

BETTYE JO EUBANKS,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 09-33

OPINION

INTRODUCTION

In this appeal, Appellant challenges the decision of the Baltimore City Board of School Commissioners (local board) affirming the Chief Executive Officer's transfer of Appellant from her IEP Team Associate position at Harbor City High School to a special education teaching position at Bay Brook Elementary School. The local board has filed a Motion to Dismiss the case for untimeliness. Alternatively, the local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has opposed the local board's motions.

FACTUAL BACKGROUND

Appellant has been employed with the Baltimore City Public School System since 1969. She holds an Advanced Professional Certificate with certification in several areas, including generic special education for grades 1 through adult.¹

For the 2007-2008 school year, Appellant was an IEP (Individual Education Plan) Team Associate (ITA) assigned to Harbor City High School (Harbor City). An IEP Team Associate serves as an IEP team member, provides IEP process management for an assigned caseload, and provides guidance and instruction to IEP Team Assistants. (Job Description). The nature of the position requires the ITA and other team members to work cooperatively.

During the 2007-2008 school year, Appellant's working relationships with her principal, Dr. Albert Thompson, and other staff members deteriorated. Dr. Thompson had received several complaints about Appellant from Appellant's secretary, Leah Harris, and from various Child Study Team (CST) members with whom Appellant worked about Appellant's disruptive and unprofessional

¹Certification information has been verified by MSDE's certification division.

behavior. (*See* Harris, Stokes, and Thompson E-mails, Hearing Officer Report at 4). Appellant and Ms. Harris had ongoing disputes regarding the day to day work in the office. Staff members also found it difficult to work with Appellant. On two occasions, the school police had to respond to incidents in which Appellant approached another employee in a threatening manner. (Thompson Letter, 2/15/08; Hearing Officer Report at 4). These problems had a negative impact on the work environment and the proper functioning of the school. (Hearing Officer Report at 4).

Appellant had also sent several unprofessional e-mails to Dr. Thompson while trying to convey her concerns about processes and procedures at the school and the manner in which special education students were being served. (Hearing Officer Report at 4). Among other concerns, it was the Appellant's belief that Dr. Thompson wanted her to remove students from the school roll without following proper protocol. Appellant's e-mail entitled "Off roll - INEFFECTIVE PRINCIPAL" stated, in part,

Making a statement about your being an ineffective principal is not "Disrespectful." It is my assessment of you as a principal. YOU ARE NOT DOING ANYTHING FOR THESE AT-RISK STUDENTS. . . . why don't the teachers come to you directly because they find you get just as arrogant and unresponsive as I find you. Let me tell you something - you are only known for pulling a fire alarm for quelling rioting students at THURGOOD MARSHALL HIGH where you stayed a hot minute. You don't impress me. . . . as a principal you are just - the -run-of-the mill gate keeper. . . . YOU SHOULD BE ON YOUR WAY TO THE WELL CENTER. You are suffering from delusions. (Emphasis in original).

Appellant signed that e-mail "DISRESPECTFULLY, UNPROFESSIONALLY YOURS." (Eubanks E-mail, 2/15/08).

On Appellant's mid-year evaluation in January 2008, she received unsatisfactory ratings in the areas of Planning and Preparation for problems with record keeping; Instruction/Instructional Support for disrespectful staff interactions, and Professional Responsibilities for inconsistently following through on requests from her supervisors. (Performance Review Report, 1/15/08). Appellant's supervisor placed her on a Performance Improvement Plan (PIP) to improve in these areas.

Dr. Thompson referred Appellant to the Employee Assistance Program for an evaluation due to her conduct and behavior. (*Id.* at 4). In the referral letter dated February 15, 2008, Dr. Thompson stated as follows:

It has become necessary for me to apprise you in writing of some concerns I have spoken to you about on several occasions regarding your creating a hostile work environment for the staff at Harbor City High School.

As you know the police had to be called on two occasions when you approached a colleague in a threatening manner. Staff members have come to me and have written to me about your threatening and unprofessional behaviors.

