; that, “after not being selected for the [positions at issue], [she] received feedback stating that she was qualified for the positions but that another candidate was chosen”; and that she “discussed her pursuit with the human resources department and received similar positive feedback regarding her employment history and experience.” _____ argued that “[t]he decision not to select [her]

³ Mr. O’Neal also indicated in his May 3, 2018 letter that, following the aforementioned April 26, 2018 meeting, he “spent significant time reviewing recent interview files for positions where _____ w[as] an applicant” and he “also contacted administrators for those positions to gain their insight.” Although Mr. O’Neal used the information he obtained from reviewing the interview files and speaking with the those relevant administrators to “offer several suggestions” to _____ in his May 3rd letter in order to increase her chances of obtaining a full-time clerical position in the future, he did not specifically discuss the information he obtained by reviewing those interview files and speaking with those relevant administrators. Mr. O’Neal did discuss that information in his response to _____ appeal to the Board, which we discuss later in this decision.

for a transfer to a full-time position in light of her current job performance, demonstrated expertise, and seniority is arbitrary and unreasonable.”

On July 20, 2018, Mr. O’Neal, again serving as the Superintendent’s designee, submitted his response to _____ appeal. In that response, Mr. O’Neal reiterated the reasons provided to _____ during their April 26th meeting as grounds for his decision, and he also provided specifics regarding the information he obtained when, following that meeting but prior to his final May 3rd decision, he reviewed the relevant interview files and spoke with the relevant administrators involved in making the hiring decision. Specifically, Mr. O’Neal stated that in every case the successful candidate scored highest in the interview process. Although _____ scored as high as second among the candidates for one of the seven positions at issue, she scored in the middle of the group for the other interviews. Mr. O’Neal further stated that, with regard to seniority, the successful candidates for four of the seven positions had more seniority than

With respect to two of the other seven positions, the successful candidates had one year less seniority but scored much higher in the interview process. With regard to the one remaining position, although the successful candidate did not have appear to have clerical experience, she had been utilized to cover the main office every day and was familiar with both the school and its office functions, which contributed to a higher interview score.

STANDARD OF REVIEW

Under Section 4-205(c) (2) of Education Article, the Superintendent is charged with “decid[ing] all controversies and disputes that involve: (i) The rules and regulations of the county board; and (ii) The proper administration of the county public school system.” Where, as here, an appellant challenges a Superintendent’s decision, the appellant bears the burden of demonstrating

that the Superintendent's decision was arbitrary, unreasonable, or illegal. See COMAR 13A.01.05.05.⁴

CONCLUSIONS OF LAW

We conclude that the Superintendent's decision was not arbitrary or unreasonable as those terms are defined. There is no evidence—or even any allegation—that _____ was not subject to the same interview questions and tasks as the other candidates for the seven positions at issue. The successful candidates for each of the seven positions received the highest scores by those charged with evaluating the candidates, and there is no evidence or allegation that those involved in scoring the candidates were biased or acted in an otherwise arbitrary, inconsistent, or unfair manner. Similarly, although _____ had more seniority than several of the candidates, there is no CCPS policy that requires that hiring decisions for clerical employees be based solely on

⁴ Although COMAR 13A.01.05.05 sets forth the Maryland State Board of Education's standard of review with regard to the State Board's review of decisions of local boards, this standard is widely used by local boards to review the decisions of local superintendents. See, e.g., *Cone' v. Carroll County Board of Education*, MSBE Op. No. 99-31 (1999). COMAR 13A.01.05.05 reads, in relevant part:

- A. General. 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.
- B. A decision may be arbitrary or unreasonable if it is one or more of the following:
 - (1) It is contrary to sound educational policy; or
 - (2) A reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.
- C. A decision may be illegal if it is one or more of the following:
 - (1) Unconstitutional;
 - (2) Exceeds the statutory authority or jurisdiction of the local board;
 - (3) Misconstrues the law;
 - (4) Results from an unlawful procedure;
 - (5) Is an abuse of discretionary powers; or
 - (6) Is affected by any other error of law.
- D. The appellant shall have the burden of proof by a preponderance of the evidence.

seniority,⁵ and the successful candidates, as noted above, received higher scores by the respective administrators involved in the selection process. We conclude that the Superintendent's deferral to the judgment of those tasked with conducting the selection processes at issue was not contrary to sound educational policy given the lack of any evidence discrediting those individuals or the processes they employed.

Nor do we believe that a reasoning mind could not have reached the same decision as the Superintendent reached based on the facts at hand. To the contrary, as Mr. O'Neal stated in his response to [redacted] appeal to the Board:

[N]ot only could another reasoning mind reach the same conclusion, in fact, multiple reasoning minds did reach the conclusion. Several committee members at multiple schools screened applicants, constructed activities and questions, interviewed a series of qualified, experienced applicants, including [redacted], and concluded that a different candidate was the best option. In contrast, it would be arbitrary and unreasonable for me, as the Superintendent's designee, to reject those entire processes and the judgments of the experienced school administrators involved and simply place [redacted] in a role.

We agree with Mr. O'Neal's reasoning and adopt it as our own.


DECISION

We conclude that the Superintendent's decision denying [redacted] request to be appointed to a full-time clerical position without being selected through the typical hiring process was not arbitrary, unreasonable, or illegal. We therefore affirm the Superintendent's decision. Should she choose to do so, [redacted] may appeal this decision to the Maryland State Board of


⁵ To the contrary, Article 7, Section B of the CASE Master Agreement provides as follows: "3. Any unit member who submits a timely application for said vacancies or new positions shall be given preference, on the basis of qualifications, length of service and the best interests of the School System, *over new hires* and/or those not currently a member of the bargaining unit. This provision shall in no way infringe upon the Superintendent's authority under 6-201 of the Education Article to the Annotated Code of Maryland." (emphasis added).

Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing, within thirty days of the date of this decision.

September 12, 2018
Date



Bob E. Lord, President




Donna M. Sivigny, Vice President



Virginia B. Harrison

(Absent)

Marsha B. Herbert



Devon M. Rothschild