

BEFORE DENISE JUNEAU, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION,
STATE OF MONTANA

TAMMY DEMIEN,)	
)	
Appellant,)	OSPI 335-13
)	
vs.)	DECISION AND ORDER
)	
ST. REGIS PUBLIC SCHOOL DISTRICT,)	
)	
Respondent.)	

Having reviewed the record and considered the parties' briefs, the Superintendent of Public Instruction issues the following decision and order:

PROCEDURAL HISTORY

On the first day of work for the 2012-2013 school year, Appellant, Tammy Demien (“Demien”) was suspended and placed on administrative leave pending an investigation. The investigation was completed by the St. Regis Public School District’s (“District”) attorneys and District Superintendent Janet Hanson (“Hanson”), who made the decision to place Demien on administrative leave until the end of the 2012-2013 school year and to place a letter of reprimand in her personnel file. Demien filed an appeal of Hanson’s decision with the District Board of Trustees (“Trustees”). The Trustees denied the complaint by letter dated April 9, 2013.

Demien appealed the Trustees’ decision to the County Superintendent of Schools by Notice of Appeal dated May 3, 2013. Erin Lipkind, Missoula County Superintendent of Schools initially accepted jurisdiction by order dated May 9, 2013. The District moved to dismiss the appeal for lack of jurisdiction. The parties submitted briefs and the County Superintendent

issued Findings of Fact, Conclusions of Law and Order on June 14, 2013 holding that “Ms. Demien’s appeal of the St. Regis Board of Trustees decision to nonrenew her contract is dismissed for lack of jurisdiction.” Demien filed a Notice of Appeal of the County Superintendent’s decision on July 5, 2013. The parties have filed briefs and this matter is now at issue.

STATEMENT OF FACTS

1. Demien was initially hired by the Trustees for the 2010-2011 school year as a principal.
2. Demien continued her employment in that position until August 6, 2012.
3. Hanson suspended Demien and placed her on administrative leave on August 6, 2012 for the purpose of conducting an investigation.
4. In response to three requests from Demien, the District, through its attorney, provided Demien with a summary of the reasons for the suspension and investigation by letter dated August 28, 2012.
5. Following the completion of the investigation by the District’s attorneys, Hanson advised Demien by letter dated November 2, 2012 that she had determined Demien failed to properly investigate and report allegations that an employee of the District and a student of the District may have been involved in an inappropriate relationship. As a result of this determination, Hansen placed a formal letter of reprimand in Demien’s personnel file.
6. In the November 2, 2012 letter Hanson also advised Demien that she had placed her on administrative leave with pay for the remainder of the 2012-2013 school year to “avoid the disruption I believe your return to the school would cause to the students and staff of the District.”
7. A Letter of Formal Reprimand was placed in Demien’s employment file.
8. Demien filed a formal complaint under St. Regis School District School Board Policy 1700 by letter dated November 19, 2012. The complaint stated that “Demien objects to the reprimand placed in her personnel file and her suspension for the remainder of the school year.” Demien also stated that she had been denied her state and federal rights to due process and free expression.
9. Demien requested the remedy of “retraction of the reprimand and removal of it and

any other negative information from her personnel file” and stated her willingness to return to her job responsibilities as principal of the St. Regis School District.

10. By letter dated December 14, 2013 Hanson denied Demien’s complaint.

11. Demien appealed Hanson’s decision to the Trustees by letter dated December 20, 2012, responded to the allegations against her, and asked the Board to rescind the reprimand and return her to her status.

12. A special board meeting was scheduled for April 8, 2013 “to review the complaint [Demien] filed in accordance with District Policy 1700.” Demien was advised that she had the right to attend and participate in the meeting and that she had the right to be represented by an attorney.

13. Demien was advised on April 5, 2013 that the board meeting would not be a “full blown evidentiary hearing” but the board would be considering the information available to Hanson when she made her decision.

14. Demien was advised by letter dated April 9, 2013 that the Trustees had denied her complaint and her requested remedy would not be implemented.

15. On April 15, 2013, the Trustees decided not to renew Demien’s employment contract for the 2013-2014 school year pursuant to § 20-4-206, MCA, terminating her employment with the district at the end of the 2012-2013 school year.

16. Demien was a nontenured principal during the 2012-2013 school year.

17. Demien did not appeal the Trustees nonrenewal of her employment contract, but acknowledged that, as a nontenured principal, she did not have a legal right to renewal of her contract.

ISSUE ON APPEAL

Whether the County Superintendent properly determined she did not have jurisdiction to hear this case.

STANDARD OF REVIEW AND AUTHORITY

The Superintendent of Public Instruction’s review of a county superintendent’s decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, Montana Code Annotated (MCA) and adopted by the Superintendent of Public Instruction in Administrative Rules of Montana (ARM) 10.6.125.

The Superintendent of Public Instruction may reverse or modify the county superintendent's decision if substantial rights of a party have been prejudiced because the conclusions of law and order are (a) in violation of constitutional or statutory provision; (b) in excess of the statutory authority; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable probative and substantial evidence on the whole record; (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (g) affected because findings of fact upon issues essential to the decision were not made although requested. Admin. R. M. 10.6.125(4).

