

MARSHA POWELL,
Appellant

v.

BALTIMORE CITY BOARD OF SCHOOL
COMMISSIONERS,
Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 10-39

OPINION

INTRODUCTION

In this case, the Appellant appeals her transfer out of an administrative position with the school system. The Baltimore City Board of School Commissioners (“local board”) has filed a Motion to Dismiss the appeal because there is no local board decision for the State Board to review. The Appellant has responded to the Motion.

FACTUAL BACKGROUND

Appellant has been employed by the Baltimore City Public School System (“BCPSS”) for approximately 35 years holding various positions, including teacher and school administrator. Appellant began serving as the principal of Steuart Hill Academic Academy (“Steuart Hill”) in June 2005. (Powell Appeal Letter, 12/2/09). The Appellant received an unsatisfactory rating for the 2008-2009 school year. (Bd. Ex. 2, Powell Letter, 10/29/09). In addition, Steuart Hill failed to make Adequate Yearly Progress (“AYP”) in 2009. (Powell Letter, 9/3/09).

On August 17, 2009, Fran Brown, the Chief Executive Officer’s Designee, notified the Appellant that she was being transferred to a different position within the school system. (Bd. Ex. 1, Brown Letter). Ms. Brown stated as follows:

The Annotated Code of Maryland, Education Article § 6-201 grants to the Chief Executive Officer the authority to assign personnel as the needs of the system require. Based on the current needs of Baltimore City Public Schools (City Schools) and as designee of the CEO, I hereby advise you that effective August 19, 2009 to September 7, 2009, you will be assigned to the Office of the Chief of Staff to assist with school readiness initiatives.

(*Id.*). Ms. Brown further advised Appellant that she would be reassigned to a teaching position for the 2009-2010 school year, and would receive notice by August 28, 2009. (*Id.*). Appellant

received an assignment as a classroom teacher at Montebello Elementary Junior Academy for the 2009-2010 school year.

On September 3, 2009, Appellant wrote to Dr. Nancy S. Grasmick, State Superintendent of Schools, asking for her "support to remain in an administrative position" because Dr. Alonso "refused to meet with [Appellant] to discuss concerns that [she] had during the school year." (Powell Letter, 9/3/09). Legal counsel for MSDE responded on Dr. Grasmick's behalf, advising the Appellant of the proper process for pursuing a controversy or dispute with the local school system. (Letter from Counsel, 9/14/09).

On October 29, 2009, the Appellant wrote to Neil E. Duke, Chairman of the Baltimore City Board of School Commissioners, requesting that the Board return her to an administrative position at any school in the BCPSS. (Bd. Ex. 2). Appellant stated in the letter that she had contacted Dr. Andrés Alonso, Chief Executive Officer of BCPSS, in September and more than 30 days had elapsed without a response from him. (*Id.*).

Appellant's letter to Mr. Duke was routed to Dr. Alonso through the Mayor's office. (Alonso Affidavit). Dr. Alonso responded to the Appellant stating:

Personnel matters of this nature must be handled in accordance with applicable provisions of Maryland law and the collective bargaining agreement with PSASA. I suggest that you contact your union representative to discuss any options that are available to you.

(Bd. Ex. 3, Alonso Letter, 12/11/09).

Prior to receiving Dr. Alonso's response, the Appellant filed this appeal to the State Board. Ms. Powell stated:

I sent Dr. Alonso a request to remain in an administrative position. He has not responded to me at all. . . . After not hearing from Dr. Alonso, after thirty days, I sent a letter to Mr. Neil Duke I gave him the scenario and requested that my administrative status not be removed. Well, it's been more than thirty days and he has not responded. . . .

I am now appealing . . . to have my administrative status returned to me. I am not asking to be returned to the school, but I know that I deserve to remain in a leadership position.

(Powell Appeal Letter, 12/2/09).

ANALYSIS

The local board has filed a Motion to Dismiss the appeal because the Appellant failed to properly appeal her transfer at the school system level and there is no local board decision for the State Board to review.

