

BAYANI LIBIT,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-29

OPINION

INTRODUCTION

The State Board received a “Petition” from Mr. Libit requesting that the Board take action in response to alleged fraudulent activity involving student grades by the former principal of James McHenry Elementary/Middle School #10 (“James McHenry”). The Baltimore City Board of School Commissioners (“local board”) filed a Motion to Dismiss.

FACTUAL BACKGROUND

Beginning in June 2013, Mr. Libit sent correspondence to Tisha S. Edwards, former Interim Chief Executive Officer for Baltimore City Public Schools (“BCPS”), raising concerns about alleged fraudulent activity by the former principal of James McHenry. Mr. Libit alleged that the principal had listed seven courses on Mr. Libit’s SMS schedule that he had not taught, and that she issued fraudulent grades under Mr. Libit’s name to the students supposedly enrolled in those courses. (Libit Emails 6/13/13). Ms. Edwards thanked Mr. Libit for bringing the matter to the attention of the school system and advised that the central office staff would be taking action on his concerns. (Edwards Email 6/13/13).

In July 2013, Mr. Libit reported the matter to the Baltimore City Fraud Hotline. By letter dated August 15, 2014, Donna Hawkins, Manager of the Staff Investigations Unit, advised Mr. Libit as follows: “The Staff Investigations Unit has completed a thorough investigation of the allegation. After careful review and consideration, the allegation is ruled substantiated.” Mr. Libit reported that during a conversation with Ms. Hawkins, she advised him that she could not provide him with a copy of the investigation report, but that the principal had been removed from her position.

On September 5, 2014, Mr. Libit wrote to Gregory E. Thornton, Chief Executive Officer for BCPS. He requested his “assistance to rectify this fraud committed against [his] person” and against the students and their parents given that the Staff Investigations Unit had found his fraud complaint to be substantiated. Mr. Libit wrote Dr. Thornton again on October 15, 2014. Dr. Thornton replied to Mr. Libit by letter dated October 29, 2014, stating that Ms. Edwards had “initiated an investigation of [his] allegations with the Office of Staff Investigations in July 2013, and that appropriate actions were taken, based on their findings.”

On November 13, 2014, Mr. Libit responded to Dr. Thornton, requesting more specificity about what actions were taken on his complaint. He also noted that it had been more than one year since he had initiated a complaint about the matter. Mr. Libit requested that Dr. Thornton take the following actions:

- File a criminal case against the former principal of James McHenry and other school officials who were responsible in the commission of the fraudulent acts;
- Initiate the cancellation of the licenses of the responsible officials;
- Dismiss the school officials involved;
- Inform the parents of the students who received improper grades;
- Invalidate the grades received by the students involved and provide the students remediation;
- Remove from Mr. Libit's permanent record the 7 subjects listed on his SMS schedule that he did not teach; and
- Other legal acts deemed necessary under the circumstances.

On December 27, 2014, Mr. Libit wrote the State Superintendent of Schools requesting her assistance with the alleged fraud, as well as his non-renewal from his teaching position. Mr. Libit was advised that the State Superintendent had to refrain from intervening in the matters discussed in his letter because they were matters in litigation. Specifically, Mr. Libit had already reported the alleged fraudulent activity to the Baltimore City State's Attorney. In addition, Mr. Libit's non-renewal case had already proceeded beyond the State Board which approved the non-renewal. *See Libit v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 14-33 (2014). The matter was under review by the Circuit Court. Mr. Libit was also advised of the §4-205 appeal process for resolving disputes with the local school system. (Kameen Letter, 1/14/15).

On January 19, 2015, Mr. Libit wrote to Dr. Sauls, Chair of the Baltimore City Board of School Commissioners, reiterating his prior correspondence to Ms. Edwards and Dr. Thornton regarding the alleged fraud. Mr. Libit received a response from the local board's executive assistant that stated: "Your complaint was forwarded to the CEO's office. I believe they already gave you a response." (Email from Amelga, 3/9/15). On March 11, 2015, Mr. Libit contacted Dr. Thornton's office requesting a copy of the response referenced in the email. By letter dated March 24, 2015, Dr. Thornton responded by producing his October 29, 2014 letter advising that there had been an investigation and "appropriate actions" were taken.

On March 31, 2015, the State Board received a "Petition" from Mr. Libit requesting that the Board take essentially the same actions he requested in his November 13, 2014 letter to Dr. Thornton. This included directing the local board to file a criminal case against the former principal of James McHenry; initiating cancellation of the licenses of responsible school officials and dismiss them from their positions; informing the parents of the affected students; invalidating the allegedly fraudulent grades and providing remediation to the students; changing Mr. Libit's unsatisfactory evaluation; and removing the seven subjects that he did not teach from the school system's records.

