

IN THE MATTER OF
ALLEN R. DYER

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Order No. OR11-16


ORDER

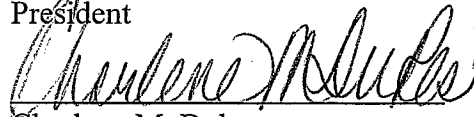
On October 26, 2011, the Administrative Law Judge issued a proposed decision denying the Motion to Intervene filed by Cynthia L. Vaillancourt, a Board Member of the Howard County Board of Education. Ms. Vaillancourt has filed Exceptions to the Proposed Decision.

The denial of a Motion to Intervene is a final, appealable order. *Hiyab Inc. v. Ocean Petroleum*, 183 Md. App. 1 (2008). The Exceptions have been timely filed and considered.

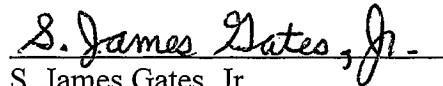
For the reasons set forth in the Administrative Law Judge's proposed decision, we agree that the Vaillancourt intervention was not legally appropriate. We affirm the ALJ's decision and adopt it as our final decision on this matter.

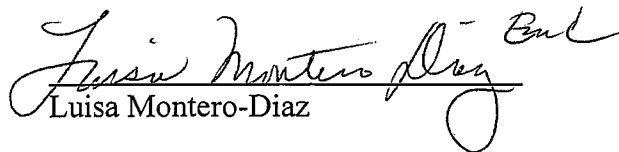
MARYLAND STATE BOARD OF EDUCATION



James H. DeGraffenreidt, Jr.
President

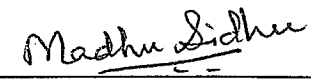

Charlene M. Dukes
Vice President


Mary Kay Finan

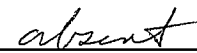

S. James Gates, Jr.

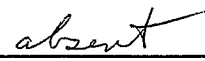

Luisa Montero-Diaz


Sayed M. Naved


Madhu Sidhu


Guffie M. Smith, Jr.


Donna Hill Staton


Ivan C.A. Walks


Kate Walsh

December 6, 2011

BOARD OF EDUCATION OF
HOWARD COUNTY

v.

ALLEN R. DYER,
RESPONDENT

* BEFORE DOUGLAS E. KOTEEN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No. MSDE-BE-17-11-28065

* * * * *

PROPOSED DECISION ON MOTION TO INTERVENE

On July 6, 2011, the State Board of Education (State Board) sent notice to Allen R. Dyer (Respondent), member of the Board of Education of Howard County (County Board), advising that the County Board had made a request to the State Board seeking the Respondent's removal from the County Board for alleged misconduct in office, pursuant to section 3-701 of the Education Article of the Maryland Annotated Code. Md. Code Ann., Educ. § 3-701 (2008). The State Board advised the Respondent that he had the right to request a contested case hearing before the State Board. The State Board has delegated the hearing authority to the Office of Administrative Hearings (OAH) and has directed the OAH to issue a proposed decision in this matter. The Respondent filed a hearing request on July 11, 2011.

On August 23, 2011, Cynthia L. Vaillancourt (Vaillancourt), County Board Member, appearing *pro se*, filed a Motion to Intervene (Motion) in this proceeding. On August 29, 2011, Judith S. Bresler, Esquire, counsel for the County Board, filed an Opposition to Motion to Intervene. On September 8, 2011, Harold H. Burns, Jr. Esquire, counsel for the Respondent, filed a Reply to Motion to Intervene and Opposition and a Motion to Stay Consideration Thereof. On September 8, 2011, Vaillancourt filed an Answer to Opposition to Motion to Intervene.

On September 8, 2011, I conducted a Prehearing Conference and motions hearing at the OAH in Hunt Valley, Maryland to address the Motion and other matters. Mr. Burns appeared on

behalf of the Respondent. Ms. Bresler appeared on behalf of the County Board. Ms. Vaillancourt appeared *pro se*. The parties argued their respective positions on the Motion. The Respondent requested that I defer ruling on the Motion for several reasons, including until a decision was issued on the Respondent's Motion to Dismiss, which raises jurisdictional issues. The Respondent filed a Motion to Dismiss on August 26, 2011, and the County Board and Vaillancourt filed responses. I granted the Respondent's request to defer my ruling on the Motion until I issued a decision on the Motion to Dismiss to secure procedural simplicity and administrative fairness. COMAR 28.02.01.11B(11).¹

Vaillancourt is one of eight members on the County Board that has requested the State Board to remove the Respondent from office for alleged misconduct in office. Vaillancourt seeks to intervene in this matter. She claims an adverse interest based on her contention that she was not afforded sufficient information regarding the charges against the Respondent when she voted against the resolution or sufficient information after the vote, her concern that this matter could threaten her position on the County Board and chill her ability to speak freely, and her desire for guidance and clarification of her rights and obligations as a member of the County Board. She also raises political issues and questions the validity of the Student's member's vote. Vaillancourt also claims that her interests will not be adequately represented by the existing parties due to the serious nature of this removal action against the Respondent.

