

FRANK MCNEIL,

Appellant

v.

BALTIMORE CITY BOARD OF  
SCHOOL COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-02

## OPINION

### INTRODUCTION

The Appellant, Frank McNeil, appeals his disqualification as a bus driver. The Baltimore City Board of School Commissioners (local board) filed a motion to dismiss the appeal maintaining that the Appellant never appealed the decision to the local board and, therefore, there is no local board decision for the State Board to review. The Appellant filed a response to the motion and the local board replied.

### FACTUAL BACKGROUND

On April 27, 2015, the Appellant was involved in an incident while operating his assigned school bus to transport a special education student. By Appellant's own admission, he "slammed on [his] brakes to avoid impacting a car that pulled out from the curb and the student fell to the floor of the bus striking his head on a bolt protruding from the floor." (James Letter, 5/11/15). According to the route detail report and the student's individualized education plan (IEP), the student should have been secured in a car seat, but was not at the time of the occurrence. *Id.* Additionally, Appellant did not immediately seek medical attention for the student. *Id.*

By letter dated May 11, 2015, Steven A. James, Safety and Training Supervisor for Baltimore City Public Schools (BCPS), advised the Appellant that the matter had been investigated and determined to be an accident under the student transportation regulations, COMAR 13A.06.07.01(B)(1)(a). He further advised that Appellant's failure to assist the injured student by seeking the appropriate medical personnel at the time of the occurrence was an unsafe action subject to disqualification under State regulation, and that Appellant was being disqualified as a school bus driver as a result. *See* COMAR 13A.06.07.07(D).<sup>1</sup>

On May 29, 2015, the State Board received a notice of appeal from legal counsel for the Appellant regarding the disqualification decision made by Mr. James. Because the notice specified that it was an appeal of Mr. James' decision and there was no local board decision

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<sup>1</sup> COMAR 13A.06.07.07(D) states, "Misfeasance, incompetence, insubordination, or any act of omission that adversely affects transportation or safety may be grounds for disqualification and termination by the supervisor of transportation."

attached, the State Board's office of legal counsel provided written guidance to Appellant's counsel concerning the §4-205 appeal process and also explained that an appeal to the State Board cannot be taken without the local board first rendering a decision. (Phillips Letter, 6/8/15).

Thereafter, on June 10, 2015, Appellant's counsel sent a letter to Keith Scroggins in the BCPS Transportation Department requesting an appeal of Mr. James' May 11<sup>th</sup> decision. He stated, in part:

In a previous telephone communication with Mr. James, he indicated to me that I should appeal this matter on behalf of Mr. McNeil to the Maryland State Department of Education, which I did. However, they are indicating that Mr. McNeil's appeal process must be finalized through the Baltimore City School System before appealing to Maryland State Department of Education.

(Cuomo Letter, 6/10/15). The letter requested an appeal hearing.

As explained in the local board's reply to this appeal, counsel for the local board then contacted Appellant's counsel to inform him that the appeal was improperly filed with Mr. Scroggins, and that it should have been filed with the Chief Executive Officer (CEO) for BCPS or his designee, Jerome Jones, Labor Relations Manager. Local board counsel advised that she was forwarding the appeal documents to Mr. Jones. (Local Board's Reply). Mr. Jones did not render a decision. Nor did the CEO or the local board.

Several months later, on September 14, 2015, the State Board received a letter from Appellant's counsel inquiring about the status of the May 2015 appeal request. (Cuomo Letter, 9/8/15). In response, counsel for the State Board contacted Appellant's counsel by phone and referred him back to the June 8<sup>th</sup> letter advising him of the appeal process which requires a local board decision before an appeal can be taken to the State Board. Appellant's counsel requested, however, that the appeal to the State Board proceed. The appeal was docketed and the local board filed a motion to dismiss the case.

#### STANDARD OF REVIEW

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.01.05.05E.

#### LEGAL ANALYSIS

The local board has filed a motion to dismiss the case maintaining that there is no local board decision for the State Board to review because the Appellant failed to appeal the matter to the local board. It is well settled that a matter must be addressed and decided by a local board before a matter is ripe to appeal to the State Board. *See Michelle B. v. St. Mary's County Bd. of*

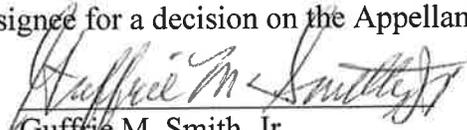
*Educ.*, MSBE Op. No. 13-53 (2013) and cases cited therein. In the usual case in which there is no local board decision to review, this Board would normally dismiss the appeal. In this case, however, the Appellant claims that his attempts to get the local board to render a decision have been stymied.

