

ROBIN BREEDON,

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-34

OPINION

INTRODUCTION

In this appeal, Appellant, the Director of TV Resources and Web Services for Prince George's County Public Schools (PGCPS), challenges the local board's decision dismissing her appeal of the superintendent's decision to appoint another individual as Communications Officer for the school system. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted a reply to the Motion.

FACTUAL BACKGROUND

In July 2006, Dr. John E. Deasy, the local superintendent, reorganized the PGCPS Public Information, Communications and Television Resources Offices as a single Office of Communications. The reorganization was done to create a more efficient and effective way of handling communications, and to have the school system speak to the media and the public with one unified voice. Dr. Deasy selected John White as the Communications Officer to lead and supervise the Office of Communications. (Deasy Affidavit).

By memorandum dated July 18, 2006, William Hite, the Chief of Staff for Prince George's County Public Schools, advised Appellant of the reorganization of the three offices into an Office of Communications. He notified her that John White was being appointed as head of the Office of Communications and that he would be reporting directly to the Chief Executive Officer.¹ (Hite Memorandum).

¹Appellant requested information from Mr. Hite regarding White's promotion and the decision-making process. (Breedon e-mail, 7/28/06). She did not receive a response. (Affidavit of Appellant).

Appellant filed a letter of appeal with the local board challenging Dr. Deasy's decision to "promote John White and make him [Appellant's] supervisor." She claimed that "Dr. Deasy's action denied [her], an African-American female, the opportunity for promotion" and that the promotion of "a white male, with less experience, tenure, and age violates U.S. Equal Employment Opportunity Discrimination Laws in regards to sex, race, and age." She stated that the position "was never posted and [her] resume was never requested for consideration."² (Appeal to Local Board).

The local board referred the matter to a hearing examiner for review. The superintendent submitted an affidavit explaining the reorganization of the offices into the Office of Communications, and the rationale for his decision regarding White. He stated that there was no requirement to post the Communications Officer position because it was the reorganization of an existing department and existing positions. The reorganization was done to correct the disjointed organization of the existing structure. (Deasy Affidavit).

In selecting the Communications Officer, Dr. Deasy stated that he reviewed the background and credentials of the individuals who were then working in communications and related areas, including Mr. White, Appellant, and a third individual. He found that Mr. White was the strongest candidate with the most experience in dealing with the media, even though he did not have the longest tenure with the school system out of the individuals considered. He stated the following reasons for Mr. White's selection:

He had been with the school system since 2004, and acted as the system's primary media spokesperson for my predecessors, Dr. Hornsby and Mr. Burnett, and for the Board of Education. Prior to coming to the school system, Mr. White managed media and public relations for AAA Mid-Atlantic Region as its Public and Government Relations Manager, where he also worked to develop means to enhance that company's public image and he pursued media coverage there. For four (4) years, from 1999-2003, he served as the Communications Director for the Maryland Aviation Administration at the BWI Airport. In that role, he was the lead contact for local, national and international media. He managed a staff of six professionals within the Communications Division, and he developed and implemented media and public relation strategies, as well a crisis communications plans, and placed news

²Meanwhile, Appellant filed a Charge of Discrimination against PGCPs concerning White's appointment as Communications Officer with the Equal Employment Opportunity Commission in November 2006. That case is still pending.

articles and issued press releases. Prior to that position, Mr. White was the Press Secretary to the Office of the Maryland Secretary of State. I also noted that he had a Bachelor's Degree, and a Masters of Business Administration.

(Deasy Affidavit). Dr. Deasy also pointed out a strong commendation for Mr. White's work representing PGCPS from a major media outlet which covers the school system. (*Id.*).

The hearing examiner decided the case on a Motion for Summary Affirmance, finding that the superintendent's actions were based on the best interests of the school system, and that there was no evidence to support Appellant's allegations of discrimination. He stated the following:

The Appellant stated that discrimination against her occurred but offered no facts other than her own assessment that she had been discriminated against as her proof of discrimination. The mere event that a Caucasian male was chosen for a position by another Caucasian male in preference to an African American female who contends that she was equally or better qualified does not in itself raise the issue of discrimination

(Hearing Examiner Decision at 2). The local board adopted the recommendation of the hearing examiner and dismissed the appeal. (Local Board Order).

