

MICHELLE B.,
(MICHELLE B. II)
Appellant

v.

ST. MARY'S COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 14-20

OPINION

INTRODUCTION

Appellant challenges the decision of the St. Mary's County Board of Education (local board) dismissing her appeal of matters related to no trespass restrictions imposed upon her by the Director of Safety and Security for St. Mary's County Public Schools, as well as several other issues. The St. Mary's County Board of Education (local board) filed a motion for summary affirmance maintaining that its decision should be upheld. Appellant replied to the motion.

FACTUAL BACKGROUND

Appellant is the mother of two children who are currently enrolled in the St. Mary's County Public Schools (SMCPS) at Evergreen Elementary School (Evergreen).¹ During the 2012-1013, the Appellant and her ex-husband were involved in a series of contentious domestic disputes that spilled over into the school, causing repeated and significant disruptions to the educational functions at Evergreen and to the "Before and After Care" program run by the St. Mary's County Department of Recreation and Parks at the school.

On February 7, 2013, F. Michael Wyant, Director of Safety and Security for SMCPS, imposed no trespass restrictions on Appellant and her ex-husband in accordance with §26-102 of the Education Article. The restrictions on Appellant and her ex-husband were the same and stated that they were "prohibited from entering into the buildings or upon the grounds of Evergreen Elementary School or any other St. Mary's County Public Schools except as provided in [the] letter." (Motion, Exhs. 1 & 2). The letters further set forth the circumstances under which Appellant and her husband could be on school property, which included pick up and drop off, emergency circumstances, by invitation, and by scheduled and confirmed appointment. *Id.*

Appellant, through legal counsel, appealed the no trespass restrictions. In anticipation of the appeal proceedings, Mr. Wyant prepared an "Executive Summary of Investigation"

¹ Although the Appellant withdrew the children from school for a period of time beginning on or about April 23, 2013, the children have been reenrolled and are currently attending Evergreen.

(investigative summary) detailing his investigation of the events which lead to the issuance of the no trespass restrictions. He furnished a copy to Appellant and her attorney. (Motion, Exh.9).

On April 17, 2013, J. Bradley Clements, Deputy Superintendent of Schools and Operations for SMCPS, conducted an appeal conference. Mr. Clements found that Appellant had never been denied access to her children at school since the issuance of the no trespass restrictions, and that the restrictions had successfully coordinated the school visits of Appellant and her ex-husband. (Motion, Exh. 11). Based on what transpired at the conference, it was Mr. Clements' understanding that Appellant agreed to have the no trespass restrictions remain in effect. *Id.* Appellant withdrew her daughters from school on April 23, 2013.

Thereafter, on April 26, 2013, Appellant sent Mr. Clements a letter purporting to rebut and appeal Mr. Wyant's investigation, investigative summary, and the restrictions. (Motion, Exh.12). On May 9, 2013, legal counsel for the school system forwarded the letter to Appellant's attorney seeking clarification as to whether Appellant intended to appeal Mr. Clements' decision. (Motion, Exh.13). Appellant's attorney did not respond. Thus, the school system did not process the matter as an appeal.

On July 1, 2013, Mr. Wyant was served with a *Subpoena Duces Tecum* for the production of the "Executive Summary of Investigation" to Appellant's ex-husband as part of the ongoing custody case. (Motion, Exh. 14). Upon learning that Appellant's attorney was no longer representing her, legal counsel for the school system advised Appellant that Mr. Wyant intended to comply with the subpoena unless Appellant obtained a court order quashing it. No order quashing the subpoena was issued so Mr. Wyant produced the document.

On July 22, 2013, Appellant filed her first appeal to the State Board. She challenged the no trespass restrictions and Mr. Wyant's investigative summary which she maintained were used against her by her ex-husband in their child custody case, thereby causing her to lose custody of her daughters to him.²

While the State Board appeal was pending, Appellant sent other filings and emails to the school system challenging the no trespass restrictions and the investigative summary, and alleging bullying, harassment and intimidation and other various claims.³ On August 22, 2013, the local Superintendent, Dr. Michael J. Martirano, advised the Appellant that although she had filed a State Board appeal, she had not yet exhausted the appeal process at the local level. He provided her with the local board's Rules of Procedure for Appeals and Hearings brought under §4-205(c) of the Education Article – local board Administrative Regulation BEE-R-1 and a Hearing Information Form, and advised her to complete and return the Hearing Information Form within ten days of the date of the letter so that the local board could decide how to proceed

² During the pendency of this case, the Court awarded the father sole physical and legal custody of the children with Appellant having visitation rights. The father re-enrolled the children in SMCPS and they are attending school. There are still no trespass restrictions in effect.

