



Maryland State Board of Education

200 W. BALTIMORE STREET / BALTIMORE, MARYLAND 21201-2595 / (410) 767-0467

January 31, 2007

John M. Larrimore
Vice President
Board of Education of Kent County
215 Washington Avenue
Chestertown, Maryland 21620

Dear Mr. Larrimore:

Thank you and the Kent County Board of Education for your careful, thoughtful response to the State Board of Education's request that you reconsider the recusal decision of each Board member. The State Board has reviewed all of the information you submitted on January 9, 2007, as well as Mr. Hanifee's Motion to Dismiss, and the Kent County Board of Education's Response to that Motion. The attached Memorandum and Order sets forth the State Board's decision in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Edward L. Root".

Edward L. Root
President

Attachment

c: Nancy S. Grasmick
State Board Members
Anthony L. South

THE MARYLAND STATE BOARD OF EDUCATION

IN THE MATTER OF * BEFORE THE
KENT COUNTY BOARD OF EDUCATION * MARYLAND
* STATE BOARD
* OF EDUCATION
* Order No. OR07-01

* * * * *

MEMORANDUM AND ORDER

On January 9, 2007, the Kent County Board of Education (local board) requested that the State Board of Education make certain findings concerning sexual harassment allegations by a school employee against a board member. The local board made three requests:

- (1) If the State Board deems that the [Investigative Report] “conclusively establishes” that the board member sexually harassed the school employee, “then we request the State Board to remove [the board member] from office.”
- (2) If the State Board believes that further fact finding is necessary, “refer the matter to the Office of Administrative Hearings” to conduct a “contested case hearing”
- (3) If the State Board believes “that the actions taken by the [local board] are sufficient . . . we request that the State Board so advise.”

Thereafter, the board member filed a Motion to Dismiss the “proceedings” asserting that this Board had no jurisdiction to act in this matter and that the local board’s actions were *ultra virus* or illegal. The local board opposed the Motion to Dismiss. The State Board has considered all the issues raised.

Jurisdiction Of The State Board To Act In This Matter

The State Board has jurisdiction to act in this matter pursuant to Md. Educ. Code Ann. § 3-801 which grants the State Board the authority to remove a member of a county board for “immorality, misconduct in office, incompetence or wilful neglect of duty.” If this Board were to exercise that jurisdiction, it would issue charges against the board member. It would base the charges on facts, usually those submitted by the local board in support of removal. This Board would provide an opportunity for hearing to the board member and would likely refer the case to the Office of Administrative Hearings. In that contested case proceeding, the local school system would present its case in support of removal, and the board member would defend.

In the matter at hand, however, because the local board members recused themselves and could not obtain a quorum to recommend removal, this Board must decide whether to exercise its removal powers in the absence of a local board recommendation. Although the statute governing removal does not require that the local board request the State Board to initiate such action, we view an action to remove a board member as a very serious matter. When a local board requests removal, we give that request great weight in deciding whether to go forward with charges. Absent such a request, the State Board acts without the full support of the local board.

Although there may be extreme circumstances when it is critical for the State Board to initiate a removal action *sua sponte*, we conclude for the reasons set forth herein, this is not the case in which to do so.

Sufficiency Of The Investigative Report To Support A Removal Action

The Investigative Report in this matter describes 17 interviews conducted to determine whether sexual harassment occurred. Although the investigator determined that harassment had

occurred, we have carefully read that report and cannot come to such a conclusive determination. Specifically, the employee describes a series of occurrences that the board member flatly denies ever happened. None of the other fifteen persons interviewed had any personal knowledge of the events or witnessed any of the incidences the employee described.

The employee did tell several of those persons about the sexual harassment incidents and one of them saw the condoms that the employee asserts the board member gave him. Each of those persons believed the employee was a truthful person. When all is said and done, however, there are only two people who have knowledge of the alleged incidences, and each of their versions of the facts is quite different. We cannot, therefore, conclude that sexual harassment occurred or did not occur. In our view, the Investigative Report does not provide sufficient factual support for the issuance of charges and the initiation of a removal action.