The County Board contends that intervention is not warranted because some interests that Vaillancourt identifies are not related to the subject matter of this proceeding regarding the Respondent's proposed removal for alleged misconduct in office, other concerns are too speculative or indirect, and the Respondent can adequately represent those interests of Vaillancourt that relate to the subject matter of this proceeding.

¹ The Respondent's Motion to Dismiss was denied in a separate proposed decision issued on this date.

The Respondent supports Vaillancourt's Motion. In support of her Motion, the Respondent relies on political arguments, public meetings requirements, notice issues, and the relative power and resources of the parties and their counsel.

The OAH Rules of Procedure, at COMAR 28.02.01.15, regarding intervention provide, in pertinent part, as follows:

.15 Intervention.

A. Upon motion filed not later than 15 days before the earlier of the prehearing conference or the hearing date, a person may be permitted to intervene in an action when the person:

- (1) Has an unconditional right to intervene as a matter of law; or
- (2) Claims an interest relating to the subject matter of the hearing that is:
 - (a) Adversely affected; and
 - (b) Not adequately represented by existing parties.

...

C. Order of Intervention.

- (1) The judge shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.
- (2) As soon as practicable, the judge shall issue an order denying or allowing Intervention.
- (3) In an order allowing intervention, the judge may place conditions upon the intervenor's participation in the proceedings.

D. Appeal.

- (1) If the judge is not the final decision maker, the denial of a motion to intervene may be appealed to the final decision maker in accordance with the agency's regulations.
- (2) When the judge is the final decision maker, a party or other affected person may seek review of the denial of a motion to intervene in accordance with law.
- (3) In the discretion of the judge, a request for further review of the denial of a motion to intervene may stay the proceedings.

Vaillancourt has not claimed that she has an unconditional right to intervene.

Vaillancourt's claim that she believes her position on the County Board and her right to speak freely might be threatened is merely speculative, unsupported by facts, and not related to the issues of whether the State Board may remove the Respondent from the County Board for his

alleged misconduct in office. Vaillancourt's desire for guidance and clarification of her rights and obligations as a County Board member is also unrelated to the issues in this proceeding regarding the Respondent's removal from the County Board. Moreover, Vaillancourt need not intervene as a party to obtain guidance from the outcome of these proceedings. In other respects, the issues raised by Vaillancourt that relate to the Respondent's proposed removal from office, such as notice issues, the validity of the Student member's vote, and whether the Respondent has engaged in misconduct in office, are the same issues that have been or will be raised by the Respondent in his own defense at the contested case hearing. Vaillancourt has failed to show how the issues regarding the Respondent's proposed removal based on his alleged misconduct affect her personally and has failed to show that the Respondent cannot adequately represent those interests in this proceeding. The claim regarding the relative power and resources of the parties is based on conjecture and does not demonstrate that the Respondent cannot adequately represent Vaillancourt's common interests in this proceeding.

Where the requested intervenor's interests are the same as those of an existing party, the requested intervenor can successfully intervene on the grounds that her interests will not be adequately represented by the existing party only if the requested intervenor can show collusion, nonfeasance, or bad faith by the existing party. *Maryland Radiological Society, Inc. v. Health Services Cost Review Commission*, 285 Md. 383, 391-392 (1979). In most respects, Vaillancourt's interests are essentially the same as those of the Respondent and she has failed to meet the standard in *Maryland Radiological Society* or otherwise show that those interests cannot be adequately represented by the Respondent in this proceeding.

Where the requested intervenor's interests are too indirect, remote, or speculative, those interests do not establish a proper legal basis for intervention. *Montgomery County v. Bradford*, 345 Md. 175 (1997); *Shenk v. Maryland District Savings & Loan Co.*, 235 Md. 326 (1964). As

noted above, Vaillancourt's concern that her position on the Board and her right to speak freely might be threatened is too speculative, unsupported by facts, and not directly related to the Respondent's proposed removal. Moreover, her desire for guidance and clarification of her rights and obligations as a member of the County Board is also not directly related to whether the Respondent's actions warrant his removal for misconduct in office.

For the reasons addressed above, I conclude that in most respects, Vaillancourt's interests are similar to those of the Respondent and can adequately be represented by the Respondent in these proceedings. COMAR 28.02.01.15A(2)(b). Other issues raised by Vaillancourt are either not related to the issues to be determined in this proceeding – whether the Respondent is responsible for misconduct in office that would support his removal as a member of the County Board – or are too indirect and speculative to warrant intervention in this matter. COMAR 28.02.01.15A(2).

CONCLUSIONS OF LAW

Based on the foregoing, I conclude, as a matter of law, that the Motion to Intervene shall be denied. COMAR 28.02.01.15.

PROPOSED ORDER

I hereby **PROPOSE** that Vaillancourt's Motion to Intervene be **DENIED**.

October 26, 2011
Date Decision Mailed

Douglas E. Koteen
Administrative Law Judge

DEK/ch
127364

APPEAL RIGHTS

Pursuant to COMAR 28.02.01.15D, if the judge is not the final decision maker, the denial of a motion to intervene may be appealed to the final decision maker in accordance with the agency's regulations. A party objecting to an administrative law judge's proposed decision may file exceptions with the State Board within 15 days of receipt of the findings. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

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