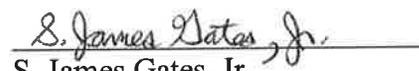
A review of the process by which controversies and disputes such as the one presented here are reviewed by a local school system is helpful here. Section 4-205(c)(3) of the Education Article requires that the local superintendent<sup>2</sup> first issue a decision in the matter. An appeal of the local superintendent's decision may then be taken to the local board.<sup>3</sup> Once the local board issues a decision, the case may be submitted to the State Board on appeal. *Id.* In addition, the State transportation regulations provide that a school vehicle driver may appeal to the State Board after exhausting the local school system appeal process. COMAR 13A.06.07.21. Based on this statutory framework, the State Board has consistently held that an appellant must first pursue and exhaust statutorily prescribed administrative remedies in the appropriate manner before appealing to the State Board. *See Kemp v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-14 (2001); *Stewart v. Prince George's County Bd. of Educ.*, 7 Op. MSBE 1358 (1998).

In this case, both parties failed to follow the process described above. Counsel for the Appellant filed an appeal directly to the State Board. After receiving information about the §4-205 appeal process, he then filed with Mr. Scroggins in the BCPS Transportation Department. Nevertheless, the June 10, 2015 appeal letter addressed to Mr. Scroggins ultimately found its way to legal counsel for the local board. She advised Appellant's counsel that the appeal should have been filed with the CEO or Mr. Jones. She further advised that she was forwarding the appeal to Mr. Jones. Although counsel for the local board now maintains that she merely sent the appeal to Mr. Jones as a courtesy, the reasonable and logical implication of this was that it was being forwarded to Mr. Jones for review and a decision. While we agree that it would have been better practice for Appellant's counsel to follow-up with Mr. Jones regarding the appeal, his failure to do so does not negate the fact that counsel for the local board advised him that she was forwarding the appeal to Mr. Jones. There is no evidence in the record that Mr. Jones ever made a decision. Because Mr. Jones did not issue a decision on the appeal, there was no decision for the Appellant to appeal to the local board.

## CONCLUSION

Given the unique set of facts in this case, we deny the local board's motion to dismiss the appeal and remand the matter to the CEO or his designee for a decision on the Appellant's letter of appeal dated June 10, 2015.

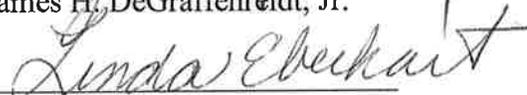
  
Guffie M. Smith, Jr.  
President

  
S. James Gates, Jr.  
Vice-President

<sup>2</sup> This includes the Chief Executive Officer of BCPS. Md. Code Ann., Educ. §1-101(e).

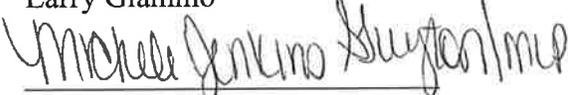
<sup>3</sup> This same process is echoed in the BCPS Policy BLA.

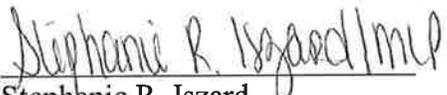
  
James H. DeGraffenreid, Jr.

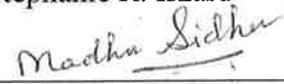
  
Linda Eberhart

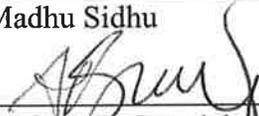
  
Chester E. Finn, Jr.

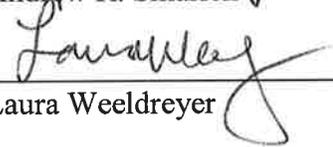
Absent  
Larry Giammo

  
Michele Jenkins Guyton

  
Stephanie R. Iszard

  
Madhu Sidhu

  
Andrew R. Smarick

  
Laura Weeldreyer

February 12, 2016