State law provides for review of Appellant's transfer through an established appeal process. Section 4-205(c)(3) of the Education Article states:

A decision of a county superintendent may be appealed to the county board if taken in writing within 30 days after the decision of the county superintendent. The decision may be further appealed to the State Board if taken in writing within 30 days after the decision of the county board.

The Appellant received correspondence from Ms. Brown, the Superintendent's Designee, dated August 17, 2009, advising the Appellant of the CEO's transfer decision. The Appellant, therefore, had until September 16, 2009 to file an appeal of the decision with the local board. Appellant's letter to Mr. Duke was dated October 29, 2009, more than one month after the deadline for filing an appeal with the local board.

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. Bd. of Educ. of Prince George's County*, 3 Op. MSBE 139 (1983).

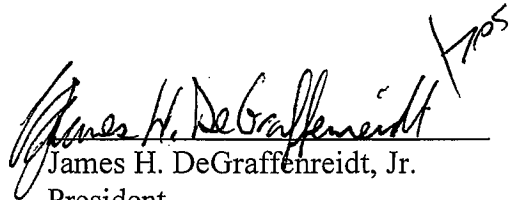
In her response to the local board's Motion, the Appellant does not provide any explanation for her failure to file a timely appeal at the school system level. Rather, she claims that her union would not assist her with the transfer issue and that she is now being "targeted" by the school system.

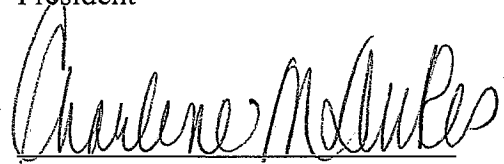
Nonetheless, in the Appellant's letters to Mr. Duke and the State Board, she claims that she sent Dr. Alonso a request to remain in an administrative position in the school system, and that he did not respond. Appellant, however, has not provided any evidence of that correspondence, nor has she specified the date of the alleged request. On the other hand, Dr. Alonso submitted an affidavit stating that he received no communications from the Appellant requesting that he review or rescind the transfer, other than receipt of a copy of the October 29 letter to Mr. Duke. (Alonso Affidavit).

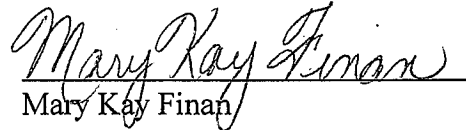
Given these facts, the Appellant has failed to show any extraordinary circumstance that would mitigate the effect of her untimely filing of an appeal. *See Thomas v. Prince George's County Bd. of Educ.*, MSBE Op. No. 06-19 (2006) (In finding that the appellant failed to pursue her appeal to the local board, the State Board noted that although the Appellant alleged she had filed with the local board, she produced no evidence of the filing nor did she assert this fact in a sworn affidavit).

CONCLUSION

For these reasons, we dismiss the appeal.


James H. DeGraffenreidt, Jr.
President



Charlene M. Dukes
Vice President

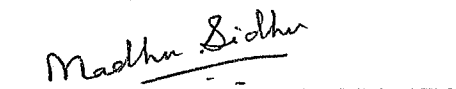

Mary Kay Finan

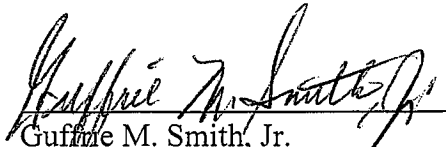
ABSTAINED


S. James Gates, Jr.


Luisa Montero-Diaz

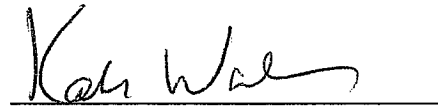

Sayed M. Naved


Madhu Sidhu


Guffie M. Smith, Jr.


Donna Hill Staton

ABSENT
Ivan C.A. Walks


Kate Walsh

September 21, 2010