

SUSAN GRUZS

Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-41

OPINION

In this appeal, Appellant challenges the decision of the Chief Executive Officer's Designee denying her grievance of her unsatisfactory performance evaluation for the 2006-2007 school year.

Appellant began her employment with the Baltimore City Public School System (BCPSS) on August 24, 2005 as a Resident Teacher, and was assigned to Leithwalk Elementary School. During her first year of employment with BCPSS, Appellant received a satisfactory evaluation. During her second year of employment, however, administrators perceived problems in Appellant's performance and placed her on a performance improvement plan in order to address the deficiencies. At the time of Appellant's second annual review, she received an unsatisfactory rating on her evaluation. Appellant's teaching contract was not renewed for the next school year.

Appellant, represented by her Union, filed a Level 3 grievance pursuant to the negotiated agreement between the local board and the Baltimore Teachers Union (BTU). Appellant argued that the unsatisfactory rating on her 2006-2007 evaluation was an act of retaliation against her for exercising her rights under the Family Medical Leave Act. Gerry Grant, Director of Employee and Labor Relations, acting as the Chief Executive Officer's (CEO) Designee, found that the allegations of retaliation were not grievable and denied the grievance because there were no procedural flaws in the grievance process. (Grant Letter, 9/12/07).

Thereafter, Appellant's Union representative, Neil T. Ross, advised her that the Union would not be appealing the matter to the Board of School Commissioners because there were no procedural issues to grieve. He advised Appellant to appeal to the State Board. (Ross letter, 9/18/07). Appellant appealed to the State Board, asking that her final evaluation be voided and that she be reinstated with back pay and benefits to the BCPSS. (Letter of Appeal).

The local board has filed a Motion to Dismiss the appeal for failure to exhaust administrative remedies because Appellant never appealed the grievance to the Baltimore City Board of School Commissioners.

Here, the Appellant filed a Step 3 grievance under the terms of the negotiated agreement between the local board and BTU. The CEO's designee issued a Step 3 decision denying the grievance. The negotiated agreement provides that a Step 3 decision may be appealed in writing to the Baltimore City Board of School Commissioners. (Negotiated Agreement at p.10). Appellant did not appeal the denial of the grievance to the Baltimore City Board of School Commissioners. Rather, she appealed the matter directly to the State Board of Education.

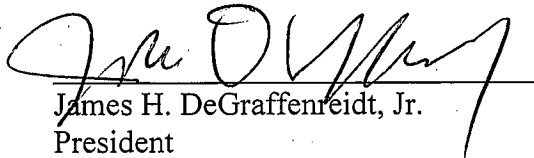
The State Board has held that an appellant must pursue and exhaust the prescribed administrative remedies in the appropriate manner. *See Kemp v. Montgomery County Bd. of Educ.*, MSBE Opinion No. 01-14 (2001); *Stewart v. Bd. of Educ. of Prince George's County*, 7 Op. MSBE 1358 (1998); *Jackson-Nesmith v. Charles County Bd. of Educ.*, 7 Op. MSBE 1320 (1998); *Hopkins v. Bd. of Educ. of Montgomery County*, 4 Op. MSBE 370 (1986).

Appellant failed to follow the grievance process available to her as provided in the negotiated agreement. Instead of appealing to the Baltimore City Board of School Commissioners, she sought an appeal before the State Board. Section 4-205(c)(3) of the Education Article requires that a matter must first be decided by the local board of education before it is submitted to the State Board on appeal. This did not happen in this case. Pursuant to COMAR 13A.01.05.03C(2), because there is no local board decision, there is nothing for the State Board to review.

We find it unfortunate that Appellant's Union representative created confusion regarding where Appellant should file her appeal of Mr. Grant's decision. Mr. Ross first advised Appellant that BTU would not be representing her in an appeal to the Baltimore City Board of School Commissioners. He then he advised her that she had a right to appeal the matter to the State Board of Education. (Ross Letter, 9/18/07). Nevertheless, despite Mr. Ross's communications with Appellant, the terms of the negotiated agreement are clear that the appeal of a Step 3 grievance decision is to the Baltimore City Board of School Commissioners.

Therefore, finding that Appellant failed to appeal the Step 3 grievance decision to the Baltimore City Board of School Commissioners, it is this ___ day of August, 2008, by the Maryland State Board of Education,

ORDERED, that the appeal referenced above be and the same is hereby dismissed for failure to exhaust administrative remedies.


James H. DeGraffenreidt, Jr.
President

Blair G. Ewing

Blair G. Ewing
Vice President

Dunbar Brooks

Dunbar Brooks

Lelia T. Allen

Lelia T. Allen

Charlene M. Duker

Charlene M. Duker

Mary Kay Finan

Mary Kay Finan

Rosa M. Garcia

Rosa M. Garcia

Richard L. Goodall

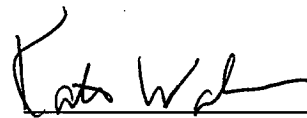
Richard L. Goodall

Karabelle Pizzigati

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Ivan C.A. Walks

Ivan C.A. Walks



Kate Walsh

August 26, 2008