

Circuit Court for Baltimore City  
Case No. 24-C-18-005626

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0113

September Term, 2019

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GRADY MCCLINTON

v.

BALTIMORE CITY DEPARTMENT OF  
SOCIAL SERVICES

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Kehoe,  
Nazarian,  
Shaw Geter,

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Opinion by Shaw Geter, J.

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Filed: June 16, 2020

\*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.

On February 22, 2019, the Circuit Court for Baltimore City affirmed a decision by an Administrative Law Judge that indicated appellant, Grady McClinton, a teacher, for child abuse of a student in a Baltimore City Public School, following an investigation and finding by the Department of Social Services. Appellant had requested and participated in a contested hearing at the Office of Administrative Hearings (OAH) where the Administrative Law Judge (ALJ) affirmed the Department’s findings. Appellant then petitioned for judicial review. Following oral arguments, the circuit court issued its Memorandum and Order. Appellant timely filed this appeal and presents the following questions, which we have condensed:<sup>1</sup>

1. Whether the ALJ erred in finding Student was placed at a substantial risk of harm?<sup>2</sup>
2. Whether the ALJ erred in failing to find that child abuse was “ruled out?”

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<sup>1</sup> Appellant’s original issues were:

1. Did the ALJ err when she found that Student was harmed?
2. Did the ALJ err when she found Student was placed at substantial risk of harm?
3. Was the ALJ’s finding of fact that appellant held Student to the floor with his knee supported by competent, material, and substantial evidence?
4. Did the ALJ err by failing to find that the child abuse was “ruled out” because appellant’s contact with Student was accidental and not caused by reckless disregard for his health and welfare?

<sup>2</sup> Because the Student was a minor, we will not use his name.

For the reasons discussed below we conclude there was no error and affirm.

### **BACKGROUND**

Three witnesses were called to testify at Appellant’s administrative hearing. The Department called Kim Hardy, a Child Protective Services investigator, and Sophia Rosenfeld, a student teacher at the school and appellant testified on his own behalf. Admitted exhibits included the Department’s child abuse report with related attachments, medical reports, the incident report and various letters submitted in support of appellant.

The incident in question occurred on February 22, 2018, when appellant, who, at the time, had been an educator for 16 years, was teaching a sixth-grade science class in a Baltimore City Public School. The students were working on an assignment and appellant instructed them to draw a diagram in their notebooks. Student then asked appellant where he was to draw the diagram and following appellant’s response, Student became disruptive. Appellant told Student he needed “to go to the dean of discipline,” but Student refused. After several verbal exchanges, appellant moved Student’s chair towards the classroom door and during this process, Student exited the chair. According to Student, appellant caused him to fall out of the chair. Appellant, on the other hand, testified that Student being embarrassed “got up out the chair, swung around, and pretty much rammed into [him] and tried to tackle him.”

Appellant further stated that Student attempted to “wrap around [his] waist.” In response, appellant tried to deescalate the situation by “elevat[ing] [his] elbows while [Student] started to get his hands around [him].” He told Student to stop and relax because he was larger than him. He stated that he placed his hands on Student’s shoulders in order

“to get distance” to ensure Student was not able to strike him. As a result of the pressure applied to his shoulders, Student’s knees buckled and he fell to the ground.

According to appellant, while Student was on the ground, he knelt next to him to calm Student because he was still “trying to punch and kick” him. Appellant stated he had one knee on the ground and the other hovered over Student’s chest. Because they were “in close proximity” appellant stated his knee may have made contact with Student when he attempted to stand. After Student rose to his feet, he exited the classroom and went to another classroom. The teacher there was Sophia Rosenfeld.

Rosenfeld testified that Student came into her classroom “very upset” and “seemed like he just wanted somewhere to chill out for a little bit.” They played chess until he calmed down and he then went to his next class. When asked if Student appeared to be injured she testified “[n]o, he didn’t seem to be in physical pain” and that she did not recall if he stated he was in pain. She also testified that she did not take him to the nurse’s office at the school.

