

CHRISTINE BETLEY,

Appellant

v.

QUEEN ANNE'S COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 23-09

OPINION

INTRODUCTION

Appellant appeals the decision of the Queen Anne County Board of Education (“local board”) dismissing the ethics complaint she filed with the local board’s Ethics Panel against local board member Marc Schifanelli. The local board filed a motion to dismiss the appeal for lack of jurisdiction and lack of standing. The Appellant responded to the local board’s motion and the local board replied.

FACTUAL BACKGROUND

Appellant is a certificated employee who was initially hired as a teacher in August 2019 by Queen Anne County Public Schools. During the 2021-2022 school year, she served as an Equity Specialist. The local board dissolved the position at the end of the school year. For the 2022-2023 school year, Appellant has been serving as the Supervisor of Equitable Access, Opportunity and Out of School Time Programs.

Appellant is appealing the local board’s decision to dismiss the ethics complaint that she filed against Mr. Schifanelli.¹ On or about February 16, 2022, Appellant filed an ethics complaint against Mr. Schifanelli with the local board’s Ethics Panel alleging violations of the local board’s Code of Ethics and Conflict of Interest Policy. (Appeal, Ex. 1). Appellant maintains that Mr. Schifanelli’s actions interfered with her ability to do her job, that her job no longer resembles the position for which she was hired, and that she and her work are constantly under scrutiny and subject to being publicly impugned by the local board and Mr. Schifanelli. (Opposition at 1). In addition, in the State Board appeal, Appellant claims that Mr. Schifanelli improperly participated in the vote to dismiss the complaint against him.

Local Board Code of Ethics and Conflict of Interest Policy 104, Section IV.S establishes the Ethics Panel of the local board, which is responsible for processing and making determinations regarding complaints alleging violations of the Policy and Regulations. Regulation 104.1, Section I.V. sets forth the procedures for processing and determining complaints alleging violations. (Motion, Ex. 2). It provides that after investigating the

¹ At the time, Mr. Schifanelli served as Vice President of the local board. He now serves as the board President.

complaint, the Ethics Panel shall “report its findings and recommendations for action to the Board.” Section V.1(h). The local board may take enforcement action if it concurs with the findings of a violation, or it may dismiss a complaint either on the recommendation of the Ethics Panel or if the board disagrees with the Ethics Panels’ finding of a violation. Section V.1(j). The Regulations provide that “after a complaint is filed and until a final determination by the Board, all actions regarding a complaint are confidential” and concurrence “by the Board with a finding of violation by the Ethics Panel is public information.” Sections V.1(k) and (l). Policy 104 defines “confidential information” as including “all information regarding a complaint filed with the Ethics Panel unless otherwise authorized for release by the Board of Education.” Section III.F.4.²

By letter dated December 14, 2022, board counsel informed Appellant that the Ethics Panel deliberated on her complaint over several months and multiple sessions, and reported its findings and recommendations to the local board for final disposition of her complaint. The letter states that “[a]s a result of its deliberations, the Board has determined that Mr. Schifanelli did not commit a violation of Policy 104 or Regulation 104.1 and is, therefore, dismissing the Complaint in accordance with Regulation 104.1.I(V)(j). No further action will be taken in this matter.” The letter further noted that consistent with Policy 104, all information and actions in the matter should remain confidential, since there was no finding of a violation, and that the confidentiality requirement applies to all board members, Panel members, parties and counsel. (Appeal, Ex. 2). Based on the local board’s interpretation of the confidentiality provisions, the letter makes no specific reference to the Ethics Panel’s recommendation or disposition of the matter.

Appellant filed this appeal to the State Board on January 12, 2023. Appellant asserts that now that Mr. Schifanelli is President of the local board, “it appears likely that the system will neither comply with the State’s mandated educational equity for all students especially given its elimination of the Equity position nor ensure and provide a safe learning environment for all students.” Appeal at 5. Appellant asks the State Board to review the local board’s actions and those of Mr. Schifanelli “to determine adherence to both Board policies, generally, and more specifically, the Ethics policies; and that the school system is being administered consistent with State mandated education equity and excellence requirements.” *Id.*

STANDARD OF REVIEW

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.06E.