³ Appellant's filings and emails are extremely confusing, making it very difficult to determine the precise issues and arguments she intends to raise.

with the case. (Motion, Exh. 18). The Appellant did not complete and return the form within ten days.

On September 24, 2013, the State Board issued its decision dismissing Appellant's initial case because there was no local board decision to review. *Bourdelais v. St. Mary's County Bd. of Educ.*, MSBE Op. No. 13-53.

On October 8, 2013, Appellant noted an appeal to the local board and submitted a completed Hearing Information Form. (Motion, Exh. 16). She raised the following issues in the appeal:

- The validity of the no trespass restrictions;
- The "data and information collection methods" used by Mr. Wyant during his investigation related to the no trespass restrictions;
- The accuracy of the investigative summary prepared by Mr. Wyant in connection with the no trespass restrictions;
- The designation of Mr. Wyant's as the coordinator for Appellant's visits to the school under the no trespass restrictions;
- The involvement of safety and security personnel in Appellant and her ex-husbands visits to school property;
- A claim that her ex-husband's no trespass restrictions should be stated the same as hers as they relate to criminal penalties for violating the directives;⁴
- A challenge to unspecified "aggressive school policies relating to parent teacher conferences when divorced parents ask for individual parent teacher conferences" and the school's refusal to provide her with separate conferences; and
- The refusal of school staff to release her children to her on January 18, 2013 and February 8, 2013.

On December 18, 2013, the local board issued a decision dismissing as untimely all matters in the Appellant's appeal related to the no trespass restrictions. The dismissal for untimeliness included the basis for the restrictions, the verbiage of the restrictions compared to the ex-husband's restrictions;⁵ the contents of Mr. Wyant's investigative summary; Mr. Wyant's investigation data and information collection methods; and the use of Mr. Wyant and security personnel to coordinate and enforce the no trespass restrictions. The local board explained that all of the claims related to the Appellant's original attempt to appeal matters surrounding the no trespass restrictions, for which the Appellant failed to complete and return the Hearing Information Form within the required ten day time frame. The local board dismissed as moot Appellant's claims that the school system refused to release her daughters to her on January 18, and February 8, 2013. It further dismissed Appellant's claims regarding parent/teacher conference policies and not having separate conferences from her ex-husband because she had not exhausted her administrative remedies, but noted that Appellant could still raise the issue with the Superintendent.

⁴ The letters to Appellant and her ex-husband contain the same verbiage regarding criminal penalties.

⁵ The local board also found that Appellant lacked standing to raise the personnel and staffing issue of having Mr. Wyant and other security personnel involved in enforcing the no trespass restrictions.

This appeal followed.⁶ Appellant presents the following issues for review:

- Whether Appellant has a right to an appeal conducted in accordance with the “Administrative Code;”
- Whether the local board failed to resolve genuine disputes of material fact related to the no trespass restrictions;
- Whether the manner in which Appellant’s appeal was conducted violated her right to due process;
- Whether the Executive Summary of Investigation constitutes slander/defamation;
- Whether Appellant’s appeal to the local board was timely;
- Whether principles of judicial economy require the local board to render a ruling on the merits of Appellant’s appeal;
- Whether the alleged harassment Appellant claims to have experienced regarding implementation of the no trespass restrictions constitutes reversible error in the local board’s decision.

STANDARD OF REVIEW

Because this appeal involves the decision of the local board involving local policy, the local board’s decision is 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. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

As a preliminary matter, we address whether Appellant’s appeal to the local board was timely filed. The school system provided the Appellant with two opportunities to perfect her appeal to the local board regarding matters she raised related to the no trespass restrictions.⁷ The first opportunity occurred on May 9, 2013, when SMCPs legal counsel sent a letter to the Appellant’s attorney seeking clarification about whether or not Appellant intended to appeal Mr. Clements’ decision by virtue of her April 26 letter to him. Counsel for the Appellant did not respond to the inquiry so the local board did not process the matter as an appeal. The second opportunity occurred on August 22, 2013, when Dr. Martirano wrote to the Appellant and advised her that she needed to fill out and return the Hearing Information Form within ten days so that the local board could proceed with the case. Appellant did not return the form until October 8, 2013, well beyond the ten day period.