On February 26, 2018, the school wrote an incident report of the altercation and notified the Department of Social Services. It stated Student’s father asked to meet with the principal of the school on February 24, 2018, to discuss the incident and father returned to the school on February 26, 2018, with documentation from Patient First, an urgent care facility, indicating Student sustained physical injuries from the altercation. The incident report included the following written statement from Student:

[I] was sitting at a desk and [I] asked [appellant] a question and then he came a bushed[sic] my desk all the way to the door but then he pushed me on the floor and [I] got back up and he put me down again on the ground and put

his knee in my chest and it made my head hurt and [I] get up and [I] left out the classroom and [I] went with my other teacher until his class was over.

As result of the report, on the 26th, the Department of Social Services had Student examined at Johns Hopkins Hospital. The JHH medical report stated: “Overall Abuse Assessment: Cannot diagnose nor exclude abuse.” On February 28, 2018, Kim Hardy, the assigned investigator, visited the school to interview Student. She testified at the hearing that Student’s description of the altercation was consistent with what he wrote in the incident report. She also testified that she interviewed appellant, Tyerse Alsup—a teacher at the school—, John Snowdy—the principal of the school—, and Detective Luke—a detective with the Baltimore Police Department Child Abuse Unit. Based on the information she obtained from interviews, the medical records from Patient First and John Hopkins Hospital and the incident report, she concluded appellant was indicated for abuse.

Following the hearing, the ALJ issued its written Decision on October 3, 2018, affirming the Department’s findings. It found:

4. On February 22, 2018, the class was working on an assignment and [Student] asked the Appellant where he was supposed to copy material in his notebook. The Appellant stated anywhere in his notebook and [Student] cursed, saying, “Stupid. F... stupid.” The appellant directed [Student] to leave the classroom and student refused.
5. The Appellant took [S]tudent’s desk and with Student seated in the chair dragged the desk to the front of the classroom. [Student] fell out of the chair, got up, and came toward Appellant with his shoulder leading, to tackle the Appellant.
6. [Student] fell to the ground and was kicking and flailing around. The Appellant held [S]tudent on the floor with his knees on his chest. The Appellant then let [Student] up in [Student] left the classroom.

7. On February 23, 2018, [Student] was examined by physician at [P]atient [F]irst. The physician diagnosed contusion of the right front wall of the thorax, contusion of the scalp, and sprain of the ligaments of the cervical spine.
8. On February 26, 2018, [Student] was examined by physician at Johns Hopkins Hospital (JHH). [Student] reported the back of his head, his neck and his chest were painful. [Student] did not have any abrasions or bruising and no signs of an injury on his skin there was evidence of a healing injury.

The ALJ concluded that Student “was injured in the incident.” She found Student’s [account reliable] and that “[a]ppellant placed [Student] at substantial risk of harm when he failed to de-escalate the situation from the beginning and, when [Student] reacted by fighting back, putting his knee on a thrashing child.” The ALJ further found that even though appellant testified his intention was not to “knock [Student] down . . . dragging the desk and placing his knee on [Student] were intentional acts, and any injury sustained thereby was not accidental. As a result, ruled out child abuse [was] not the correct finding in this case.” The ALJ concluded the Department “established by a preponderance of the evidence that the finding of indicated child abuse [was] supported by credible evidence consistent with the law” and that appellant was the “individual responsible for indicated child abuse.”

Appellant appealed the decision, and on February 22, 2019, following a hearing, the circuit court issued its Memorandum and Order (“Order”) upholding the ALJ’s decision.

