

ROBERT GREEN,

Appellant

v.

BOARD OF EDUCATION OF
PRINCE GEORGE'S COUNTY,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-46

OPINION

INTRODUCTION

This appeal challenges the local board's decision not to employ the Appellant as the football coach at Oxon Hill High School for the 2011-2012 school year. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant responded to the local board's Motion and the local board submitted a reply.

FACTUAL BACKGROUND

The Appellant served as the head football coach for Oxon Hill High School (Oxon Hill) for the 2009-2010 and 2010-2011 school years.¹ (Motion, Ex.C). For each year Appellant served as coach, he had an executed Appointment and Authorization Form for Athletics which is the written agreement for the coaching position. *Id.*

Appellant's son also attended Oxon Hill and was the quarterback for the football team. *Id.* For the 2011-2012 school year, the Appellant's son transferred from Oxon Hill to Crossland High School to participate in the Heating Ventilation and Air Conditioning (HVAC) program which was not offered at Oxon Hill. Appellant's son was a senior and the Appellant wanted to transfer him out to give him the opportunity to obtain a technical certification in the event he was unable to obtain a football scholarship for college. *Id.*

As football coach, Appellant considered the football team of approximately 28 players to be small in number. He attributed this to the athletic eligibility rule implemented by the school system that requires students to maintain an overall grade point average of a 2.0 with no "E" grades. *Id.* The Appellant became concerned about the dwindling numbers of players each year, noting that the eligibility policy affected many students who, as a result, could not play football. *Id.* Numerous times during the 2010-2011 school year, the Appellant communicated his concerns about the policy and the team size to Earl Hawkins, the Superintendent of Athletics. Mr. Hawkins eventually advised Appellant to write to the principal at Oxon Hill and explain the

¹ Appellant is also a tenured health education teacher for Prince George's County Public Schools, where he has been employed as a teacher since 2003. *Id.*

problems he was encountering with efforts to ensure that Oxon Hill would have a team for the 2011 football season. *Id.*

On July 12, 2011, Appellant emailed the principal of Oxon Hill, Jean-Paul Cadet, and expressed his concerns about the eligibility rule and not having sufficient numbers of players to field a team for the football program at the school for the 2011-2012 school year. *Id.*

On August 12, 2011, one day before the start of the new football season, Principal Cadet and the vice-principal met with Appellant to discuss the football program. *Id.* At that meeting, Appellant advised that his son had transferred out of Oxon Hill and would no longer be quarterback. Appellant claims that Principal Cadet chastised him for this decision and stated that he was not looking out for the best interests of the Oxon Hill football program. Principal Cadet advised Appellant that he had received a written statement from a parent alleging that Appellant had told him to transfer his son to another school if he wanted to play football.² Principal Cadet then removed Appellant from his coaching position. *Id.* Another individual was appointed to the football coach position. (Motion, Ex.1).

On October 21, 2011, Principal Cadet emailed the Appellant regarding the coaching position.³ *Id.* He stated the following:

I responded to your question about the football position on August 12, 2011, but please let me reiterate, the Football Coaching position is an annual position. You only signed a contract for the 2010-2011 school year. You did not sign a contract for this school year (2011-2012) therefore you were not fired from the coaching position because you actually never signed paperwork to hold the position for this school year.

Appellant appealed Principal Cadet's decision to the Interim Superintendent on January 12, 2012.

On September 17, 2012, Dr. Alvin Crawley, Interim Superintendent, issued a decision in the case. (Motion, Ex.F). First, he found that the appeal was untimely because Appellant had received notice that he was not being rehired as football coach on or about August 12, 2011, but he did not submit his appeal until January 12, 2012, four months after the appeal deadline.⁴ *Id.* Second, he found that the school principal acted reasonably when he decided not to renew the coaching contract for the 2011-2012 school year based on Appellant's conduct informing students and parents that Oxon Hill would not have a viable football program for the upcoming school year and encouraging football team members to seek transfers to other schools. *Id.* The Interim Superintendent stated that such actions were "completely inconsistent with the

² Appellant vehemently denies this allegation.

³ Whatever communication there may have been from the Appellant to Principal Cadet that prompted this response is not a part of the record.

⁴ The Interim Superintendent stated that he was denying the appeal on the basis of untimeliness, but that he would address the merits of Appellant's claims without waiving that determination. *Id.*

responsibility delegated to [Appellant] to lead and build the football program at Oxon Hill High School.” *Id.* Third, he found that there was no violation of COMAR 13A.06.03.04B(1),⁵ which requires school systems to employ as coaches only teachers or certificated professional educators employed by the local board, because a temporary coach was hired in accordance with COMAR 13A.06.03.04B(2). He further found that there was no violation of a 2006 Settlement Agreement between the school system and the Prince George’s County Educator Association for the timing of the Principal Cadet’s decision which was one day prior to the start of the football season. *Id.*

Appellant appealed the Interim Superintendent’s decision to the local board on September 25, 2012. (Motion, Ex.E). On September 12, 2013, in response to the appeal, Dr. Kevin Maxwell, Chief Executive Officer, submitted a brief to the local board. (Motion, Ex.C). On January 9, 2014, the local board heard oral argument. (Motion, Ex.A).

On February 5, 2014,⁶ the local board issued an Order in the case upholding the Interim Superintendent’s decision to remove Appellant from the coaching position for the 2011-2012 school year. (Motion, Ex.1). Although the local board agreed with the ultimate outcome, it modified Dr. Crawley’s decision stating as follows:

The Board finds that the determination letter issued by the Interim Superintendent on September 17, 2012, to Lewis A. Robinson, PGCEA, includes findings that do not have sufficient support in the record. Specifically, the assertion that Mr. Green encouraged students who were members of the Oxon Hill High School to seek transfers to other schools and informed them that there was not going to be a viable football program at Oxon Hill is not supported by credible evidence. In addition, the statement in the letter that over 50 students joined the program at Oxon Hill during School Year 2011/2012 clearly has no support in the record. Because of these errors, if this letter has been placed in Mr. Green’s personnel file along with any other documentation that may be in his personnel file regarding this appeal the Order of the Board must also be included in his personnel file. Due to the lack of credible evidence, Mr. Green’s name is cleared of the allegations made by the Interim Superintendent to support his removal as Head Football Coach.