STANDARD OF REVIEW

Because this case involves a local policy or dispute regarding the rules and regulations of a local board, the standard of review is that the decision of the local board shall be 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.01.05.05A.

ANALYSIS

Preliminary Issue

Among the issues raised in her appeal to the State Board, Appellant contends that White's appointment was a violation of Maryland law and of local policy and procedure in that the appointment had to be made by nomination of the superintendent and approval by the local board. The local board maintains that these arguments should be dismissed because Appellant failed to raise them before the local board. Based on our review of the record, however, Appellant included these arguments in her opposition to the superintendent's motion for summary affirmance that was submitted to the local hearing examiner prior to his

recommendation to the local board. *See* Memorandum in Opposition to Superintendent's Motion for Summary Affirmance. Therefore, Appellant did not waive her right to raise these issues on appeal to the State Board.

Alleged Violation of §6-201 of the Education Article

Appellant maintains that the superintendent violated Maryland law when he appointed John White as Communications Officer. She argues that the superintendent violated §6-201(b) which requires superintendents to nominate professional assistants for appointment by the local board. There was no recommendation by the superintendent or approval by the local board in White's case.

Appellant's confusion with regard to the applicability of 6-201(b) is understandable based on the argument raised in the superintendent's motion for summary affirmance before the hearing examiner. In that motion, the superintendent maintained that his selection of White for the Communications Officer position was a valid exercise of authority given that White was a "professional assistant" who could be assigned and transferred by the superintendent as the needs of the schools required as provided in §6-201(b)(2)(i) & (ii). This same analysis is contained in the hearing examiner's recommendation, which was adopted by the local board. Based on this reference, Appellant assumed that §6-201(b)(1)(i), which requires the superintendent's recommendation and the local board's approval for appointment of professional assistants, was applicable as well.

Section 6-201(b), however, is not applicable at all in this case because White is not a "professional assistant." Section 6-201(e) makes clear that a professional assistant must hold the appropriate certificate from the State Superintendent of Schools. *See also Venter v. Howard County Bd. of Educ.*, MSBE Opinion No. 05-22 (2005); *Walsh v. Montgomery County Bd. Of Educ.*, MSBE Opinion No 00-54 (2000). White is not certificated, nor does the Communications Officer position require certification. *See* Affidavit of Romaine V. Reid.

The relevant provision in this case is §6-201(c)(1). Section 6-201(c)(1) provides that the superintendent shall appoint clerical and other nonprofessional personnel. White falls into the class of employees considered "nonprofessional personnel." Thus, there is no requirement in §6-201(c) that White's appointment be approved by the local board.³ For this reason, we find that the superintendent acted within his statutory authority when he appointed White to the Communications Officer position, without seeking the approval of the local board.

³Appellant also claims that the school system violated 6-201(f) which provides that the local board determines qualifications, tenure and compensation of appointees. She has presented no evidence to support this claim.

Alleged Violation of Local Policy and Procedure

Appellant alleges that the superintendent's appointment of White is a violation of local board policy and procedure pertaining to professional personnel. In support of her argument, however, she relies on a policy that is not applicable to Prince George's County Public Schools. (Affidavit of Romaine v. Reid). Based on the Policies and Procedures document that is attached to Appellant's appeal, it appears that Appellant has mistakenly referenced a policy belonging to Carroll County Public Schools.⁴ Obviously, it is inapplicable here.

Appellant also alleges that local policy required the superintendent to post or advertise the Communications Officer position. Again, Appellant has not cited any policy that requires this. Thus, we find no merit to Appellant's allegations that the superintendent violated local policy and procedure.

Discrimination Claim

Appellant, an African-American female, alleges discrimination based on the fact that a younger white male was selected for a position instead of herself. Appellant believes that she should have been considered and awarded the position, which she claims is a promotion with a substantial salary increase.