### **STANDARD OF REVIEW**

When appellate courts review “an administrative agency decision, we reevaluate the decision of the agency under the same statutory standards as would the circuit court;

we do not employ those standards to reevaluate the decision of the circuit [court].” *Frederick Classical Charter Sch., Inc. v. Frederick Cty. Bd. of Educ.*, 454 Md. 330, 369 (2017) (quoting *Spencer v. Md. State Bd. of Pharmacy*, 380 Md. 515, 523 (2004)). “Whether conduct permits a finding of indicated child abuse is a mixed question of law and fact, and we affirm the ALJ’s decision unless it is unsupported by competent, material, and substantial evidence in light of the entire record as submitted;” such revision is known as the substantial evidence review. *Wicomico Cty. Dep’t of Soc. Servs. v. B.A.*, 449 Md. 122, 132–33 (2016); *Charles Cty. Dep’t Of Soc. Servs. v. Vann*, 382 Md. 286, 295 (2004).

Under the substantial evidence test we are to determine if a reasonable mind would accept the evidence provided as sufficient to maintain the finding. *Doe v. Allegany Cty. Dep’t of Soc. Servs.*, 205 Md. App. 47, 55 (2012). When reviewing agency decisions under the substantial evidence test “*we are mindful that we must not engage in judicial fact-finding or substitute our judgment for that of the agency.*” *Tochterman v. Baltimore Cty.*, 163 Md. App. 385, 407–08 (2005) (emphasis in original) (quoting *Hill v. Baltimore County*, 86 Md. App. 642, 657 (1991)).

## DISCUSSION

### **I. The ALJ did not err when she found Student was placed at a substantial risk of harm.**

The Family Law Article of the Maryland Code defines abuse as “the physical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or at substantial risk of being harmed . . .” An abuser is defined as one who “has responsibility for supervision of the child” or because of their “position or occupation,

exercises authority over the child . . .” Md. Code Ann., Fam. Law § 5-701(b)(1)(i).

The Code of Maryland Regulations (COMAR) provides the following:

A. Indicated Child Abuse.

(1) Physical Abuse with No Mental Injury. . . . a local department may make a finding of indicated child physical abuse if there is credible evidence, which has not been satisfactorily refuted, that the following four elements were present during the alleged child abuse:

(a) A physical injury;

(b) A child victim;

(c) A parent, caregiver, or household or family member of the alleged victim responsible for the alleged abuse; and

(d) Circumstances including the nature, extent, and location of the injury indicating that the alleged victim's health or welfare was harmed or was at substantial risk of harm.

COMAR 07.02.07.11A.

Appellant argues the ALJ erred in determining the Department met its burden in indicating him for physical child abuse. He asserts the evidence did not support the conclusion that Student’s health or welfare was harmed or placed at substantial risk of harm. He argues the ALJ’s “finding of substantial risk of harm is primarily based on the unsupported conclusion that [appellant] intentionally ‘took [Student] to the ground and held him there with his knee on [Student’s] chest.’” Further, there was no competent, material, and substantial evidence to support the allegation that he held Student to the ground with his knee because there was no detail about “the length, pressure, intent, or effect of this contact.” The Department argues the ALJ did not err as there was ample evidence in the record to support the ALJ’s findings.



Both parties concede that appellant, as a teacher, was a caregiver at the time, of Student, who was twelve years old. There also is no dispute that Student suffered an injury, albeit minor. The crucial consideration, thus, is whether there was substantial evidence in the record to support the ALJ's conclusion that appellant's actions harmed Student's health and welfare or placed him at substantial risk of harm.

Contrary to appellant's assertion, the ALJ did not conclude appellant "intentionally 'took [Student] to the ground and held him there with his knee . . .'" rather, the judge stated that the Department provided evidence to that effect. Specifically, the ALJ found Student was placed at a "substantial risk of harm when [appellant] failed to de-escalate the situation from the beginning and, when [Student] reacted by fighting back, putting his knee on a thrashing child." She also found that Student was harmed but based her opinion in large part on whether appellant's actions placed him at substantial risk of harm. We note, there is no requirement that both factors be found. Rather, there must be "circumstances including the nature, extent, and location of the injury indicating that the alleged victim's health or welfare was harmed or was at substantial risk of harm." COMAR 07.02.07.11A.

