

CRAIG DUNKLEBERGER

Appellant

v.

CARROLL COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 22-20

OPINION

INTRODUCTION

Appellant appeals the June 14, 2022, decision of the Carroll County Board of Education (“local board”) finding his appeal to the local board of the December 16, 2019, no trespass order untimely and moot. The local board filed a memorandum in response to the appeal maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.¹

FACTUAL BACKGROUND

Appellant is a former Carroll County Public Schools (“CCPS”) employee.² On December 4, 2019, the District Court of Maryland for Carroll County granted a final peace order for a CCPS employee against Appellant. The Court found by a preponderance of the evidence that Appellant committed the act of misuse of electronic communication or interactive computer service against the CCPS employee, and the Court ordered Appellant to stay away from the employee’s place of employment through June 4, 2020. (R.12).

On December 16, 2019, Duane A. Williams, CCPS Supervisor of Security and Emergency Management, issued a no trespass order prohibiting Appellant from entering onto property owned or leased by CCPS unless he obtained prior approval in order to conduct legitimate business. (R.18). The letter stated that the decision was made “as a result of a continued course of conduct [Appellant] displayed, by posting disparaging and threatening [*sic*] information about current employees and family members on social media” and that it was “in the best interest of the students and staff safety.” *Id.* The letter cited Md. Ann. Code, Educ. §26-102 and stated that the “Superintendent, principal or designee may deny access to the buildings or grounds of the institution to any person who does not have lawful business or who disrupts or disturbs the normal educational functions.” *Id.* While the letter did not contain an end date for the no trespass order, it instructed Appellant to contact the Office of Security and Emergency

¹ Appellant attempted to file multiple additional materials to the State Board outside of the briefing process. Counsel for the State Board informed Appellant that these materials would not be included in the record or considered by the Board.

² During the 2018-2019 school year, CCPS employed Appellant as a Mathematics Resource Teacher. Appellant resigned from this position on January 25, 2019. (R.10).

Management or Human Resources “to make arrangements and receive approval before entering onto CCPS property” to conduct legitimate business with CCPS. *Id.* Appellant did not appeal the December 16, 2019, no trespass decision.

On April 11, 2022, Appellant emailed CCPS Superintendent Dr. Lockard, writing:

I am writing this letter to verify that the no trespass order, from all schools has expired, one year after it was issued, as is the practice... As a registered democrat, I want to be sure that I’m allowed to go onto school grounds to vote and to pass out information and flyers for different democratic candidates. The letter also did not contain specifics as to why I was banned from all schools, so if you could let me know the rationale, that would be great.... (R.26-27).

On April 12, 2022, Appellant sent a follow-up email “looking for the specific reasons and rationale” for the ban from all school buildings and “clarification” of the end date. He requested an email response “specifically stating the reason for [the] ban from every school” and “the specific rationale, that [was] used, to make such a decision.” (R.27).

On April 14, the superintendent’s designee, Mr. Pierce granted Appellant entry onto school property for voting and electioneering and responded to the other inquiries as follows:

Dr. Lockard has requested that I look into your question in regards to the no trespass order previously issued to you by Mr. Duane Williams. In reading Mr. Williams’ [December 16, 2019] letter to you, there is no expiration date listed. Therefore, the order will continue to remain in effect... We have discussed your request to go onto school grounds to vote and pass out information for different democratic candidates and agree to allow you to do so. As for your question about the decision to ban you from all schools, I can’t speak on this decision since I was not actively employed during issuance of the letter by Mr. Williams. Other than the stated reasoning of posting disparaging and threatening information about current employees and family members on social media I have no further knowledge of this incident. (R.27-28).

Appellant responded asking for further clarification. He requested CCPS remove the reference to family members in the no trespass letter and provide him with a list of staff members about whom he has posted disparaging and threatening comments. (R.28). Mr. Pierce responded that he could provide no further clarification other than what was in the letter, that Appellant could enter the property to vote and conduct electioneering, and that Appellant could appeal to the local board. (R.29).

On April 20, 2022, Appellant appealed Mr. Pierce’s decision to the local board, alleging that the no trespass order is an unconstitutional suppression of protected speech, intended to censor his social media posts. He also alleged that the no trespass order is discriminatory based

on his sexual orientation. He further argued that the no trespass order is arbitrary because it has no expiration date. (R. 26-39).

