

JOSEPH HEANEY,

Appellant

v.

NEW BOARD OF SCHOOL
COMMISSIONERS OF BALTIMORE CITY,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-17

OPINION

In this appeal, a Baltimore City Public School principal who received an overall “satisfactory” evaluation asserts (1) that the “unsatisfactory” ratings he received for criteria #1 and #13 on his annual performance evaluation for 1997-98 are inaccurate, as well as the comments pertaining to criteria #1, #3, #8, #9, and #13; (2) that improper data was utilized in the evaluation; (3) that he was not involved in the evaluation process; and (4) that there was poor communication between him and the Area Executive Officer (“AEO”) throughout the evaluation process. The local board has filed a Motion to Dismiss or for Summary Affirmance maintaining that the State Board has no jurisdiction to review this matter.

BACKGROUND

Appellant, who was serving as principal at Calverton Middle School, received an overall rating of “satisfactory” in his Annual Evaluation Report for the evaluation period beginning July 1, 1997, and ending June 30, 1998.¹ An annual evaluation conference was held on June 24, 1998 in which Appellant claims he disagreed with certain portions of the evaluation. By letter dated July 3, 1998 to the Area Executive Officer (AEO), and received July 17 by the AEO, Appellant attempted to challenge portions of the evaluation through the grievance procedure described in the Memorandum of Understanding between the Public School Administrators and Supervisors Association of Baltimore City and the local board (“PSASA Agreement”). It appears from the substance of that letter that Appellant was challenging the merits of his evaluation. Appellant’s grievance was rejected based on his failure to comply with the specified time limits. Appellant requested further grievance hearings on the matter. In those requests, it appears that Appellant was again challenging the substance of the evaluation. Those requests were also denied based on untimeliness.

¹Mr. Heaney was also the appellant in *Joseph P. Heaney v. New Board of School Commissioners for Baltimore City*, MSBE Opinion No. 99-2 (January 26, 1999) (upholding local board decision to transfer Appellant from principal of Calverton Middle School to principal of Dr. Lillie M. Jackson Elementary School).

Thereafter, Appellant requested that the local board conduct a hearing on the issue of timeliness, as well as on the contents and accuracy of his evaluation. By letter dated September 29, 1998, the local board executive assistant advised Appellant that his performance evaluation was not grievable under the PSASA Agreement, but that he could submit an appeal pursuant to Md. Code Ann., Educ. § 4-205 (c) within fifteen days. Appellant did not submit an appeal to the local board. Instead, he filed the instant appeal before the State Board.

ANALYSIS

As a threshold matter, because Appellant received an overall “satisfactory” rating on his evaluation, he is not entitled to an appeal under Md. Educ. Code Ann., § 4-205 (c) on the merits of his evaluation. *See* COMAR 13A.07.04.04. The local board erred in inviting Appellant to submit such an appeal in contravention of State regulation. Appellant’s remedy with respect to disagreement with an overall satisfactory evaluation, as provided by Article X.B of the PSASA Agreement, is to respond in writing and have his response attached to the file copy of the evaluation.

Appellant argues that his claims are grievable under the PSASA Agreement. However, to the extent that the claims concern the merits of the evaluation decision, the claims are not grievable. *See Howard County Educ. Ass’n, Inc. v. Howard County Board of Education*, 5 Op. MSBE 51 (1988).

Appellant also attempts to argue before the State Board that he is challenging the procedures followed by the AEO in making the evaluation decision; however, as stated above, Appellant failed to indicate below that he was challenging anything other than the substance of his evaluation. Appellant was even provided an opportunity to appeal to the local board pursuant to Md. Code Ann., Educ. § 4-205 (c), but he opted not to do so.² The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See Chase Craven v. Board of Education of Montgomery County*, MSBE Opinion No. 97-43 (October 29, 1997) (failure to challenge suspension before local board constituted waiver); *Earl Hart v. Board of Education of St. Mary’s County*, MSBE Opinion No 97-37 (September 25, 1996) (failure to raise issue of age discrimination below constituted waiver on appeal). Moreover, there is no local board decision for the State Board to review given that Appellant declined to submit an appeal pursuant to § 4-205 (c) of the Education Article. Accordingly, Appellant has waived his right to raise procedural errors before the State Board.

²Appellant’s evaluation conference was held on June 24, 1998. He was denied his first appeal on July 28, 1998. After further appeals, on September 29, 1998, the local board advised Appellant that he was not entitled to a grievance hearing, however, as a courtesy it permitted him an appeal pursuant to § 4-205 (c) of the Education Article and granted Appellant fifteen more days in which to note the appeal. Appellant failed to do so. Appellant was given more than the thirty days allotted in § 4-205 (c) in which to note his appeal of procedural errors to the local board.

Even if the State board were to consider an appeal of the procedures utilized in conducting Appellants performance evaluation, we would not find that any procedures were violated in the evaluation process. Appellant refers to page four of the Guidelines for Administering the Performance-Based Appraisal Instrument for Principals (“Guidelines”), claiming that he was not involved in the gathering and interpreting of data, that the AEO did not communicate concerns regarding the criteria throughout the evaluation year, and that the evaluation was prepared prior to the end of year conference.

The guidelines state that “[c]ontinuing communication between the principal and the area assistant superintendent is necessary throughout the appraisal process.” This statement is broad, and does not specifically require the communication of any particular information. The guidelines also state that “[a]t the conclusion of the [annual evaluation] conference, the area executive officer will assign a rating for each criterion.” This does not prevent the AEO from making preparations for the meeting. Appellant has indicated that a conference was held where Appellant verbalized his concerns about the evaluation. At that time it was within the AEO’s discretion to evaluate Appellant as she saw fit. Clearly the AEO did not believe any changes were warranted since she did not alter the prepared evaluation ratings and comments as Appellant desired. As noted above, Appellant’s remedy with respect to his disagreement with specific aspects of the overall satisfactory evaluation was to place his comments in writing and have his response attached to the file copy of the evaluation.

CONCLUSION

For these reasons, we grant the Motion to Dismiss filed by the New Baltimore City Board of School Commissioners.

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