Id. Despite these findings, the local board explained that it was upholding the non-renewal decision because the Appellant was not legally entitled to the position and the principal did not need to give any reason to the Appellant for deciding not to reappoint him. *Id.* The board noted that Appellant was free to apply for the position should he desire to do so and that school system

⁵ The Interim Superintendent’s decision cites to COMAR 13A.06.04B in error.

⁶ We note that there are large unexplained time lapses from the date the Appellant appealed Principal Cadet’s decision to the date of the Interim Superintendent’s decision and also between the date Appellant appealed to the local board and the date the local board rendered its decision.

personnel could not consider the reasons given by Principal Cadet nor the Interim Superintendent as a basis to exclude Appellant from the position.⁷ *Id.*

This appeal to the State Board followed.

STANDARD OF REVIEW

In reviewing a local board's decision of its local policy, the decision of the local board is presumed to be *prima facie* correct. COMAR 13A.01.05.05A. The State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable or illegal. *Id.* The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05D.

LEGAL ANALYSIS

The Appellant maintains that the local board arbitrarily and unreasonably removed him from the football coach position, and that the removal has tarnished his reputation and caused him to lose a monetary benefit. The local board maintains that its decision not to re-appoint Appellant as football coach should be upheld because Appellant had no tenure in the position.

We first point out that the parties have used various language to describe the action taken by the school system in this case regarding the Appellant's employment as a football coach. They have referred to it as a removal, a non-renewal, and a decision not to re-appoint. In order to resolve the case, we must first address the type of employment relationship that existed between the parties regarding the football coach position.

In Prince George's County Public Schools (PGCPS), coaching positions are one year assignments that are separate and apart from any teaching position that an individual may have with the school system. PGCPS requires its coaches to execute an "Appointment and Authorization" agreement which sets forth the assignment, compensation, minimum hours, and various other expectations. The agreement states that the coaching "assignment shall be for one school year only" and that the "applicant must apply annually for the position." (Motion, Ex.C). Appellant executed two such agreements with PGCPS, one for the 2009-2010 school year and one for the 2010-2011 school year. *Id.* In order to continue in the coaching position for the 2011-2012 school year, Appellant would have had to apply for and be hired as coach, and would have had to execute a new one year agreement. This did not occur.

Appellant maintains that he had an expectation of continued employment as football coach because he completed coaching the fall 2010 season, completed the off-season training during the school year, held study halls during the school year to help students qualify for team eligibility, and completed the summer work-out program up to the day before practice started for the fall 2011 season. There is no discussion in the record whether such duties were expected as part of the coaching responsibilities. We note, however, that the agreement is fairly open ended in terms of the time a coach must dedicate to the position and does not specify job requirements.

⁷ The local board did not address the timeliness issue.

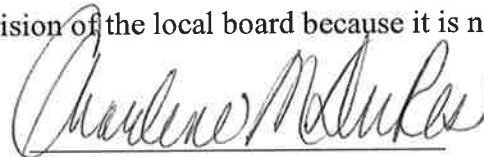
It requires no less than 40 hours, which leaves open the likelihood that it encompasses activities beyond the fall season. (See Motion, Ex.C).

Despite any football activities performed by Appellant during the school year, the terms of the agreement secured no interest in re-employment as football coach for the following school year and no possible entitlement to the position. The position is not one to which tenure attached. Rather, the terms of the agreement are clear that the coaching position was a one year assignment for which Appellant needed to reapply if he wished to continue serving in that capacity. Appellant had no legal interest in the position beyond the one year term. See, e.g. *Board of Regents v. Roth*, 408 U.S. 564 (1972).

Appellant believes that his reputation was damaged based on the statements attributed to him by the principal and Interim Superintendent, and because he no longer holds the coaching position. In our view, the local board addressed and corrected any damage to his reputation by publicly discounting any references made by the Interim Superintendent in his decision about the reasons given for the decision not to renew the contract and by requiring that the local board Order be made a part of Appellant's personnel file to address any improper references contained therein. We note that the local board's decision is a public document, as is this decision.

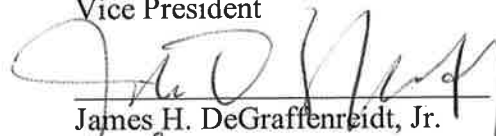
CONCLUSION

For all of these reasons, we uphold the decision of the local board because it is not arbitrary, unreasonable or illegal.


Charlene M. Dukes
President

Absent

Mary Kay Finan
Vice President


James H. DeGraffenreidt, Jr.



Linda Eberhart

Absent

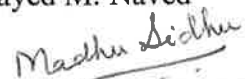
S. James Gates, Jr.

 -mup
Larry Giampio

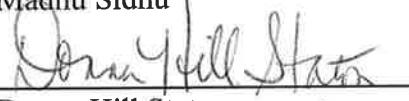

Luisa Montero-Diaz



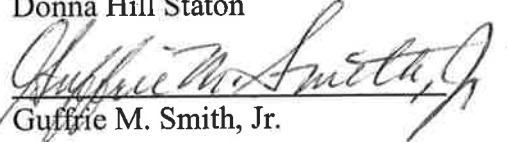
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffie M. Smith, Jr.

August 26, 2014