

KIMBERLY SPARKS,

Appellant

v.

ST. MARY'S COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-33

### OPINION

Kimberly Sparks, a substitute bus driver employed by a private contractor for St. Mary's County Public Schools, appeals the decision of the supervisor of transportation for St. Mary's County Public Schools to revoke Appellant's certification to drive a school bus based on inappropriate behavior between Appellant and a student. The local board has submitted a Motion to Dismiss for failure to exhaust administrative remedies. Appellant has submitted several lengthy replies opposing the local board's motion.

### FACTUAL BACKGROUND

On December 1, 2000, Appellant was suspended from driving a school bus for St. Mary's County Public Schools pending an administrative investigation by the school system into allegations of inappropriate behavior between Appellant and a student.<sup>1</sup> As a result of the investigation, Reed A. Walker, Supervisor of Transportation for St. Mary's County Public Schools, revoked Appellant's certification to drive a school bus for the school system. Appellant was notified of Mr. Walker's decision by letter dated January 8, 2001. The letter states, in part:

After much deliberation and consideration concerning this matter and with the preponderance of evidence presented, I have determined that inappropriate behavior did occur between you and the student in question. As you are aware from the training you received in August regarding child abuse and sexual harassment, any intimate or dating relationship between a student and a school official or representative is prohibited. The situation that occurred concerning you and the student represents a breach of the trust placed in you as a school bus driver. Additionally, I must view this behavior as contributing to the delinquency of a minor. Because of

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<sup>1</sup>Appellant appeared in the District Court for St. Mary's County on an ex-parte temporary peace order requested on behalf of the student at issue. Despite allegations of assault and child abuse, the judge made a finding of harassment only. Based on that finding, Appellant was prohibited from having any contact with the student in question through June 8, 2001.

this determination, it is necessary for me to revoke your certification to drive a school bus for St. Mary's County Public Schools.

Thereafter, Appellant sent a letter to the local superintendent requesting her job back. In response, the local superintendent asked for clarification of Appellant's letter and advised her that if she wished to appeal Mr. Walker's decision, she must do so in writing by a certain date. The local superintendent also explained to Appellant that St. Mary's County Public Schools was not her employer. Rather, Appellant was employed by a bus contractor who provided bus service through a contract with the school system.

Appellant submitted a letter dated January 31, 2001 appealing Mr. Walker's decision. The local superintendent designated William May, the school system director of human resources, to hear Appellant's appeal and a conference was scheduled for March 7, 2001. No conference took place, however, because Appellant's attorney, Thomas Axley, advised legal counsel for the school system in writing that Appellant was withdrawing her appeal of Mr. Walker's decision. See 2/28/01 letter from Axley to O'Meally quoted below.

Appellant appealed the matter to the State Board by letter received on May 31, 2001.

#### ANALYSIS

State law and regulations of the State Board require that a matter must first be decided by the local superintendent and the local board of education before it is submitted to the State Board on appeal. See Md. Code Ann., Educ. § 4-205(c). Accordingly, the State Board has consistently held that an appellant must pursue and exhaust statutorily prescribed administrative remedies in the appropriate manner. See *Linda 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); *Jackson-Nesmith v. Board of Education of Charles County*, 7 Op. MSBE 1320 (1998); *Peacock v. Baltimore County Board of Education*, 7 Op. MSBE 1287 (1998); *Hopkins v. Board of Education of Montgomery County*, 4 Op. MSBE 370 (1986).

The documentation in this record discloses that although Appellant initially submitted an appeal of Mr. Walker's decision to the local superintendent, Appellant withdrew the appeal pursuant to the February 28, 2001 letter from her attorney. That letter states as follows:

The purpose of this letter is to withdrawal (sic) the appeal on behalf of Kimberly Sparks revoking her certification to drive a school bus.

I have had an opportunity to review the letters which you forwarded to me and have discussed the same with Ms. Sparks. Although she continues to deny writing those letters or approaching

the subject minor child she has agreed that they at least provide the appearance of impropriety and that it would be in the best interest of all not to pursue the same any further. Please withdraw this matter from hearing which is presently set for 2:30 p.m. on Wednesday March 7, 2001.

In her lengthy responses opposing the Motion to Dismiss, Appellant does not dispute the fact that her attorney on her behalf withdrew her appeal to the local superintendent. Rather, Appellant only focuses on the merits and denies any interaction with the student. However, Appellant with the advice of counsel affirmatively chose not to pursue her appeal before the local superintendent and local board. Appellant has therefore waived her right to appeal the local decision to the State Board. *See, e.g., Deborah A. Jackson-Nesmith v. Charles County Board of Education*, 7 Op. MSBE 1320, 1323 (1998) (Failure to raise issue before local board constitutes waiver of right to appeal issue to State Board.)

### CONCLUSION

For these reasons, we dismiss the appeal based on Appellant's failure to pursue the administrative remedies that were available to her to contest Mr. Walker's decision to revoke her certification to operate a school bus for St. Mary's County Public Schools.

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September 26, 2001