Your negative, inflammatory statements and emails directed at staff and administration are not acceptable to me personally, nor are they in keeping with the district policy.

Had the incidents ended when I first spoke to you, no problem would exist. Unfortunately you continue to act in an unprofessional manner when addressing parents, students, staff and administration and you continue to send harassing emails. Your disruptive behaviors have a negative impact on the operation of our CST Office and cause an unhealthy work environment for your colleagues.

In her March 2008 evaluation, Appellant improved in two of the previously unsatisfactory areas but her staff interactions were still in need of improvement as of that date. (PIP; Hearing Officer Report at 5).

By letter dated May 23, 2008, Lesly J. Neely, Specialist in the Office of Benefits Management, advised Appellant that she was scheduled for fitness for duty evaluation with a psychologist. (Hearing Officer at 5). Appellant was advised not to return to work pending receipt of the examination results. She received pay and benefits through the balance of the school year. Appellant saw the psychologist on June 3, 2008. The psychologist reported that there were no psychological problems preventing Appellant from working. (Hearing Examiner Report at 5).

Thereafter, the Chief Executive Officer (CEO) assigned Appellant as a special education teacher at Bay Brook Elementary School (Bay Brook) for the 2008-2009 school year. The parties dispute the timing and manner in which Appellant received notice of her transfer. Appellant testified that she reported to Harbor City on August 24, 2008 upon the advice of the Human Resources Office, at which time she was advised that she no longer worked there. She then contacted her union representative who advised her of her assignment to Bay Brook. (*Id.* at 3, 6). Yet the record contains a letter dated August 12, 2008, from the Chief Human Resources Officer advising Appellant of her transfer to Bay Brook, effective August 19, 2008. (Koehler Letter). The transfer resulted in Appellant suffering a loss in pay (\$79,878 to \$77,194) due to the difference in the pay scales for an IEP Team Instructional Associate and a Base Teacher. (*Id.*; Human Resources Change Form).

Appellant began teaching elementary special education students at Bay Brook. Although Appellant was certified to teach these students, she had great difficulty doing so as her last teaching assignment was in 1992 as a high school vocational education teacher and she had no classroom experience teaching elementary school students. (Hearing Examiner Report at 3; Custis Letter, 2/13/09). The principal of Bay Brook noted that Appellant was unable to deliver a high quality instructional program to special education students in an elementary setting. She placed Appellant on a Performance Improvement Plan and added a teacher to Appellant's classroom for added support. (*Id.*)

Appellant grieved the transfer decision. The matter was assigned to a Hearing Officer who recommended that the CEO's decision to transfer Appellant to Bay Brook be upheld. (Hearing Officer Decision at 6). After reviewing the case, the local board upheld the recommendation of the Hearing Officer and denied Appellant's request that the transfer be rescinded. (Local Board Order).

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a 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.01.05.03E(1). The exercise of the superintendent's transfer authority and the local board's decision upholding the exercise of that authority are entitled to deference and must be upheld unless the Appellant can make specific allegations of fact that, if true, would prove otherwise. *Koenig v. Bd. of Educ. of Montgomery County*, MSBE Op. No. 96-33 (1996).

ANALYSIS

Motion to Dismiss

The local board has filed a Motion to Dismiss the appeal based on untimeliness. COMAR 13A.01.05.02B(1) provides that an appeal to the State Board "shall be taken within 30 calendar days of the decision of the local board" and that the "30 days run from the later of the date of the order or the opinion reflecting the decision." An appeal is deemed transmitted within the limitations period if it has been delivered to the State Board or deposited in the United States mail, as registered or certified, before the expiration of the time period. COMAR 13A.01.05.02B(3).

The local board issued its Opinion and Order in this case on January 13, 2009. The appeal should have been filed with the State Board by February 12, 2009, but it was not filed until February 23, 2009. Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice of the decree. *See Scott v. Board of Education of Prince George's County*, 3 Op. MSBE 139 (1983).