According to appellant, he knelt next to Student with his knee hovering over him. When asked if his knee made contact with Student, appellant stated, "I believe probably" because they were "in close proximity" his knee may have touched Student when he attempted to rise. Student did not testify at the hearing, but his account was a part of the incident report that was admitted and states: ". . . he put me down again on the ground and put his knee in my chest and it made my head hurt . . ." The medical reports, one from Patient First, the day after the incident and the other from Johns Hopkins Hospital, several

days later, differed in their assessments. The court noted the assessment written the day after was sufficient to prove that it was more likely than not that he had sustained an injury. The judge then observed that “. . . the magnitude of the injury [was] relevant to whether the child’s health or welfare was harmed or at substantial risk of harm.” She concluded “[Student] had injuries to his head, chest and cervical spine due to the incident.”

The ALJ’s Opinion detailed the testimony and evidence presented and concluded that appellant’s version was “too practiced and slanted in every particular to his benefit.” Further, his “description, an adult holding his knee over a flailing child, does not seem realistic.” On the other hand, [Student’s] account was found more “reliable.”

As we have noted, “credibility findings of hearing officers who themselves have personally observed the witnesses have almost conclusive force.” *Geier v. Md. State Bd. of Physician*, 223 Md. App. 404, 431 (2015). Here the ALJ made specific findings regarding her assessment of the witnesses’ credibility. She stated “Student’s reports to Ms. Hardy and his father are consistent on the matter of the Appellant putting his knee on Student’s chest when he was on the floor. Student also reported to Ms. Hardy that he hit his head. His statement is supported by the Patient First report showing bruised chest and scalp contusion. Based on his consistency, I find Student’s account reliable.”

Viewing the record before us, we cannot say these findings were not based on substantial evidence. “Applying the facts to the law,” we hold a reasonable minded person could conclude that competent, material, and substantial evidence existed. *B.H. v. Anne Arundel Cty. Dep’t of Soc. Servs.*, 209 Md. App. 206, 228 (2012).

**II. The ALJ did not err when she determined that child abuse was not “ruled out.”**

Appellant argues the ALJ erred by determining child abuse was not “ruled out.” He claims he did not intentionally make contact with Student and Student was “responsible for escalating the incident into a physical confrontation.” The Department counters that appellant was the initial aggressor and “created a substantial risk of harm, evidencing a reckless disregard for Justin’s health and welfare.”

The Maryland Code defines the term “ruled out” as “a finding that abuse, neglect, or sexual abuse did not occur.” Md. Code Ann., Fam. Law § 5-701(w). COMAR expands on this definition in the following manner:

C. Ruled Out Child Abuse.

(1) A local department shall make a finding that child abuse is ruled out if the local department finds that child abuse did not occur.

(2) The local department may base a finding of ruled out on:

(a) A lack of credible evidence supporting one or more elements of indicated child abuse; or

(b) A credible refutation of one or more of the elements of indicated child abuse; or

(c) A finding that the alleged maltreater was not responsible for the injury for reasons including but not limited to:

(i) The injury resulted from accidental and unintended contact with the child and was not caused by a reckless disregard for the child's health or welfare; or

(ii) The injury was a result of the child's medical condition.

COMAR 07.02.07.11C.

Here the ALJ found that appellant’s actions in “dragging the desk and placing his

knee on [Student] were intentional acts, and any injury sustained thereby was not accidental.” Again, on review, we are deferential to an agency’s factual findings and credibility determinations. We review the record to determine whether substantial evidence supports the findings of the ALJ. It is undisputed that appellant placed his hands on Student’s desk and moved it towards the door. This act then touched off a series of events culminating in appellant placing his knee on Student and Student receiving minor injuries as a result. The judge’s determination that appellant’s actions were intentional and not accidental was, thus, supported by substantial evidence in the record.

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