

IN THE MATTER OF

BEFORE THE BOARD

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OF EDUCATION OF

CARROLL COUNTY

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DECISION OF THE BOARD OF EDUCATION OF CARROLL COUNTY

This is an appeal before the Board of Education of Carroll County (the "Board") pursuant to Section 4-205(c) of the *Education Article to the Annotated Code of Maryland* brought by _____ (collectively, the Appellants), relating to the reorganization of the Judy Center. Among other allegations, the Appellants complain of the reduction of hours for some hourly employees, the institution of new time card procedures, the replacement of some hourly positions with full-time permanent positions, the posted qualifications for the positions, and confusion over separation letters from the Human Resources Department. For the reasons that follow, we shall dismiss the appeal. Alternatively, even if this Board did not dismiss the appeal, it would nonetheless affirm the merits of the Superintendent's decision on the grounds that his decision was neither arbitrary, unreasonable, nor illegal.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Along with other Maryland school systems, the Board receives a grant from the Maryland State Department of Education ("MSDE") to maintain the Judith P. Hoyer Early Child Care and Family Education Centers (the "Judy Centers"). At the beginning of

¹ The State Board has long held that there is no need for an evidentiary hearing or oral argument when, as in this case, the appeal does not involve an alleged liberty or property interest deprivation thereby invoking the protections of the Fourteenth Amendment Due Process Clause. *See Bricker v. Frederick County Board of Education*, 3 Op. MSBE 99 (1982); *Anderson and Blake v. Board of Education of Prince George's County*, 5 Op. MSBE 415, 417 (1989). For this reason, and because we do not believe that a hearing would aid us in the decision-making process, we decline to conduct an evidentiary hearing or oral argument on these appeals but shall render a decision based upon the written record presented to us.

the 2014-2015 school year, the Board operated two full-service Judy Center sites at Robert Moton Elementary School and Taneytown Elementary School and two limited service Judy Center sites at Cranberry Station Elementary School and Elmer Wolf Elementary School. Appellant began working at the Judy Center as an hourly employee in 2004 and is currently still employed. Appellant began working at the Judy Center as an hourly employee in 2010 and is currently still employed. Appellant began working at the Judy Center in 1998 as an hourly employee and is no longer employed by the Board.

In August of 2014, MSDE responded to the Board's annual Judy Center Continuation Grant Application indicating a need for modifications to the Carroll County Judy Centers including a need for more full-time permanent employees rather than relying upon temporary hourly employees. As a result of concerns raised by MSDE, the Board was instructed to revise and re-submit its grant application. The Board's revised grant application indicated plans to make Cranberry Station Elementary School and Elmer Wolf Elementary School full service Judy Center Sites by moving part-time hourly employees from those schools to other Judy Center sites. In addition, plans were made for an organizational restructuring of the Judy Centers whereby twenty part-time hourly positions were replaced with eight permanent full-time certificated teaching positions for the 2015-2016 school year. In late April of 2015, representatives of the Board's Human Resources Department met with affected employees and informed them of the reorganization and its impact upon their future employment. Ultimately, Appellants retained their positions while Appellant did not.

In July of 2015, the Appellants filed their appeals to this Board. We will address each issue separately.

Judy Center Reorganization

Collectively, the primary thrust of the Appellants' appeal is to challenge the Judy Center reorganization. However, the Appellants' appeal must be dismissed for two important reasons. First, the Appellants' appeals to this Board were not filed until July of 2015. Accordingly, they were not timely filed within thirty days of the Superintendent's decision in accordance with Section 4-205(c) of the *Education Article to the Annotated Code of Maryland*. Second, there is no evidence in the record that the Appellants attempted to exhaust their administrative remedies with the Superintendent which is a jurisdictional prerequisite to bringing an appeal to this Board.² Accordingly, we dismiss this portion of the appeals on the grounds that the appeals were not timely filed and for failure to exhaust administrative remedies before the Superintendent.

In addition, as to Appellants _____ since these Appellants have retained their hourly positions despite the reorganization, they lack standing to appeal a decision that does not affect them. Accordingly, as to Appellants _____, we dismiss their appeals for the additional reason that they lack the requisite standing to bring an appeal.

Even if we were not inclined to dismiss the appeals for the reasons discussed above, the decision to reorganize the Judy Centers was not arbitrary, unreasonable, or illegal but, rather, was the product of considered decisions made for the purpose of improving the delivery of services at the Judy Centers in accordance with MSDE requirements. The Superintendent has broad statutory authority under Section 6-201 (b) and (c) of the *Education Article to the Annotated Code of Maryland* to assign and transfer

² In their Appeal Information Form, the Appellants are specifically asked to provide the date of the Superintendent's decision from which the appeal is taken. In response, the Appellants simply provide "FY14, FY15 & FY16."

both certificated and non-certificated staff as the needs of the schools require. Here, there was a need to re-organize staff to meet the needs of the Judy Center program. Although the Appellants evidently disagree with this decision, it is certainly not a decision that was “contrary to sound educational policy” or one where a reasoning mind could not reasonably agree with the Superintendent. *See* COMAR 13A.01.05.05B. Accordingly, even if we did not dismiss this portion of the appeal, we would nonetheless affirm the Superintendent’s decision to reorganize the Judy Centers.

Reduction of Work Hours

Appellants also complain of work hour reductions of hourly staff for reasons allegedly related to Affordable Care Act mandates as well as a concern that they were made to re-apply for their positions. However, these actions occurred in 2013 – well prior to the Judy Center reorganizations. The appeals filed in July of 2015 are, accordingly, untimely. Moreover, there is no evidence that the Appellants ever attempted to exhaust administrative remedies before the Superintendent. Accordingly, this portion of the appeals must be dismissed as untimely and for failure to exhaust administrative remedies.