LEGAL ANALYSIS

The local board has filed a motion to dismiss the appeal for lack of jurisdiction. Appellant, on the other hand, maintains that the State Board has jurisdiction. The State is authorized to hear appeals pursuant to either §4-205(c) or §2-205(e) of the Education Article. We address the jurisdiction of the Board under each section in turn.

² The Ethics Policy and Regulations are consistent with the Model Board of Education Regulations established by the Maryland State Ethics Commission. See COMAR 19A.05.00.00, Appendix A.

Appellant argues that the State Board has jurisdiction under §4-205(c). Section §4-205(c) invests the State Board with the authority to review a quasi-judicial decision of the local board. Section 4-205(c) provides as follows:

(c)(1) Subject to the authority of the State Board under §2-205(e) of this article, each county superintendent shall explain the true intent and meaning of:

- (i) The school law; and
 - (ii) The applicable bylaws of the State Board;
- (2) Subject to the provisions of §6-203 and Title 6, Subtitle 4 of this article and without charge to the parties concerned, each county superintendent shall decide all controversies and disputes that involve:
- (i) The rules and regulations of the county board; and
 - (ii) The proper administration of the county public school system.
- (3) A decision of a county superintendent may be appealed to the county board if taken in writing within 30 days after the decision of the county superintendent. The decision may be further appealed to the State Board if taken in writing within 30 days after the decision of the county board.

The jurisdiction of the State Board under §4-205(c) requires an appellant to exhaust administrative remedies. *Sartucci v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-31 at 3 (2010). It is limited to matters arising within the authority and initially decided by a local superintendent. *See Board of Educ. of Garrett County v. Lendo*, 295 Md. 55, 66 (1982); *In the Matter of Specialized Educ. Servs, Inc. and Specialized Educ. of Md.*, MSBE Op. No. 16-22 at 3 (2016). Here, there was no decision of the local superintendent. This was a matter decided by the local board pursuant to its ethics Policy and Regulations. Accordingly, we do not have jurisdiction under §4-205(c) in this matter.

Jurisdiction Under §2-205(e)

Appellant argues that the State Board has jurisdiction to review this matter under §2-205(e) “to determine adherence to both Board policies, generally, and more specifically, the Ethics policies; and that the school system is being administered consistent with the State mandated education equity and excellence requirements” in order “to ensure that its regulations are being implemented with fidelity.” (Appeal at 5).

Section 2-205(e) gives the State Board the power to determine the true intent and meaning of State education law and to decide all cases and controversies that arise under the State education statute and State Board rules and regulations. The Court of Appeals has explained that §2-205 was intended by the General Assembly as a grant of “original jurisdiction” to the State Board allowing an appellant a direct appeal to the State Board “without the need to exhaust any lower administrative remedies.” *See Board of Educ. for Dorchester County v. Hubbard*, 305 Md. 774, 789 (1986); *Board of Educ. of Garrett County v. Lendo*, 295 Md. 55, 65-66 (1982).

The Supreme Court of Maryland (formerly Court of Appeals) has explained the category of cases heard under §2-205 “deal primarily with statewide issues (i.e. statutes or bylaws applicable to all county boards of education) . . .” *Board of Educ. of Garrett County v. Lendo*, 295 Md. At 65, *see also, Strother v. Board of Educ. of Howard County*, 96 Md. App. 99, 113-114 (1993). As we stated in *Sartucci*, “[t]hat statute defines the contours of our authority. Specifically, the law confines matters subject to review under §2-205 to those involving State education law, regulations, or a policy that implicates State education law or regulations on a Statewide basis.” MSBE Op. No. 10-31 at 4. The State Board has consistently reaffirmed this principle and stated that we exercise our original jurisdiction sparingly. *Nehemia’s Vision, Inc. v. Bd. of Educ. of Prince George’s County*, MSBE Op. No. 14-30 at 3 (2014); *Rock Creek Hills Ass’n v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-49 at 4 (2012).