A county superintendent's conclusions of law are reviewed to determine if the interpretation of law is correct. *Baldrige v Board of Trustees*, 264 Mont. 199, 870 P.2d 711 (1994). A county superintendent's findings of fact are reviewed to determine whether they are clearly erroneous. *Steer, Inc. v. Dept. of Revenue*, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990). The Montana Supreme Court has described the review of the clearly erroneous standard as three "prongs." Are the findings supported by substantial evidence? If there is substantial evidence to support a finding, did the trier of fact misconstrue the effect of the evidence? And if not misconstrued, a court may still determine a finding as "clearly erroneous" when "a review of the record leaves the court with the definite and firm conviction that a mistake has been committed." *Interstate Production Credit v. DeSaye*, 250 Mont. 320, 323, 820 P.2d 1285, 1287 (1991) (internal citations omitted).

CONCLUSIONS OF LAW AND OPINION

Demien argues that the County Superintendent made findings and issued her order on an issue that was not on appeal, i.e. the nonrenewal of her contract. Both parties in their briefs before the County Superintendent stated that the nonrenewal of Demien's contract was not an issue in the appeal to the County Superintendent.

The County Superintendent's findings and conclusions of law dealing with the issue of nonrenewal of Demien's contract are not pertinent to the matters on appeal. Her conclusion that the County Superintendent had no jurisdiction to hear the matter, however, was correct. Jurisdiction is dispositive of this matter, so regardless of the erroneously applied findings of fact and conclusions of law by the County Superintendent, the case is nonetheless dismissed for lack of jurisdiction.

Montana law provides that “except for disputes arising under the terms of a collective bargaining agreement or as provided under 20-3-211 or 20-4-208, the county superintendent shall hear all matters of controversy arising in the county as a result of decisions of the trustees of a district in the county.” § 20-3-210, MCA.

Montana administrative rule provides that school controversy means a contested case or “any proceeding in which a determination of legal rights, duties or privileges of a party is required by law to be made after an opportunity for a hearing.” Admin R. M. 10.6.102

To determine if the issues on appeal constitute a “contested case” and fall under the jurisdiction of the County Superintendent, Demien must show that she had a statutory right to a hearing to determine if her legal rights, duties or privileges were violated.

Demien alleges she was denied her state, federal, and constitutional rights due to the Trustees:

1. Placing her on paid administrative leave without informing her of the reasons for her suspension for three weeks;
2. Failing to conduct a timely, fair and complete investigation;
3. Placing a formal reprimand in her personnel file;
4. Treating her in a disparate way from other school agents and employees;
5. Retaliating against her for hiring counsel who spoke about the District’s unfair and inappropriate treatment of her;
6. Giving her a list of directives to accomplish while she was on administrative leave while not allowed at the school or the opportunity to work with staff or students;
7. Failing to timely hear her appeal of the superintendent’s denial of her complaint; and
8. Failing to notify her of the procedures the school board would use to hear her appeal and denying her the right to have a full hearing on her complaint.

Demien does not cite any statute stating that she had a right to a hearing following disciplinary actions taken against her by the District. The Montana Constitution at Article X, Section 8 provides that “[t]he supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.” The Montana legislature gave the trustees responsibility for employment decisions for all district personnel. MCA 20-3-324. The legislature did not provide for the right to a hearing when objecting to disciplinary decisions made by administrators or a board of trustees.

The Montana Supreme Court has stated “an aggrieved person must be able to identify a legal right to contest a school board’s decision; absent a statutory right to a hearing, a county superintendent does not have jurisdiction to hear a matter. *Roos v. Kircher Public School Board of Trustees*, 2004 MT 48 ¶10, 320 Mont. 346, 86 P.3d 39. “Simply because a disagreement occurs in a school does not mean the school district, the county or the state must provide a contested case hearing to resolve it. Just as there must be a cause of action in district court, there must be a constitutional interest at stake or a statutory right to a hearing before the dispute rises to the level of contested case.” 2004 MT 48, ¶10 (citing *Bland v. Libby School District* (1993) (OSPI 205-92, 12 Ed. Law 76 at 78).

Demien received full pay and benefits provided under her contract throughout her suspension and administrative leave. Demien took a disciplinary decision of the District Superintendent to the Trustees via district policy for complaints. After considering the issues raised by Demien in a closed executive session (at which her attorney was present), the Trustees denied her complaint to the Board without holding an evidentiary hearing or making any decision on the issues raised.

Although Demien may have causes of action in a different venue, she was not entitled to a hearing before the board of trustees on the issues raised, and therefore the County Superintendent did not have jurisdiction to hear the matter. The County Superintendent’s dismissal of Demien’s appeal for lack of jurisdiction is affirmed, although not for the reasons stated in her decision.

DATED this 26th day of November, 2013.

/s/ Denise Juneau
Denise Juneau,
Superintendent of Public Instruction

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 26th day of November, 2013, I caused a true and exact copy of the foregoing DECISION AND ORDER to be mailed, postage prepaid, to the following:

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