As part of the record in this case, the superintendent submitted an affidavit explaining the rationale for his decision, and denying any discriminatory motive. He stated that he reviewed the background and credentials of the individuals who were then working in the school system in communications and related areas, including White and Appellant. He determined that White was the strongest candidate with the most experience in dealing with the media, despite the fact that he did not have the longest tenure with the school system out of the individuals considered. He provided a summary of White's experience and credentials.

Appellant disagrees with the superintendent's rationale and views herself as the more experienced individual. Appellant has submitted an affidavit to counter the superintendent's affidavit. Although Appellant makes a myriad of assertions in the affidavit, it lacks any credible evidence demonstrating a discriminatory motive on the part of the superintendent. *See* Affidavit of Appellant. Rather, Appellant states that she is prepared to subpoena individuals to testify about system practices and the promotion of White.

⁴Although the document itself does not indicate the school system from which it originated, the internet address on the document indicates that it came from CCPS. Using the internet address to access the policy online, demonstrates that it is, in fact, a policy from the Carroll County Public Schools.

The State Board has consistently held that an Appellant must support allegations of illegality with factual evidence. See *Ewing v. Cecil County Board of Education*, 6 Op. MSBE 818 (1995); *Stepper v. Board of Education of Anne Arundel County*, 7 Op. MSBE 324 (1996). As the State Board articulated in *Ewing*:

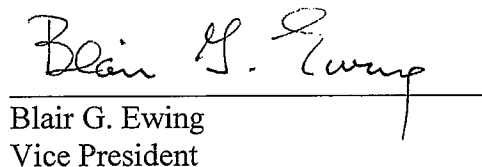
In order to defeat a motion the opposing party must demonstrate that there is a genuine dispute as to a material fact 'by producing factual assertions, under oath, based on personal knowledge.' Unsupported statements or conclusions are insufficient.

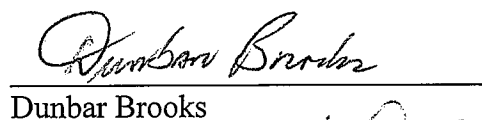
Ewing v. Cecil County Board of Education, 6 Op. MSBE at 820; See also *Hurl v. Howard County Board of Education*, 6 MSBE Op. 602 (1993) (mere allegation of discrimination without any supporting factual specifics is insufficient to sustain a claim). We therefore find that Appellant has not met her burden regarding the claim of discrimination here.

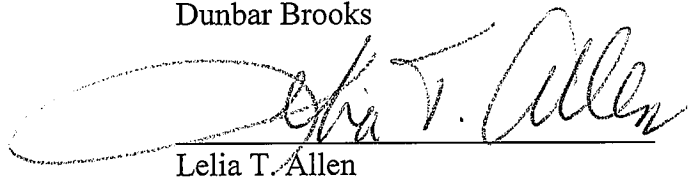
CONCLUSION

We do not find the local board's decision to be arbitrary, unreasonable or illegal. Accordingly, we affirm the decision of the local board.



James H. DeGraffenreidt, Jr.
President

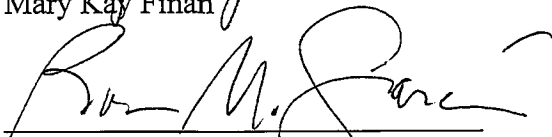

Blair G. Ewing
Vice President

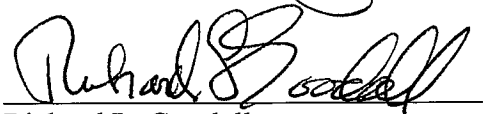

Dunbar Brooks


Lelia T. Allen

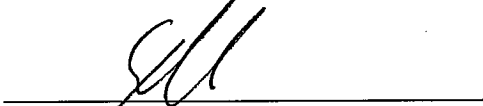
RECUSED
Charlene M. Dukes


Mary Kay Finan


Rosa M. Garcia


Richard L. Goodall


Karabelle Pizzigati


Ivan C.A. Walks, M.D.


Kate Walsh

July 15, 2008