The local board’s Code of Ethics and Conflict of Interest Policy and regulations derive from the Maryland Public Ethics Laws. In matters involving public ethics, the Maryland General Assembly has established a framework for local boards of education for the review and enforcement of allegations of violations of conflicts of interest and other matters of ethics pertaining to local board members through the State Public Ethics Laws. *See* Md. Code Ann., Gen. §Prov. §§5-801-5-820. These laws require local boards to adopt regulations concerning conflict of interest, financial disclosure, and lobbying. *Id.* at §5-816, §5-817, and 5-818. The laws require the local board regulations to comply with regulations adopted by the Ethics Commission. *Id.* at 5-816(b)(2)(ii). Section 5-819 of the General Provisions Article authorizes the State Ethics Commission to approve the local board regulations and §5-820 contains provisions regarding enforcement of the adoption of ethics regulations, which lies with the State Ethics Commission. The State Legislature provided no role for the State Board in administering matters of the public ethics laws, notwithstanding the broad responsibilities the Legislature authorized for the State Board under §2-205 of the Education Article.

As part of the framework, the State Ethics Commission has jurisdiction over the Ethics Laws and has promulgated regulations requiring local boards of education to adopt regulations consistent with the Public Ethics Laws. Md. Code Ann., Gen. Prov. §5-104; COMAR 19A.05.02.01 and .02. COMAR 19A.05.02.03 provides that the local board regulations must establish a mechanism for processing and making determinations in response to complaints alleging violations of the regulations and within “the board of education’s administrative authority include sanctions for enforcement of the substantive provisions.” In addition, COMAR 19A.05.03.03 provides enforcement authority for the State Ethics Commission in situations in which local boards fail to comply with the requirements of the Public Ethics law.

There are no provisions requiring a mechanism for appealing the determinations in response to complaints. Nor are any such provisions included in the State Ethics Commission’s Model Board of Education Ethics Regulations set forth in COMAR 19A.05.00.00, Appendix A and B. Rather, the model found in Appendix A provides that there is an Ethics Panel to which complaints alleging violations of the ethics regulations may be filed, and that the Panel shall report its findings and recommendations for action to the local board, which may dismiss the complaint or take enforcement action in the event of a determination of a violation, such as discipline, personnel action, or removal.

Given the statutory and regulatory framework surrounding local board of education ethics policies and regulations, we decline to exercise jurisdiction under §2-205 to review an appeal of a local board’s dismissal of an ethics complaint filed with the Ethics Panel of the local board. *See In the Matter of Maryland Public Ethics Law*, MSBE Order No. OR19-03 (2019) (dismissing for lack of jurisdiction a request for declaratory ruling that board members violated conflict of interest provisions contained in local, county, and State ethics laws because the issues did not involve State education law and concerned matters entrusted to another agency.). To the extent that Appellant also seeks to have the State Board review general adherence to board policies or other yet to be determined actions of the local board under §2-205, we decline to entertain such a request.³

Request for Removal

At the end of Appellant’s appeal it states that “it is within the State Board’s power to remove local board of education members for misconduct per §3-10A-02 of the Education Article.” (Appeal at 5). To the extent that Appellant seeks to remove Mr. Schifanelli as a local board member, COMAR 13A.01.05.12 sets forth the process for a citizen to request such action. Appellant did not comply with that process.

CONCLUSION

For the foregoing reasons, we dismiss the appeal for lack of jurisdiction.

Signatures on File:

Clarence C. Crawford
President

Susan J. Getty
Vice-President

Gail H. Bates

Chuen-Chin Bianca Chang

Charles R. Dashiell, Jr.

Jean Halle

³ The local board also argues that Appellant lacks standing to appeal the local board’s dismissal of the ethics complaint because she is the complainant and not the respondent. Because we find that we lack jurisdiction to review this case, we decline to rule on this issue.

Joan Mele-McCarthy

Joshua Michael

Lori Morrow

Warner I. Sumpter

Absent;
Shawn D. Bartley
Rachel McCusker
Holly Wilcox

April 26, 2023