

IN THE MATTER OF
WENDY LIPPE

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 21-37

OPINION

INTRODUCTION

The Petitioner, Wendy Lippe, has requested a declaratory ruling on the status of her tenure. The Baltimore County Board of Education (“local board”) has moved to dismiss the Petition as moot.

FACTUAL BACKGROUND

Ms. Lippe began her teaching career in Baltimore County Public Schools (“BCPS”) in 1994 and was consistently rated highly effective. She possessed a Master’s Degree from Johns Hopkins University, as well as over thirty credits of additional higher education training, entitling her to be considered by BCPS as a “senior” or “advanced professional” teacher affording her increased benefits and compensation.

Ms. Lippe twice took advantage of Board of Education-approved separations from her services at BCPS in order to raise children and to seek another teaching opportunity at a private school.

In the present matter, Ms. Lippe resigned on June 20, 2019 as a “certificated” “tenured” teacher with a “highly-effective” rating. Subsequently, Ms. Lippe sought and was rehired by BCPS as a long-term substitute teacher in January 2020 at Dumbarton Elementary and Catonsville Middle Schools. She was offered and accepted a full-time position with BCPS in August 2020 (before the September start of the 2020-2021 academic school year) and was awarded the full seven months of service time as a BCPS employee for substitute teaching from December 2019 through June of the 2020 school year.

BCPS rehired Ms. Lippe as a full-time tenured teacher after she had discussions with BCPS Human Resources staff concerning the maintenance of her “tenure.” She was told on October 2020, however, that she was re-considered to be a “non-tenured” teacher, subject to three years of probation, increased requirements including, but not limited to, additional classroom work, assessment and observation requirements for three years, and the inability to seek other teaching positions within the BCPS system.

Ms. Lippe sought multiple times, and was denied, a re-determination from the BCPS Human Resources staff. But, on March 18, 2021, after she filed this request for declaratory ruling, the Division of Human Resources advised her that her non-tenured status would last only one year, through the end of the 2020-2021 school year, rather than three years.

It appears that the end of the 2020-2021 school year is June 22, 2021, which coincides with the date of the State Board meeting during which we are considering this case.

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 statute that governs tenure when there is a break in service explicitly addresses the tenure status of teachers who are hired into a school system *different* than the one from which they resigned. That law, which passed in 2010, granted “portability” of tenure and states:

(3)(i)...if a certificated employee has achieved tenure in a local school system in the State and moves to another local school system in the State, that employee shall be tenured if the employee’s contract is renewed after 1 year of probationary employment in the local school system to which the employee relocated if:

1. The employee’s final evaluation in a local school system from which the employee departed is satisfactory or better; and
2. There has been no break in the employee’s service between the two systems of longer than 1 year.

Md. Code Ann., Educ. §6-202.

Although the law is silent on the tenure status of a teacher with satisfactory ratings, and a break in status of one year or less, who is re-employed by the same school system, it is our view, as a matter of sound education policy, that such a tenured teacher re-employed by the same school system should not be treated differently from such tenured teachers employed by a different school system. We discern no reasoned basis for different treatment.

Here Ms. Lippe’s break in service was less than a year and she had been consistently evaluated at satisfactory or better. Yet Ms. Lippe was treated differently from similarly situated teachers hired into a school system different from the one in which they had taught, having been told that her probationary status would last three years, rather than one year. The school system corrected that error, but only after Ms. Lippe sought a declaratory ruling from this Board.

We shall grant the declaratory relief she seeks.

As part of the relief she requests reimbursement for her legal costs. We have never awarded such costs. Indeed, in *J.B. v. Harford County Bd. of Educ.*, MSBE Op. No. 17-01 (2017), we noted that the State Board has “no authority to award payment of attorney’s fees in an administrative appeal.” *Id.* at 4 n.1 (citing *Richard C. and Kathy C. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 12-02 (2021)). We consider that precedent binding.

Jurisdiction

Although neither party has addressed the issue of jurisdiction, we must do so for unless we have jurisdiction we have no power to rule on the merits.

Ordinarily, a case reaches the State Board following a final decision of the local board. *See* Md. Code Ann., Educ. §4-205(c). That path defines our appellate jurisdiction. Ms. Lippe did not appeal the tenure decision to the local board. Instead, she sought direct review of the tenure decision by requesting that we issue a declaratory ruling. The State Board has jurisdiction to issue declaratory rulings to explain the “true intent and meaning” of State education law. Md. Code Ann., Educ. §2-205. That statutory provision defines the “original” grant of jurisdiction to this Board allowing a petitioner to appeal directly to the State Board.

We exercise our original jurisdiction sparingly and in specific circumstances. As the Court of Appeals has explained *in dicta*, 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. 55, 65 (Md. 1982); *see also, Strother v. Board of Educ. of Howard County*, 96 Md. App. 99, 113-114 (1993). 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. *Janis Zink Sartucci v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-31 (2010); *see also T.G. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 18-10 (2018).

With that jurisdictional framework in mind, we turn again to the law governing this case. Because this tenure issue has significant implications for all teachers who are rehired into the same school system, because this is an issue governed by State education law, *see* Md. Code Ann., Educ. §6-202, and because it is an issue of first impression, we conclude that circumstances exist to support exercising our original jurisdiction in this case.¹

CONCLUSION

We declare that tenured teachers re-hired by the same school system after a break in service of one year or less and with a satisfactory rating shall be eligible for tenure after one year of probation. We also direct that Ms. Lippe be granted tenure at the end of the 2020-2021 school year.

Signatures on File:

Clarence C. Crawford
President

Jean C. Halle
Vice-President

¹ We note that as a matter of legal principle, this case will be moot as of June 22, 2021 because Ms. Lippe will be granted tenure, the substantive relief she requests, as of that date. Because this issue of tenure is an important one, however, we will take this opportunity to declare tenure status when a tenured teacher resigns but then is rehired by the same school system.

Gail H. Bates

Charles R. Dashiell, Jr.

Susan J. Getty

Vermelle Greene

Rose Maria Li

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Absent:

Shawn D. Bartley

Rachel McCusker

Joan Mele-McCarthy

June 22, 2021