Counsel responded on the Board's behalf explaining to Mr. Libit that he had already reported the allegations regarding fraudulent activity to the Baltimore City State's Attorney's office, and that BCPS had removed the former principal from her position at the school and that she was no longer a BCPS employee. With regard to the request to change student grades and

provide remediation, we advised that it would be inappropriate for the State Board to become involved in the matter as student grades are a matter of local concern and there was no local board decision to review. We forwarded a copy of Mr. Libit's "Petition" and our response to counsel for the local board for handling. On April 14, 2015, our office received correspondence from BCPS counsel that Ms. Edwards had addressed Mr. Libit's concerns, and that an investigation was conducted and concluded. (Letter from BCPS Counsel, 4/14/15).

Thereafter, Mr. Libit wrote again to the State Board. For the purpose of this matter we will consider this final filing as a Petition for Declaratory Ruling filed pursuant to Education Article §2-205.

STANDARD OF REVIEW

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.05E.

ANALYSIS

Mr. Libit petitions this Board to direct the local board to take various actions in response to his complaints. We address each request below.

Initiation of Criminal Case

Mr. Libit requested that the State Board direct the local board to initiate a criminal case against the school employees involved. The State Board does not have jurisdiction to do so. If Mr. Libit wishes to press charges against the former principal or other school officials, it is his prerogative to do. We note that Mr. Libit previously represented that he had reported the fraudulent activity to the Baltimore City State's Attorney.

Revocation of Certification

With regard to Mr. Libit's request to revoke the certification of BCPS employees, such action is governed by COMAR 13A.12.05 and comes under the jurisdiction of the State Superintendent, not the State Board. A certificate may be revoked only for the reasons set forth in the regulation after the State Superintendent receives notice of charges against the certificate holder from a local superintendent, administrator of a nonpublic school or the Assistant State Superintendent of Certification and Accreditation. COMAR 13A.12.05.02 & .03. The revocation process is set forth in the regulation and is not subject to an appeal process before this Board.

Dismissal of School System Employees

Mr. Libit also asks that the local board dismiss the school officials involved in this matter. We point out that BCPS advised Mr. Libit that the principal was removed from her position. To the extent that he seeks the dismissal of other BCPS employees, this Board has ruled consistently that parents' standing to appeal a personnel decision made at the local level is very limited. *See Thompson v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-43 (2012); *Rafael Y. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-40 (2007); *Schlamp v. Howard County Bd. of Educ.*, MSBE Op. No. 04-04 (2004); *Elder v. Prince George's County Bd. of*

Educ., 7 Op. MSBE 304 (1996). As we explain in, *Kristina E. v. Charles County Bd. of Educ.*, MSBE Op. No. 15-27 (July 28, 2015):

We “base that conclusion on the fact that the employment relationship is between two parties, the local school system and the employee and on the law that establishes that personnel decisions are confidential. Md. Gen. Prov. Code Ann. §4-311.” Under the law of standing, an individual “must show some direct interest or ‘injury in fact, economic or otherwise.’” *Taylor v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-32 (2007), quoting *Adams, et al. v. Montgomery County Bd. of Educ.* 3 Op. MSBE 142, 149 (1983). Thus, while a parent may have an interest in the decision whether or not to discipline a teacher or staff that interest is not the type of “direct interest” required for standing. Moreover, a parent may feel aggrieved by a personnel decision, but again, that is not the type of “injury in fact” that confers standing.

This same analysis applies to Mr. Libit who, like a parent, is not a party to the employment relationship between the school system and its employees. Only the teacher or staff who is the subject of the personnel decision has the “direct interest” or suffers the “injury in fact.”

Student Grades

Mr. Libit has also requested that the local board inform the parents of the students regarding the improper grades, invalidate the grades, and provide remediation to the students. As stated above, in order to have standing to bring an action, an individual must show some “direct interest” in the matter or an “injury in fact.” *Id.* The issue of the student grades is between the local board, the students and their parents. Although Mr. Libit had a connection to the grades in some way, he has not shown a direct interest or injury in fact that would give him standing to challenge them. *See Vermillion Teachers’ Ass’n v. Vermillion Local Sch. Dist. Bd. of Educ.*, 648 N.E.2d 1384, 1388 (Ohio Ct. App.Ct. 1994)(teacher lacked standing to challenge local board’s decision to change student grade).

We point out that Dr. Thornton did respond to Mr. Libit’s inquiry about the actions taken on his fraud complaint. In an October 29, 2014 letter, Dr. Thornton advised Mr. Libit that appropriate actions had been taken by the school system based on the findings of the investigation. Dr. Thornton did not elaborate, but that may be because as of the end of the 2012-2013 school year Mr. Libit was no longer a BCPS employee and the school system was thereafter unable to share confidential student record information with him. It would have been better, however, for Dr. Thornton to have acknowledged Mr. Libit’s assistance in bringing the fraud to light and to have explained why he could not release any additional information. In addition, the school system could have responded more timely to Mr. Libit’s various complaints throughout the process.

