

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1892

September Term, 2015

ALFRED C. WAINWRIGHT

v.

BALTIMORE CITY BOARD OF SCHOOL
COMMISSIONERS

Krauser, C.J.,
Graeff,
Nazarian,

JJ.

PER CURIAM

Filed: December 12, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Alfred C. Wainwright, a former teacher in Baltimore City, filed this appeal after the Circuit Court for Baltimore City affirmed the revocation of his Maryland State Department of Education teaching certificate by the Maryland State Superintendent of Schools (“the Superintendent”). On appeal, Wainwright presents two questions for review: (1) Was the Superintendent’s decision to revoke his teaching certificate legally correct and supported by substantial evidence? and (2) Did the circuit court abuse its discretion in denying his motion for a continuance to obtain legal counsel?¹ For the reasons that follow, we affirm the judgment of the circuit court.

In 2013, the executive director for Garrett Heights Elementary/Middle School received complaints from five anonymous students and one parent accusing Wainwright of misconduct including: (1) telling a student that he gave extra credit for hugs; (2) biting his lips while looking at students; (3) looking “inappropriately” at students’ breasts and buttocks; (4) telling students that the assistant principal had a “fat butt” and that he wanted to marry her; (5) asking a female student wearing a skirt to bend over in front of him to pick something up; (6) biting off a chocolate bar and then attempting to feed it to two female students; (7) touching a female student in an inappropriate manner; and (8) showing a student a picture of a naked female on his phone. The assistant principal and another school staff member also signed statements accusing appellant of making unwanted sexual advances toward them.

¹ Although Wainwright also claims that the circuit court erred by not fully considering the evidence in the agency record, we only review the administrative agency decision and not the decision of the circuit court. See *Motor Vehicle Admin. v. Shea*, 415 Md. 1, 15 (2010) (citation omitted).

Baltimore City Public Schools (BCPS) placed Wainwright on paid leave and conducted an investigation during which twenty-two of Wainwright’s students were interviewed at random. Based on the results of that investigation, BCPS’s Interim Chief Executive Officer charged Wainwright with misconduct toward students, placed him on leave without pay, and recommended that the Baltimore City Board of School Commissioners terminate his employment. Wainwright initially appealed the recommendation of termination but subsequently withdrew the appeal and resigned his teaching position.

After Wainwright resigned, BCPS requested the Maryland State Board of Education to revoke his teaching certificate pursuant to Code of Maryland Regulations (COMAR) 13A.12.05.02C(5), which requires the Superintendent to either suspend or revoke a teacher’s certification if he or she “resign[s] after notice of allegation of misconduct involving a student in any school system[.]” Following a contested case hearing, at which appellant was represented by counsel, the Administrative Law Judge (“ALJ”) issued a proposed decision recommending that Wainwright’s teaching certificate be revoked.

Wainwright sought *de novo* review of the ALJ’s decision before the Superintendent, challenging the strength of the evidence underlying the allegations of misconduct and claiming that he resigned, not to avoid a hearing on the misconduct charges, but because he could not afford to remain on leave without pay. The Superintendent determined that Wainwright’s teaching certificate should be revoked, noting that the charges he was facing when he resigned were “serious and demonstrate[d] behavior that is unacceptable for an educator.” The Superintendent further noted that Wainwright had “forfeited his ability to

challenge the underlying facts of the charges by resigning” and in doing so he had “avoided the procedural steps that could have led to a finding that he committed misconduct.”

Wainwright then filed, *pro se*, a petition for judicial review in the Circuit Court for Baltimore City on January 15, 2015. On October 8, 2015, the circuit court conducted a hearing on his petition and, for the first time, appellant requested a postponement to hire an attorney. The court denied Wainwright’s motion noting that the case had “been pending for . . . quite a long time.” Following that hearing, the circuit court issued a written order affirming the Superintendent’s decision to revoke Wainwright’s certificate.

“When we review the decision of an administrative agency or tribunal, we [assume] the same posture as the circuit court . . . and limit our review to the agency’s decision.” *Sugarloaf Citizens Ass’n v. Frederick County Bd. of Appeals*, 227 Md. App. 536, 546 (2016) (internal quotation marks and citation omitted). “Our scope of review is narrow, and is limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Kenwood Gardens Condominiums, Inc. v. Whalen Properties, LLC*, 449 Md. 313, 325 (2016) (internal quotation marks and citation omitted). In making that determination, the test we apply is “whether a reasoning mind could reasonably have reached the conclusion reached by the agency, consistent with a proper application of the controlling legal principles.” *HNS Dev., LLC v. People’s Counsel for Balt. Cnty.*, 200 Md. App. 1, 14 (2011) (quotations and alterations omitted). We defer to the agency’s factual findings, if supported by the record. *Motor Vehicle Admin. v. Salop*, 439 Md. 410, 421 (2014).

In challenging the Superintendent’s decision to revoke his teaching certificate, Wainwright claims that the investigation into his misconduct was unreliable because it was conducted by an unqualified investigator and relied on uncorroborated hearsay evidence. Wainwright’s teaching certificate, however, was not revoked because he was found to have “committed” misconduct. Instead, the revocation was based on his resigning after having been alleged to have committed misconduct.

Wainwright concedes that he was alleged to have committed misconduct involving students and that he resigned thereafter. Consequently, the Superintendent was required to either suspend or revoke his teaching certificate. *See* COMAR 13A.12.05.02C(5). The only remaining issue is whether the Superintendent’s decision to revoke, rather than to suspend, Wainwright’s teaching certificate was supported by substantial evidence.

Given the seriousness of the allegations against Wainwright at the time he resigned, we cannot say that the Superintendent’s decision to revoke his teaching certificate was one that no reasonable mind could have reached under the circumstances. Although Wainwright asserts that the charges against him were unsubstantiated, the Superintendent correctly noted that he forfeited the right to challenge those allegations by withdrawing his appeal after the BCPS recommended termination. Wainwright also claims, as he did in the agency proceedings, that he resigned for financial reasons, and not to avoid a finding of misconduct. The Superintendent, however, did not believe his explanation and it is the province of the agency, not this Court, to resolve evidentiary conflicts.

Wainwright also contends that the circuit court abused its discretion in denying his motion for a continuance so that he could hire an attorney. “Generally, an appellate court

will not disturb a ruling on a motion to continue unless [discretion is] arbitrarily or prejudicially exercised.” *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011) (internal quotation marks and citation omitted).

Here, the circuit court did not abuse its discretion in denying Wainwright’s motion as he did not indicate that he needed counsel until the morning of the hearing, which was approximately ten months after he filed the petition for review. *Id.* (noting that the Court of Appeals has consistently affirmed denials of motions to continue “where untimely requests were made”). Moreover, Wainwright suffered no prejudice as he was represented by counsel throughout the agency proceedings and this Court ultimately reviews the correctness of the agency decision, not the decision of the circuit court.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**