Referral Of This Matter To The Office Of Administrative Hearings

The local board has requested that, if the State Board finds insufficient facts in the Investigative Report to support removal, that the State Board refer the matter to the Office of Administrative Hearings (OAH) to “hold a contested case hearing” to determine whether or not sexual harassment occurred. We decline to do so. In our view, OAH would not have the jurisdiction to hear this matter.

An administrative agency may, of course, delegate to OAH the authority to conduct agency hearings. Md. State Gov’t Code Ann. § 10-205. Those hearings, however, must meet the definitional requirements for a contested case hearing because the jurisdictional authority of OAH is to hear only “contested cases.” *Id.*; *North v. Kent Island Ltd. Partnership*, 106 Md. App. 92. ___ (1995); *Maryland Pharmacists Ass’n v. Office of the Attorney General*, 115 Md. App.

650, _____, *cert. denied* 347 Md. 154 (1997).

A contested case is “a proceeding before an agency to determine, a right, duty, statutory entitlement or privilege of a person that is required by statute or constitution to be determined only after an opportunity for an agency hearing.” Md. State Gov’t Code Ann. § 10-202(d). Simply put, only if a statute or the constitution gives a person the right to an agency hearing, can a case be considered a “contested case.” We know of no statutory or constitutional right to a hearing before the State Board/OAH to determine whether sexual harassment occurred between a local board member and a school employee. The local board essentially wants OAH to decide whether the employee or the board member is telling the truth, but neither of those two people has any right under law to get such a hearing at OAH.¹ Nor does the local board have such statutory or constitutional right to ask for such a hearing.

Even if OAH had jurisdiction to hear this matter, the local board has made clear that it cannot and will not be a party to such a hearing. It is our view that the State Board has no authority to direct the employee and the board member, two private individuals, to present their cases to OAH for a determination of whether sexual harassment occurred.

For all those reasons, we decline to refer this matter to OAH.

Sufficiency Of The Local Board Actions

The local board has directed both the board member and the school employee to take all actions necessary to avoid each other. The local board has established specific rules to govern the board members. The board directed the board member:

¹There are proper forums for such a case. For example, the Maryland Office of Human Relations, the Equal Employment Opportunity Commission, and federal or state court are the likely venue for such an action

1. To suspend and discontinue all further participation in the "Character Counts" program pending further notice from the Board.
2. To avoid the schools where the employee has been assigned, unless the board member has provided the Superintendent and the Board with at least seventy-two (72) hours advance notice so that the Superintendent can make sure that there is no interface between the board member and the employee. The board member shall inform the Superintendent of his business at the schools where the employee works so that the Superintendent can be sure to make the necessary arrangements to avoid incidental contact between the two.
3. Work with the Superintendent to avoid the schools where the employee works altogether.
4. Not to approach or speak to the employee on school property and if the board member sees the employee on school property, he should stop and wait for the employee to avoid him.
5. Not to have an employee of the Kent County School System with whom he has not had a prior, longstanding relationship over to his home, or similar property, in order to work, free of charge, on improvements to such property.
6. Not to solicit employees of the Kent County School System to have alcoholic beverages with him at a bar or similar establishment. This does not include non-alcoholic beverages at a Board or School System sponsored event.

Those actions address the immediate issue of the alleged harassment and limit the board members' freedom to interact socially with other employees.

The local board has stated in its letter of January 9, 2007 that "should [the board member] ignore this directive in the future, the Board will reconsider whether a violation of such protocols warrants a recommendation of removal from office." We offer no definitive view of the sufficiency of the Kent County Board of Education, but agree that if the board member ignores the directives further action by the local board will be warranted.

Therefore, for all these reasons we deny the Motion to Dismiss, decline to issue charges for removal, decline to refer this matter to OAH, and close this case. It is so ordered.

MARYLAND STATE BOARD OF EDUCATION

By: Edward L. Root

Edward L. Root, President