

WILLIAM JOHNSON,

Appellants

v.

SOMERSET COUNTY
BOARD OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR14-10

ORDER

On August 1, 2014, the local board filed a motion for reconsideration in this case. On August 21, 2014, the local board filed a Petition for Judicial Review.

The filing of the Petition for Judicial Review has affected the status of the case before the State Board. The Board has consistently ruled that filing a Petition for Judicial Review divests the State Board of jurisdiction to decide a motion for reconsideration.

As we explained in *Kent County Board of Education v. Kent County Teacher's Association*, MSBE Op. 08-46, as a general rule, the filing of an appeal will preclude a judicial body from "exercising its jurisdiction in a way that could affect the subject matter of the appeal or the appellate proceeding." See *County Commissioners of Carroll County v. Carrol Craft*, 384 Md. 23, 45 *Education*. The State Board has followed that rule in the past. In *Bowers v. Howard County Board of Education*, 4 Op. MSBE 351 (1986), the Appellants filed their Request for Reconsideration on the same day they filed their appeal in the Circuit Court. The State Board ruled that "[o]nce the Appellants filed an order for Appeal in the Circuit Court, this Board lost the jurisdiction to entertain the Request for Reconsideration..." *Id.* at 352.

Admittedly, this rule places a losing party in a procedural conundrum. Should a party file for reconsideration within the 30 days and demur from filing an appeal on the theory that filing the appeal could deprive the Board of jurisdiction to hear the reconsideration motion? If a party decides not to file an appeal within the 30 day time period, however, it could risk losing its right to appeal at all on untimeliness grounds. The local board in this case chose to cover all bases and put this case on dual track - - asking for reconsideration and judicial review.

Absent a statute granting this Board "dual track" jurisdiction, however, the Board is deprived of power to act on the Motion for Reconsideration. The Motion must be dismissed.

Accordingly, it is this 23rd day of September, 2014, by the Maryland State Board of Education, ORDERED, that the Motion for Reconsideration is hereby dismissed.

MARYLAND STATE BOARD OF EDUCATION

By:



Dr. Charlene M. Dukes
President