

STACY MESSICK AND
STEPHANIE MOSES

Appellant

v.

WICOMICO COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-14

OPINION

INTRODUCTION

The Appellants filed an appeal with this Board asking that the decision of the Wicomico County Board of Education (local board) dismissing their appeal be reversed. The local board filed a Motion to Dismiss the appeal before this Board. The Appellants filed a Response and the local board filed a Reply.

FACTUAL BACKGROUND

While the appeal filed herein contains several types of complaints¹, the gravamen of the appeal involves two memos about the Superintendent's expectations for the Appellants' job performance that the Superintendent wrote and discussed with the Appellants. (Ex.'s 1 and 2 attached to the appeal). The Appellants filed an appeal to the local board asking that the memos be removed from their personnel files. All parties to the proceeding before this Board agree that, during the pendency of their appeal before the local board, the Superintendent removed the memos from the Appellants' personnel files. As a result the local board moves to dismiss this appeal as moot.

STANDARD OF REVIEW

On the issue of whether an appeal shall be dismissed as a matter of law, the State Board exercises its independent judgment.

¹ The appeal contains allegations and arguments about alleged age and sex discrimination. All parties agree that those legal issues are not ripe for review before this Board. Also, the Appellants have been terminated. The issues related to the termination will likely be the subject of later appeal to this Board.

LEGAL ANALYSIS

The Appellants assert that their appeal is not moot because there is an existing controversy between the parties and that this Board can provide an effective remedy. To support that assertion, they point out that although the Superintendent removed the memos from the Appellants' personnel files, he retained them "in a separate folder" in his office. (Reply at 5). The local board does not dispute that the Superintendent retained the memos in a file in his office. The Appellants argue, therefore, that the appeal is not moot because the Superintendent could place the memos in their personnel files in the future. They want the memos expunged from all files and destroyed.

The local board points out that while the Appellants have a right to contest the content of their own personnel records, they have shown no legal basis for their claim to control the content of the Superintendent's own files. Further, the Appellants' speculation that the memos might be placed in their files at some undetermined time in the future does not save this issue from being moot. "The possible existence of a future live controversy does not necessarily preclude the current action from being moot." *Washington County Board of Education v. Washington County Teachers Association*, MSBE Op. No. 11-05 (2011). Indeed, an "actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Steffel v. Thompson*, 415 U.S. 452, n.10 (1974); *Honig v. Doe*, 484 U.S. 305, 317 (1988). The memos at issue have been removed from the Appellant's personnel files. There is no live controversy. This appeal is moot.

The Appellants also asserted in their appeal that, at the time they were called to meet with the Superintendent to discuss the content of the memos, "they were not provided with the allegations against them and an opportunity to be heard." (Response at 6-7). They claim that under due process law they had a right to present witnesses and evidence at that meeting. *Id.*

Due process requirements arise when a party is to be deprived of a property or liberty interest. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 538 (1985). We agree with the local board that the memos did not deprive Appellants of a property interest. The memos were about performance issues, but were not in a form of a reprimand, and did not generate a disciplinary action. They were the basis of a boss-to-employee discussion about job expectations. It would be far outside the boundaries of due process law to find that a meeting with one's boss to discuss performance issues requires an evidentiary type hearing to be conducted.

CONCLUSION

For the reasons stated above, we grant the local board's Motion to Dismiss the appeal based on untimeliness.



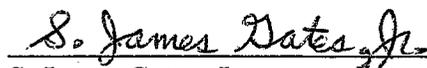
James H. DeGraffenreidt, Jr.
President



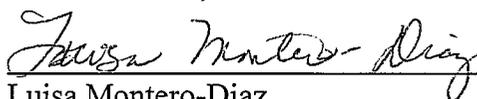
Charlene M. Dukes
Vice President



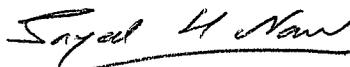
Mary Kay Finan



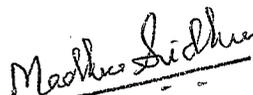
S. James Gates, Jr.



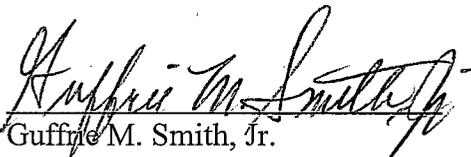
Luisa Montero-Diaz



Sayed M. Naved



Madhu Sidhu



Guffie M. Smith, Jr.

absent

Donna Hill Staton



Ivan C.A. Walks



Kate Walsh

April 24, 2012