Finally, this Board is powerless to undo decisions that were made in 2013 regarding hourly reductions that took place at the time as well as requirements for employees to re-apply for their positions at that time. The Maryland State Board of Education explained the concept of mootness as follows:

It is a well established principle that a question is moot when “there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide.” *In Re Michael B.*, 345 Md. 232, 234 (1997); *See also Arnold v. Carroll County Board of Education*; MSBE Opinion No. 99-41 (September 22, 1999); *Farver v. Carroll County Board of Education*, MSBE Opinion No. 99-42 (September

22, 1999); *Chappas v. Montgomery County Board of Education*, 7 Op. MSBE 1068 (1998).

Smoot v. Charles County Board of Education, MSBE Op. No. 03-27, at 3 (2003),

In this appeal, there is no longer any effective remedy that this Board can provide regarding the alleged prior reduction of work hours. Accordingly, this portion of the appeals must be dismissed on the grounds of mootness.

Time Card Procedures

The Appellants raise an additional concern regarding time card procedures that they contend were instituted “beginning in 2014,” and they reference email communications from January of 2015 on this subject. This time-frame was obviously more than thirty days prior to the appeals filed in July of 2015. As a result, we must dismiss this portion of the appeal as being untimely. Moreover, as noted above, there is no evidence that the Appellants ever attempted to exhaust remedies before the Superintendent, and we dismiss for that reason as well. Finally, to the extent that time card procedures have already been put into place, it would be impossible for this Board to provide a retro-active remedy. Accordingly, the appeals are also dismissed on the grounds of mootness.

Qualifications for New Positions

The Appellants also challenge the posted qualifications for the new positions and contend that these positions do not require certificated teachers. As to Appellants and , since they have retained their hourly positions, they have no standing to challenge the posted minimum qualifications for other employees. As to all three Appellants, there is no evidence that this portion of the appeal was ever brought to the Superintendent for review or that the appeal was timely filed. Accordingly, we dismiss

for the additional reasons that the Appellants have failed to exhaust administrative remedies or file a timely appeal.

Finally, even if we were not inclined to dismiss, we would affirm the Superintendent's decision on the grounds that he has the authority under Section 6-201 (b) and (c) of the *Education Article to the Annotated Code of Maryland* to assign both certificated and non-certificated staff as the needs of the schools require, and the decision to replace non-certificated part-time hourly employees with certificated full-time teachers was not arbitrary, unreasonable, or illegal.

Correspondence from Human Resources

The Appellants complain that there was confusion regarding separation letters received from the Human Resources Department. To the extent that Appellants and [redacted] have retained their jobs, they lack standing to appeal other employees' separation letters. Moreover, there is no evidence that any of the Appellants ever appealed this portion of the appeal to the Superintendent. Accordingly, the appeal must be dismissed for failure to exhaust administrative remedies. Finally, at this juncture, despite regrettable confusion in miscommunications from the Human Resources Department, there is no remedy that the Board can possibly provide to rectify prior miscommunications. Accordingly, this portion of the appeal must be dismissed on the grounds of mootness.

Harassment, Maltreatment, and Discrimination

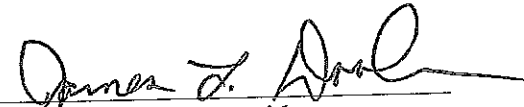
Finally, the Appellants contend that that they have been subjected to harassment, maltreatment, and discrimination due to their opposition to the reorganization of the Judy Centers. First, despite general allegations, the Appellants have failed to provide specific factual allegations in support of their claims. As the Maryland State Board of Education

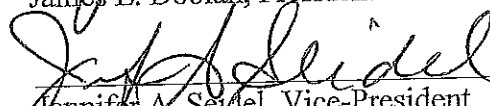
has repeatedly held, "allegations alone are insufficient to support a claim of discrimination." *Weeks v. Carroll County Board of Educ.*, MSBE Op. No. 13-44 (2013); *Keene v. Washington County Board of Educ.*, MSBE Op. No. 04-02 (2004); see *Ewing v. Cecil County Board of Educ.*, 6 Op. MSBE 818 (1995). Second, as with the other claims asserted by the Appellants, there is no evidence that they have exhausted their administrative remedies with the Superintendent prior to bringing their appeals. Accordingly, this portion of the appeal is dismissed for this reason.

DECISION

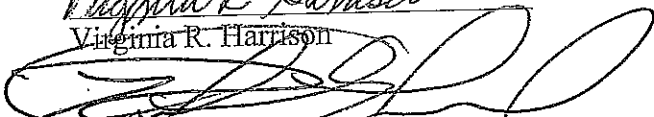
For the reasons discussed at length above, this Board shall dismiss the Appellants' appeals. Alternatively, for the reasons also discussed above, the Board would affirm the Superintendent's decisions regarding the Judy Center reorganization and associated staffing changes complained of by the Appellants on the grounds that these decisions were not arbitrary, unreasonable, or illegal but, rather, considered decisions by the Superintendent in an area where he had statutory authority. Should they choose to do so, the Appellants may appeal this decision to the Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing, within thirty days of the date of this decision.

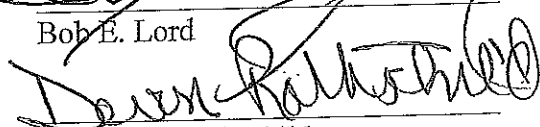
10/8/15
Date


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