

JANET WINTER,

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-33

OPINION

INTRODUCTION

The Appellant, Janet Winter, filed an appeal of the Anne Arundel County Board of Education's (local board) decision not to hire her as a lacrosse coach. The local board filed a Motion for Summary Affirmance of the Appellant's appeal, arguing that its decision was not arbitrary, unreasonable, or illegal. The Appellant filed a Response and the local board responded.

FACTUAL BACKGROUND

The Appellant has been a certified business teacher at Glen Burnie High School (GBHS) for 22 years and an employee of Anne Arundel County Public Schools (AACPS) for 33 years. During her time teaching, the Appellant served as a volunteer and assistant girls' lacrosse coach before becoming the head girls' lacrosse coach at GHBS during the 2011 and 2012 seasons. (Affidavit of Janet Winter).

After the 2012 season, the Appellant was given and signed a "Needs Improvement" coaching evaluation (Coaches Evaluation Form, 2012). The evaluation noted that though the Appellant was "Effective" in some areas of coaching, she "Needs Improvement" in others. *Id.* At the end of the evaluation was a comment voicing displeasure with the Appellant's communication with the school administration over problems with the team. *Id.* The evaluation stated how several girls' lacrosse team members complained directly to the administration about their dissatisfaction with the program staff and that "[t]he administration questions the knowledge and ability of the staff to reach the maximum potential of the athletes, [and] there is a lack of innovation in the coaching techniques and methods witnessed by the administration." *Id.* The Appellant claims she signed the evaluation on or about May 25, 2012 without looking at it too closely, and that she never received a copy until later in 2013. (Affidavit of Janet Winter).

The Appellant sought the same head coaching position again in 2013, but was not interviewed and an emergency coach was hired instead. The Appellant appealed the athletic director's decision. She did not apply for the head coaching position for the 2014 season because of the ongoing appeal. The local board ultimately denied the Appellant's appeal.¹

¹ This local board opinion was not a part of the record.

The Appellant was the only teacher who applied to the head coaching position for the 2015 season. She was interviewed on January 15, 2015, but not hired. The school system instead hired emergency coaches who were not teachers. One emergency coach announced her hire on her Facebook page on the same day as the Appellant's interview. It is not clear from the record when the other candidates were interviewed and offered the position. School officials informed Appellant of their decision on January 21, 2015.

On February 18, 2015, the Teacher's Association of Anne Arundel County (TAAAC) filed an administrative appeal on the Appellant's behalf. On June 5, 2015, the Superintendent's designee denied the Appellant's appeal without a hearing or meeting. The Superintendent's designee decided the Appellant failed to establish by a preponderance of the evidence that the principal's decision was arbitrary, unreasonable, or illegal. (Appeal). The Superintendent's designee also noted that "AACPS affords principals wide latitude and discretion to exercise their best judgment and leadership skills to meet operational requirements." *Id.*

On June 10, 2015, the Appellant appealed to the local board. On February 4, 2016, the local board issued an Opinion and Order upholding the Superintendent's decision that the hiring decision was consistent with AACPS policies and regulations. The Appellant appealed to the State Board, requesting that she both be reinstated as head girl's lacrosse coach and that she receive a coaching stipend for the 2015 season.

STANDARD OF REVIEW

In cases involving a decision of a local board concerning a local policy, the local board's decision is 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.

LEGAL ANALYSIS

The Appellant challenges the local board's decision on two grounds: (1) GBHS's coaching evaluation of the Appellant after the 2012 lacrosse season was invalid and unfair, and thus should not have influenced the 2015 decision to not hire her as head coach; and (2) GBHS failed to abide by the policies in the AACPS Athletics Handbook and COMAR by not giving her, as a certified teacher, priority in the hiring process. (Opposition, 8-12).

2012 Season Evaluation

The Appellant raises a challenge to her 2012 evaluation, a copy of which she received in 2013. This appeal was not filed until 2015. The State Board has ruled that evidence cannot be challenged if it has remained unchallenged too long. *Williams v. Prince George's County Board of Education*, MSBE Op. No. 16-20 (2016). In *Williams*, the State Board found that a teacher could not challenge her negative 2013-2014 teaching evaluation in 2016 because she had no reasonable excuse for why she waited over a year to contest it. *Id.* The State Board has ruled that "time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice of the decree." *See Scott v. Board of Educ. of Prince George's County*, Op. No. MSBE 3-139 (1983); *Veronica v. Frederick County Board of Education*, MSBE Op. No. 16-08 (2016).