On June 14, 2022, the local board affirmed the no trespass letter. (R.2-8). First, the local board determined that the appeal was untimely because it was not filed within 30 days of the issuance of the no trespass letter on December 16, 2019. *Id.* Second, it found the appeal to be moot because Appellant could show no harm given that he could enter CCPS property with approval. *Id.* Third, the local board found Appellant failed to prove that the no trespass letter was arbitrary, unreasonable, or illegal. *Id.*

This appeal followed.

STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board are considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A.

LEGAL ANALYSIS

Appellant appeals the decision of the local board arguing that Mr. Pierce's email affirming the no trespass letter is illegal. (Appeal, 1). It is Appellant's position that the no trespass letter violates his constitutional right to free speech, protection against double jeopardy, due process, and freedom from discrimination based on sexual orientation. Appellant also argues that failure to include an end date for the no trespass order violates State law.

The local board argues that Appellant's arguments are untimely filed. Maryland law requires a local superintendent's decision to be appealed to the local board within thirty days. Md. Code Ann., Educ. §4-205(c)(3). CCPS issued the no trespass letter on December 16, 2019. At that time, Appellant declined to appeal the letter to the local board. Appellant does not dispute that the timeline to appeal the no trespass letter passed without his taking action.³ Appellant argues that the April 14, 2022, email from Mr. Pierce constitutes a new decision – an extension of the no trespass letter – subject to appeal under §4-205(c)(3) of the Education Article. The local board maintains that Mr. Pierce did not make a decision regarding the length of the no trespass letter, but merely confirmed the no trespass letter was still in effect. We concur with the local board.

Examination of the totality of the communications in the record, as set forth in the factual background above, demonstrates that – at best – Appellant's emails are an attempt to revive the stale claim in order to initiate an appeal to the local board, which he failed to do at the time the letter was issued in December 2019. In his April 11, 2022, email to the CCPS Superintendent, Appellant requested CCPS confirm the no trespass letter was expired, so he could access school

³ Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice of the decree. See *Scott v. Board of Educ. of Prince George's County*, 3 Op. MSBE 139 (1983). Appellant does not claim that there are extraordinary circumstances that warrant the waiver of the time limitation.

property to vote and electioneer. At no time did the Appellant seek to have the no trespass letter lifted or reconsidered. Instead, he sought clarification and a rationale for the prior decision. Mr. Pierce simply verified for Appellant that the no trespass letter continued to remain in effect based on the language of the December 16, 2019, letter. Mr. Pierce's April 2022 responses to the Appellant did not constitute a new decision regarding the merits of the no trespass letter. The only decision made by Mr. Pierce was to allow Appellant to enter CCPS property for the purposes of voting and electioneering. As Appellant's arguments all go to the merits of the December 2016 no trespass letter, we find his appeal untimely.

CONCLUSION

For the reasons stated above, we find that that the local board's decision finding Appellant's appeal untimely was not arbitrary, unreasonable or illegal. Accordingly, we affirm.



Clarence C. Crawford
President



Susan J. Getty
Vice-President



Shawn D. Bartley



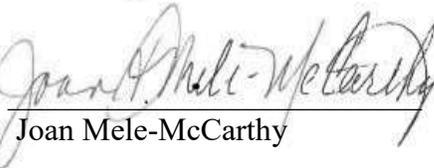
Chuen-Chin Bianca Chang



Charles R. Dashiell, Jr.



Jean Halle



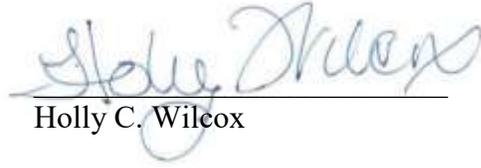
Joan Mele-McCarthy



Lori Morrow

A handwritten signature in blue ink, appearing to read "Warner I. Sumpter", written over a horizontal line.

Warner I. Sumpter

A handwritten signature in blue ink, appearing to read "Holly C. Wilcox", written over a horizontal line.

Holly C. Wilcox

Abstained:
Rachel McCusker

September 27, 2022