Unsatisfactory Evaluation

Mr. Libit has also requested that his unsatisfactory evaluation be changed. Mr. Libit first received an unsatisfactory evaluation from Principal Laura Moore during the 2011-2012 school

year when he taught at the Institute of Business and Entrepreneurship (“IBE”). IBE is now closed. Apparently as a result of that unsatisfactory evaluation, on June 28, 2012, Mr. Libit received a letter of non-renewal from the Human Capital Office. Then, without explanation, on June 29, 2012, he received a renewal letter. Thus, he was assigned to James McHenry Elementary/Middle School for the 2012-2013 school year. During the school year, Mr. Libit filed a grievance against the principal, Ms. Grace Yador, because, for a variety of reasons, he believed his schedule violated the Collective Bargaining Agreement. He received an unsatisfactory evaluation from Principal Yador in the 2012-2013 school year. On or about March 22, 2013, he was informed that he would not be renewed for the 2013-2014 school year.

Sometime during 2013, Mr. Libit came to believe that the principal was giving students grades under Mr. Libit’s name in classes that he did not teach. In July 2013, Mr. Libit filed a fraud hotline complaint against Principal Yador alleging grade fraud. The school system investigated, substantiated the complaint, and the principal was apparently terminated.

Mr. Libit appealed his non-renewal to the State Board. In that appeal, Mr. Libit made a broad assertion that he received the unsatisfactory evaluation from Principal Yador for filing a grievance, but in his *pro se* appeal document he did not back up that claim with evidence of retaliation and in the subsequent additional filings by his lawyer (also labeled “appeal”) there was no mention of retaliation. In addition, in his *pro se* appeal document he called for an investigation into the fraud committed by the principal, but neither he nor his counsel connected the alleged fraudulent conduct of the principal to his unsatisfactory evaluation or his non-renewal. In fact, in the “appeal” that his counsel filed on his behalf, the alleged fraud issue is not mentioned at all. When we analyzed the issues in the case, we analyzed only those issues that his lawyer presented, not every allegation contained in the *pro se* appeal. We did so because this Board has held that it will not sift through the case record to make an appellant’s argument on appeal. *Hill-Gilchrist v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 12-52 (2012); *Shumante v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 10-12 (2010), citing *Van Meter v. State*, 30 Md. App. 406, 408 (1976). In the non-renewal case before the State Board, it was Mr. Libit’s burden to develop and set forth his arguments concerning his unsatisfactory evaluation and to support those arguments with evidence. He failed to do so.


Here Mr. Libit requests that the State Board order that his unsatisfactory evaluation be changed. Under the principle of *res judicata*, where a “second suit is between the same parties and is upon the same cause of action, a judgment in the earlier case...is an absolute bar, not only as to all matters litigated, but also matters which could have been litigated.” *MPC, Inc. v. Kenny*, 279 Md. 29, 32 (1977). As stated above, the record on appeal in the non-renewal case contains allegations about retaliation and about the alleged fraudulent grades, but those were bald allegations, not claims fully developed with evidence. They could have been and should have been fully litigated in the non-renewal case. They were not. In our view, *res judicata* bars Mr. Libit from reasserting those claims here. Moreover, the non-renewal case is now on appeal to the Court of Special Appeals. That is now the forum in which Mr. Libit can assert error.

Personnel Record

Finally, Mr. Libit requests that the local board remove from his permanent record the 7 subjects listed on his SMS schedule that he did not teach. It is our understanding that the school system does not retain such records and that they are not a part of Mr. Libit’s personnel file.

CONCLUSION

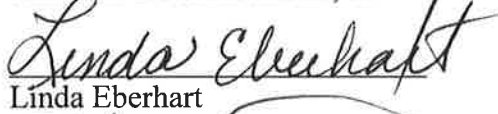
For all of the reasons stated above, we dismiss Mr. Libit's "Petition."

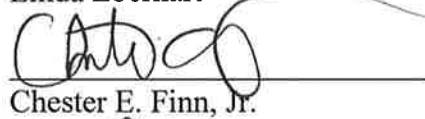

Guffie M. Smith, Jr.
President

Absent

S. James Gates, Jr.
Vice-President


James H. DeGraffenreidt, Jr.


Linda Eberhart


Chester E. Finn, Jr.

Absent

Larry Giammo

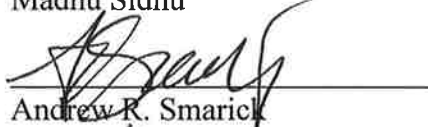

Michele Jenkins Guyton

Absent

Stephanie R. Iszard

Absent

Madhu Sidhu


Andrew R. Smarick

Absent

Laura Weeldreyer

August 25, 2015