Although the Appellant appealed the decision not to hire her in 2013, she admitted that she did not pursue her administrative remedy challenging her 2012 evaluation beyond her appeal to the local board (Opposition, at 7). Accordingly, the Appellant has waived the right to challenge the evaluation before the State Board now.

Failure to Follow Regulations and Policies

COMAR 13A.06.03.04B(2) states that “if no acceptable and qualified coaches are available from the teachers or certifiable professional educators employed by the local board of education, [a] temporary emergency coach may be employed...” Furthermore, Article II, Section 5F of the AACPS Athletic Handbook states that:

“In accordance with COMAR, only certified teachers and professional educators and MPSSAA credential coaches will be interviewed in the first round of the selection process. After the teacher ranks have been exhausted, then, and only then, will temporary (emergency) coaches receive an interview.”

The AACPS Athletic Handbook provides that certified teachers have priority in applicant interviews. *See* Article II, Section 5F. However, the Handbook also states that “final selection of all athletic personnel shall be made by the school principal.” *See* Article II, Section 5(G). Although COMAR states that emergency coaches can be hired if there is no “acceptable or qualified” teacher applying for the position, what constitutes an “acceptable” candidate has not been defined. COMAR 13A.06.03.04B(2).

The school’s principal generally has discretion to decide whether a candidate is “acceptable” for a coaching position. *See Moore v. Baltimore City Board of School Commissioners*, MSBE Op. No. 5-26 (2005). Certified teachers have been overlooked for coaching positions because the school principal doubted the teachers’ ability to be acceptable for the position. *Id.* at 3. In a recent case, the State Board upheld the local board’s decision not to employ a tenured health education teacher for a head coaching position for a high school football team even though he had held the position in the past. *Green v. Prince George’s County Board of Education*, MSBE Op. No. 14-46 (2014). We stated that past coaches have “no legal interest in the position beyond the one year term” season for which they were hired. *Id.* at 5. Having had the coaching position in the past is not sufficient to be acceptable for the position in the future. *Id.*


Here, the Appellant mistakenly views “qualified” as being the same as “acceptable and qualified.” (Opposition, 11-12). She argued that she was the only qualified teacher applying for the position, and thus the only acceptable candidate. *Id.* Emergency coaches can only be hired if no acceptable and qualified coaches are available to fill the vacancy. *Id.* While it is true that the Appellant is “qualified” to coach because she is a certified educator with relevant coaching experience, that does not ensure that she is also “acceptable.” The GBHS Principal, and the Superintendent by extension, have discretion to decide whether an applicant can be deemed “acceptable” for a coaching position. Given the Appellant’s poor coaching evaluation from her last season, it was not unreasonable for the local board to find her unfit for the girls’ lacrosse head coach position. The Appellant has the right to continue to reapply for the coaching position

every season, but that does not mean the school system must consider her to be an acceptable candidate given her past performance as a coach.

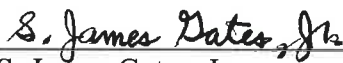
According to AACPS policy, the Appellant should have had her interview before the other candidates for the 2015 season because she was the only teacher candidate. Although the record is not entirely clear on this point, it appears that other non-teacher candidates were interviewed prior to Appellant. The *Accardi* doctrine requires that a government agency “scrupulously observe rules, regulations, or procedures which it has established.” *Glover v. Baltimore City Bd. Of Sch. Comm’rs*, MSBE Op. No. 15-25 (2015) (citing *Accardi v. Shaughnessy*, 347 U.S. 260 (1954)). In order to strike down an agency’s decision under *Accardi*, a complainant must show that he or she was prejudiced by the agency’s failure to follow its rules, regulations, or procedures. *Id.* (citing *Pollack*, 274 Md. at 504). However, the Appellant has not explained in her findings how she was prejudiced by not being interviewed first. Thus, she has not met her burden to show that the local board’s decision should be reversed on *Accardi* grounds.

CONCLUSION

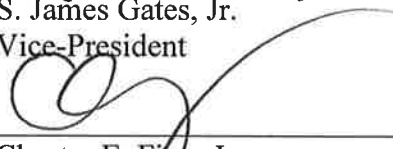
For the reasons stated, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.



Andrew R. Smarick
President



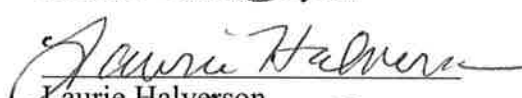
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July 26, 2016