The local board maintains that, with regard to matters surrounding the no trespass restrictions, the Appellant’s appeal was untimely because she failed to return the required form

⁶Since the time that Appellant filed her initial appeal to the State Board she has deluged the office of our legal counsel with endless emails attempting to raise issues outside the scope of this appeal, despite the request that she cease the communications. Appellant was previously advised that the unrelated emails are not a part of her State Board appeal.

⁷ Although Appellant attempts to break apart the issues related to the no trespass restrictions (i.e. investigation, summary, imposition, etc.), they are all interrelated and comprise one large issue with several subparts.

within the ten day time frame.⁸ We agree. Local Board Administrative Regulation BEE-R-1 requires an appellant to complete the Hearing Information Form within ten days after the form is sent to the appellant. It further provides that failure to complete the form within the time frame may result in dismissal of the appeal. (Administrative Reg. BEE-R-1(2)(d)(1)). Dr. Martirano specifically provided the Appellant with both the Administrative Regulation and the form and advised her in writing to return the form within ten days of the date of the letter. The Appellant failed to do so. Although the Appellant believes that the local board's dismissal of her claims violates her due process rights, the local board provided the Appellant an opportunity to present her position, but the Appellant failed to comply with the established procedure.

We note that based on the contents of Appellant's October 8 filing with the local board, it appears that she was under the mistaken impression that she could renew her appeal to the local board by submitting the Appeal Information Form within 30 days of the date of the State Board's September 24, 2013 decision. The State Board decision merely dismissed the case because there was no local board decision for the State Board to review. It did not mention further filings with the local board. *See Michelle B. v. St. Mary's County Bd. of Educ.*, MSBE Op. No. 13-54 (2013). Appellant's mistaken belief does not qualify as a circumstance that would excuse her late filing of the Appeal Information Form.

The local board dismissed as moot Appellant's claims regarding staff refusal to release the children to her instead of her ex-husband on January 18, 2013 and February 8, 2013. It is well established that a question is moot when "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide." *In Re Michael B.*, 345 Md. 232, 234 (1997); *see also J.H. v. Baltimore County Bd. of Educ.*, MSBE Order No. OR07-03 (2007). We agree that the matters are moot as there is no longer an existing controversy regarding the January 18 and February 8 events and, therefore, no effective remedy to provide.

Finally, with regard to the claim regarding school policy on parent/teacher conferences and Appellant's desire to have conferences separate from her ex-husbands, we agree with the local board that such claims were not properly raised in the earlier appeal. Appellant is free to raise the issue with the local Superintendent.

We find that the local board's decision was not arbitrary, unreasonable or illegal because it properly dismissed Appellant's claims for untimeliness, mootness, and failure to exhaust administrative remedies. These findings obviate the need to address any additional arguments raised by the Appellant in her appeal to the State Board.

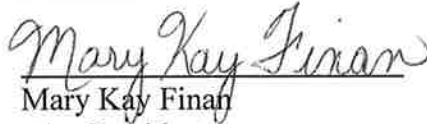
⁸ In addition, Appellant lacks standing to raise the issue of the school system's assignment of Mr. Wyant and security personnel to coordinate and enforce the no trespass restrictions. *See, e.g. Susan H. v. Howard County Bd. of Educ.*, MSBE Op. No. 13-22 (2013); *Thompson v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-43 (2012).

CONCLUSION

For the reasons described above, we uphold the local board's decision dismissing Appellant's appeal.



Charlene M. Dukes
President



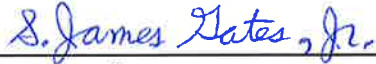
Mary Kay Finan
Vice President

Absent

James H. DeGraffenreidt, Jr.



Linda Eberhart



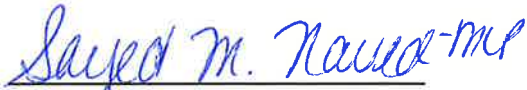
S. James Gates, Jr.



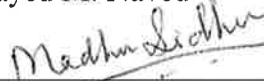
Larry Giammo



Luisa Montero-Diaz



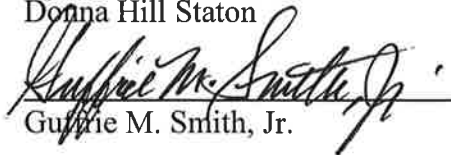
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffie M. Smith, Jr.

April 22, 2014