Appellant has responded to the local board's motion, maintaining that she "delivered the Appeal to the MSBE on February 11 and was informed that it was not according to State Guidelines formatting procedures and that [she] needed to read the directions." (Response to Motion to Dismiss). She states that she then picked up a copy of the guidelines from the Attorney General's Office, which serves as legal counsel for the State Board. According to Appellant, the Administrative Officer there assured her that her filing "would not be late as [she] had 30 days from the date in which [she] received the notice" from the local board to appeal to the State Board. *Id.* Based on this alleged statement, Appellant maintains that it was her understanding that she had 30 days from January 31, 2009, which was the date she received notice of the local board's decision from her union representative. *Id.*

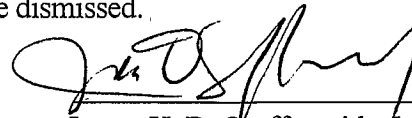
The local board sent Appellant's union representative a copy of the local board's decision on January 21, 2009. (Johnson Letter, 1/21/09). Assuming *arguendo* that the date for filing an appeal began to run on January 21, 2009, this appeal was not filed within the 30 day time period. We note that Appellant's union representative advised Appellant of the decision by letter dated January 27, 2009 and included in the letter directions for timely filing of an appeal.

For many years, this Board has strictly applied the rule about timely filing of an appeal. The rule is clearly stated in our regulation. It is up to the Appellant to be aware of the rule and follow it. We excuse untimely filing for only the most exceptional circumstances. This is not one of them.

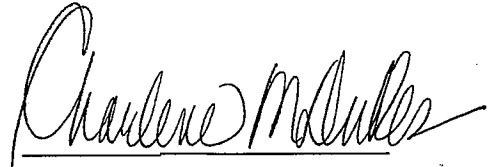
We have attempted to verify the Appellant's explanation about the untimely filing. We have not been able to verify that anyone at the State Board office refused to accept her appeal papers on February 11. It is not State Board practice to review appeal documents at the time of filing for conformance to the rules or to reject them for any reason. We have verified, however, that the Appellant picked up the rules for filing an appeal at the Attorney General's Office on February 11. No matter what Appellant believes she was told, however, the Appellant had the obligation to read the rules and comply with them. The rules say that the 30 day time period runs from the date of the local board's decision, not from the date the Appellant receives the decision from her union representative. Appellant also received other documents that advised her of when the 30 day time period for filing an appeal began to run. Both the February 11, 2009 cover letter from the Administrative Officer and the January 27, 2009 letter from Appellant's union representative provided the same information. This appeal was untimely filed.

CONCLUSION

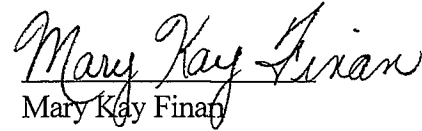
Because the appeal was not timely filed, it shall be dismissed.



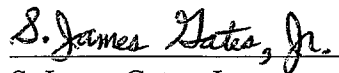
James H. DeGraffenreidt, Jr.
President



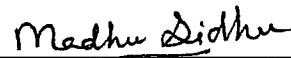
Charlene M. Dukes
Vice President



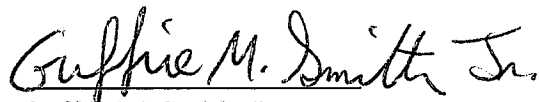
Mary Kay Finap



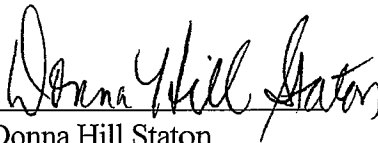
S. James Gates, Jr.



Madhu Sidhu



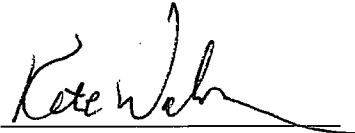
Guffie M. Smith, Jr.



Donna Hill Staton



Ivan C.A. Walks



Kate Walsh

September 21, 2009