

DANIEL GARTNER,

Appellant

v.

HOWARD COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-41

### OPINION

Appellant, the father of a student who attends Howard High School (“HHS”) in Howard County, challenges the actions of the local board in selecting basketball coach, Gregory Smith, at HHS. Appellant asserts that the “Board’s decision to hire Mr. Greg Smith as coach was illegal and represents an ongoing, illegitimate suspension of a principal’s authority and a continuing denial of opportunity to all other potential applicants for the position.”<sup>1</sup> The local board has submitted a motion to dismiss based on lack of standing and failure to file a timely appeal to the State Board. Appellant has submitted an opposition to the motion.

### FACTUAL BACKGROUND

Mary Day, the principal of HHS, appointed Derrick Dunlap as the new head coach of the boys’ varsity basketball team for the 2000-01 school year. Mr. Dunlap was not an employee of the local board. Mr. Smith, an employee of the local board, had also applied for the position.<sup>2</sup> Mr. Smith appealed the decision not to select him for the coaching position to the local board.

On January 10, 2001, the local board issued a decision in Smith’s appeal, ordering by a 3-2 vote that Mr. Dunlap be replaced by Mr. Smith.<sup>3</sup> Mr. Dunlap finished the 2000-2001 season and Mr. Smith resumed coaching responsibilities in the 2001-2002 school year. The local board decision was reported in the news media.

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<sup>1</sup>Appellant also states that the local board “bribed Mr. Smith to step aside last December, in effect paying him hush money to remain silent about their agreement.” However, there is no evidence in the record to support this assertion.

<sup>2</sup>Mr. Smith was a special education teacher and the junior varsity boys’ basketball coach at HHS.

<sup>3</sup>State regulation requires that Maryland Public Secondary Schools Association (“MPSSA”) member schools employ as coaches only teachers or certified professional educator employees of the local board unless no acceptable or qualified coaches are available from that pool of individuals. COMAR 13A.06.03.04B.

Appellant disagreed with the local board's decision in the Smith appeal. On May 8, 2001, Appellant wrote to the local superintendent, John R. O'Rourke, complaining of the Greg Smith decision. The superintendent responded by letter dated May 22, 2001, thanking Appellant for noting his concerns and indicating that he could not respond substantively since the issues pertained to a personnel matter. Simultaneously, Appellant raised his objections with the local board. By letter dated May 14, 2001, legal counsel on behalf of the local board thanked Appellant for his correspondence and indicated that the matter could not be discussed because it concerned a personnel issue. This appeal followed.

## ANALYSIS

The local board argues that the State Board should dismiss the appeal because Appellant lacks standing. As the State Board noted in *Adams, et al. v. Montgomery County Board of Education*, 3 Op. MSBE 143, 149 (1983), the general rule on standing is that "for an individual to have standing, even before an administrative agency, he must show some direct interest or 'injury in fact, economic or otherwise'" arising out of the disputed matter. See also *Schwalm v. Montgomery County Board of Education*, MSBE Opinion No. 00-10 (February 23, 2000); *Vera v. Board of Education of Montgomery County*, 7 Op. MSBE 251 (1996); *Way v. Howard County Board of Education*, 5 Op. MSBE 349 (1989).

Appellant's appeal is essentially a challenge of the hiring process and decision regarding HHS's boys' varsity basketball coach. Mr. Smith, the individual at issue in that process, has already pursued an appeal of the personnel decision with the local board.<sup>4</sup> That matter has since been resolved. Appellant was not a party to Mr. Smith's appeal and was not an applicant for the coaching position.

The State Board has repeatedly held that an individual who is not a party in interest does not have standing to challenge personnel matters regarding an employee of the school system. *Tompkins v. Montgomery County Board of Education*, 7 Op. MSBE 475 (1996) (Parent of student lacks standing to challenge local board's decision regarding discipline of English teacher); *Edler v. Board of Education of Prince George's County*, 7 Op. MSBE 304 (1996) (Teacher did not have standing to challenge school system's determinations regarding either the suspension or expulsion of a student or the discipline of an employee other than himself); *Vera v. Board of Education of Montgomery County*, 7 Op. MSBE 251 (1996) (Individual lacked standing to appeal local board decision to sever services of individual's mother as classroom volunteer); *Schlamp v. Board of Education of Howard County*, 7 Op. MSBE 27 (1995) (Parent of student lacked standing to demand that local superintendent take disciplinary action against a principal).

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<sup>4</sup>Mr. Dunlap, the other individual at issue in the hiring process, did not pursue an appeal of the decision.

Appellant is not a party in interest and has suffered no injury in fact arising from the disputed matter. Therefore we find that he lacks standing to bring this appeal to the State Board.<sup>5</sup>

### CONCLUSION

Accordingly, because Appellant lacks standing, we dismiss this appeal as improperly filed. *See* COMAR 13A.01.01.03J.

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<sup>5</sup>Alternatively, the local board argues that Appellant failed to appeal in a timely manner. Because Appellant lacks standing in this case, there is no need for the State Board to address this issue. Nevertheless, we note that at first glance Appellant's appeal to the State Board appears to have been untimely filed. The local board rendered its decision in the Greg Smith appeal on January 10, 2001. The State Board received Appellant's appeal by certified mail postmarked July 11, 2001. Appellant maintains, however, that he lacked notice of the local board's decision until May 3, 2001 when it was publicized in the news media. However, even using the May 3<sup>rd</sup> date, Appellant's appeal filed on July 11<sup>th</sup> is well more than 30 days beyond the 30 day statutory deadline. *See* Md. Code Ann. Educ. § 4-205(c) and COMAR 13A.01.01.03B(3).

John L. Wisthoff

December 5, 2001