

JOHN SCHLAMP,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-04

OPINION

This is an appeal of the denial of Appellant's request that the local board remove the county superintendent from his position based on the superintendent's failure to terminate the employment of a school principal. The local board has submitted a Motion to Dismiss and/or for Summary Affirmance maintaining that Appellant does not have standing to challenge personnel matters regarding an employee of the school system and that the local board's decision was not arbitrary, unreasonable, or illegal. Appellant has submitted documentation opposing the local board's motion.

FACTUAL BACKGROUND

Appellant's son Scott is a student attending Howard County High School in the Howard County Public Schools System ("HCPS"). On September 27, 2002, Scott was arrested by the Howard County police pursuant to a validly issued arrest warrant. The charges were third degree sexual offense and second degree assault. Scott was arrested during the school day, on school grounds, handcuffed and taken away by the police. Neither the principal, Dr. Sylvia Pattillo, nor anyone else from the school contacted Scott's father. Scott was finally able to contact his father from the police station some four hours after his arrest.¹

Appellant filed a complaint with both the Howard County Police and with Mr. Roger Plunkett, Assistant Superintendent of HCPS, alleging that the procedures concerning an arrest of a student on school premises set forth in COMAR 13A.08.01.12 were not followed with respect to his son. In particular, there was no effort to contact the parents immediately as required by COMAR 13A.08.01.12C.² Mr. Plunkett met with Appellant several times to discuss his

¹The prosecutor subsequently "nolle prossed" the charges on which the arrest was based.

²Appellant also alleged that Scott's educational placement was changed without convening an IEP team meeting in violation of the Individuals with Disabilities Education Act and that his educational program was not fully implemented. However, Appellant chose to pursue a remedy for these alleged violations with the U.S. Department of Education's Office of Civil Rights ("OCR") which has resolved the complaint with HCPS. See OCR letter dated October 30, 2003, with Commitments to Resolve, attached.

concerns. Mr. Plunkett subsequently met with Dr. Pattillo to review the circumstances of Scott's arrest and to provide guidance on how to handle such a situation. Mr. Plunkett also responded to Appellant by letter dated March 19, 2003, acknowledging that Appellant had not been notified in a timely manner and assuring him that steps were being taken so that such action would not happen again. Mr. Plunkett also provided guidance to all HCPS principals concerning how to handle arrest situations at the end of the 2002-2003 school year and again at the beginning of the 2003-2004 school year. (Affidavit of Roger Plunkett). Mr. Plunkett, however, declined to discuss specific disciplinary action against any school system employee, in accordance with HCPS Policy #1415, Confidentiality of Personnel Records. (Letter of March 19, 2003).

Appellant was dissatisfied with Mr. Plunkett's response and filed a complaint with Mr. John O'Rourke, Howard County Superintendent of Schools, concerning the actions of both Dr. Pattillo and Mr. Plunkett. Mr. O'Rourke investigated the matter and met personally with Appellant to discuss his concerns. (Affidavit of John O'Rourke). Appellant requested that Mr. O'Rourke terminate the employment of both Dr. Pattillo and Mr. Plunkett for their failure to follow the procedures in COMAR. Mr. O'Rourke declined to do so. (Affidavit of John O'Rourke).

Appellant then filed an appeal to the local board, requesting removal of Mr. O'Rourke for misconduct in office, incompetence, and willful neglect of duty pursuant to §4-201 of the Education Article. (Letter of Appeal, September 10, 2003). The local board reviewed the documentation supplied by Appellant and by letter from Dr. Sandra French, Chairman of the Howard County Board, denied his request. (Letter of August 22, 2002).³ This appeal followed in which Appellant also now requests the dismissal of Dr. Pattillo.⁴

ANALYSIS

Standing

Before the local board, Appellant requested the removal of the county superintendent.⁵

³Appellant filed another appeal with the local board requesting that Dr. French be removed as Chairman of the local board because she signed the letter that denied his appeal. The local board denied that appeal by letter dated October 7, 2003.

⁴In a submission dated November 18, 2003, well beyond the October 28, 2003 deadline for his response, Appellant requests that the State Board remove all the members of the local board. This issue will not be considered because it is not within the scope of Appellant's original appeal.

⁵In his Opposition, Appellant requests that the State Board remove Mr. O'Rourke. However, under Section 4-201(e) of the Education Article only the State Superintendent may remove a county superintendent and only for certain enumerated causes. Although the local

In this appeal to the State Board, he now also requests Dr. Pattillo's dismissal. Because he did not raise the issue of Dr. Pattillo's dismissal before the local board, Appellant cannot now raise this issue on appeal to the State Board. *See Regan v. Frederick County Board of Education*, MSBE Opinion No. 02-21 (May 22, 2002) (Failure to raise issue before local board constitutes waiver of right to raise issue before the State Board.) Accord, *Kemp v. Montgomery County Board of Education*, MSBE Opinion No. 01-14 (April 24, 2001); *Stewart v. Board of Education of Prince George's County*, 7 Op. MSBE 1358 (1998); and *Jackson-Nesmith v. Board of Education of Charles County*, 7 Op. MSBE 1320 (1998).

Even if the dismissal of Dr. Pattillo were properly before the State Board, the local board alleges that Appellant does not have standing to request disciplinary action against any employee of the school system. The State Board has consistently held that an individual who is not a party in interest does not have standing to challenge personnel matters regarding a school system employee. *See Gartner v. Howard County Board of Education*, MSBE Opinion No. 01-41 (December 5, 2001); *Tompkins v. Montgomery County Board of Education*, 7 Op. MSBE 476 (1996); *Edler v. Prince George's County Board of Education*, 7 Op. MSBE 304 (1996).

Indeed, this same Appellant previously received a ruling from the State Board that he lacked standing to demand that the local superintendent take disciplinary action against a principal. *See Schlamp v. Howard County Board of Education*, 7 Op. MSBE 27 (1995). In that ruling, the State Board held that a request for disciplinary action against a principal is not a controversy or dispute within the purview of § 4-205 of the Education Article. Thus, consistent with our ruling in *Schlamp I*, we dismiss this appeal pursuant to COMAR 13A.01.01.03J because Appellant lacks standing to pursue this matter with respect to either the superintendent or the principal.

CONCLUSION

For the reasons set forth above, we dismiss the appeal because Appellant lacks standing to pursue the issues. *See* COMAR 13A.01.01.03J(1).

Edward L. Root
President

JoAnn T. Bell
Vice President

board may recommend removal of a local superintendent by the State Superintendent, the local board does not have the ultimate authority to remove a superintendent. *See Iris Metts v. Prince George's County Board of Education*, MSBE Opinion No. 02-05 (February 23, 2002).

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January 28, 2004