

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

SHAWN HENDRICKSON,)	
)	
Appellant,)	OSPI 328-11
)	
vs.)	DECISION
)	
POLSON SCHOOL DISTRICT NO. 23,)	
)	
Respondent.)	
)	
)	

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

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Appellant, Shawn Hendrickson (Hendrickson) was employed by Polson School District Board of Trustees (Board) as an assistant high school principal for the 2009-2010 school year. His contract was renewed for the 2010-2011 school year.

On February 10, 2011, the District Superintendent notified Hendrickson he had recommended to the Board that Hendrickson's contract not be renewed for the 2011-2012 school year. Hendrickson did not have tenure with the District.

At a regularly scheduled board meeting held on February 14, 2011, the Board considered renewal of administrator contracts. The Board voted not to renew Hendrickson's contract. Hendrickson was allowed to speak at the meeting during the public comment period of the meeting, but there was no hearing on the matter.

Hendrickson timely appealed the Board's decision to the Lake County Superintendent of

Schools on March 11, 2011. The Board filed a Motion to Dismiss the Appeal and Brief in Support on March 23, 2011. On April 5, 2011, Hendrickson filed an Unopposed Motion for Extension of Time to File a Response Brief, which the County Superintendent granted and ordered Hendrickson to file his response brief on April 18, 2011.

On April 18, 2011, prior to Hendrickson filing his response brief, the County Superintendent dismissed Hendrickson's appeal for lack of jurisdiction.

On May 17, 2011, the Superintendent of Public Instruction received a Notice of Appeal from Hendrickson appealing the County Superintendent's decision. The Superintendent of Public Instruction issued a Notice and Briefing Schedule, the parties submitted briefs, and this matter is now at issue.

ISSUE ON APPEAL

Did the County Superintendent err in determining he did not have jurisdiction over this appeal?

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, MCA and adopted by the Superintendent of Public Schools in ARM 10.6.125.

The Superintendent of Public Instruction may reverse or modify a 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. ARM 10.6.125(4).

A county superintendent's conclusion of law is reviewed to determine if the interpretation of law is correct. *Baldrige v Board of Trustees*, 264 Mont. 199, 870 P.2d 711 (1994).

CONCLUSIONS OF LAW AND OPINION

Issue. Did the county superintendent err in determining he did not have jurisdiction over this appeal?

No. The County Superintendent correctly concluded he did not have jurisdiction to hear this

matter because it is not a contested case as defined by Montana law.

Section 20-3-210, MCA states:

Controversy appeals and hearings. (1) 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 and decide all matters of controversy arising in the county as a result of decisions of the trustees of a district in the county. ***

The Administrative Rules of Montana (ARM) provide clarification and further definition.

10.6.101 SCOPE OF RULES (1) These rules govern the procedure for conducting all hearings on school controversy cases arising under the provisions of Title 20, MCA, before the county superintendent... and all appeals to the state superintendent of public instruction. ***

10.6.102 SCHOOL CONTROVERSY MEANS CONTESTED CASE (1) Contested case means 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 hearing.

While this is a controversy resulting from a decision of the Board, not all decisions of a board of trustees are contested cases. The Montana Supreme Court has determined a dispute with a school board does not rise to the level of a contested case unless the individual has a constitutional interest at stake or a statutory right to a hearing.

Roos v. Kircher Public Sch. Bd. of Trs., 2004 MT 48, 320 Mont. 128, 86 P.3d 39, involved a nontenured teacher whose contract was not renewed. The Court held that although Roos raised allegations of policy violations, she failed to allege any violation of state statute granting an administrative hearing or constitutionally protected interest entitling her to a hearing before the county superintendent. “[A]n aggrieved person must be able to identify a legal right to contest a school board’s decision; absent a statutory or constitutional right to a hearing, a county superintendent does not have jurisdiction to hear a matter.” *Roos*, ¶10. Although Hendrickson lost his job with the District and has alleged violations of constitutionally protected interests including equal protection, individual dignity and due process, he has no right under Montana law to a hearing for nonrenewal of his contract as a nontenured teacher. As § 20-4-206(3), MCA clearly states “trustees may nonrenew the employment of a nontenure teacher at the conclusion of the school fiscal year **with or without cause.**” (Emphasis added.) Any reference to a "teacher" in Title 20 includes a principal. § 20-1-101(15), MCA.

The Montana Supreme Court in *Roos* clarified that a nontenured teacher has no right to a hearing when not given a new contract.

Furthermore, in *Irving v. School District No. 1-1A* (1991), 248 Mont. 460, 813 P.2d 417, we upheld the State Superintendent's decision that a teacher denied contract renewal did not have the right to appeal. We stated that, "Nowhere in ... the statutes ... is [the teacher] given a right to appeal her non-renewal. Moreover, as a non-tenured teacher she has no legally recognized property right in a new contract."

Roos, ¶11.

The Board's policies and state law regarding the renewal/nonrenewal of nontenured teacher contracts do not provide for a hearing in the event of the nonrenewal of a nontenured teacher contract. The Board considered whether or not to renew nontenured staff at a regularly scheduled school board *meeting*. That meeting was not a "hearing" and therefore the Board was not under the obligation to follow hearing procedures. The Board allowed public comment on the issue of Hendrickson's contract as required by the Board's policies and state law. The Board need only consider, not defer to the opinions offered during public comment.

A similar situation was addressed in *Dupuis v. Ronan* 2006 MT 3, 330 Mont. 232, 128 P.3d 1010. In *Dupuis*, the local school board heard public comment, recommendations and opinion regarding the board's pending decision on appropriate school mascots. The *Dupuis* decision stated "policies by themselves do not confer jurisdiction on the County Superintendent to hear ... claims." *Dupuis*, ¶13. "A mere disagreement with a school district does not automatically entitle an aggrieved party to a contested case hearing to resolve the disagreement." *Dupuis*, ¶12, citing *Roos*, ¶10.

Although the Board ultimately did not heed these recommendations, disagreement with a Board's discretionary decision does not automatically give rise to the level of a "contested case" within the meaning of Rule 10.6.102(1), ARM. *Roos* ¶ 10. Similarly, absent a "contested case," the District policies do not grant the right to an appeal from an unfavorable decision.

Dupuis, ¶13.

Hendrickson also argues the Board initially stated the nonrenewal of his contract was without cause, but Board members made comments indicating there was cause for nonrenewal, thereby giving him the right to contest the Board's action.

In 1997, the Montana Legislature amended the statutes related to tenure, removing a requirement that, upon request, a nontenured teacher be notified of the reasons for nonrenewal. The legislature also eliminated the requirement for a hearing before the county superintendent if the teacher believed the reasons given for nonrenewal were untrue. As addressed above, under current Montana law, regardless of whether the nonrenewal of a nontenured teacher's contract is with or without cause,

there is no provision for a hearing when a teacher's contract is not renewed prior to the end of the school's fiscal year. Therefore, there is no "controversy" or "contested case" as addressed in § 20-3-210, MCA and defined in ARM 10.6.102. As addressed in *Roos*, ¶10, possible policy violations by the Board are not a controversy appropriately appealed to the county superintendent without an identifiable right to a hearing.

To be appealable to the County Superintendent the policy decision at issue must be governed by a statute that grants an administrative hearing or an interest constitutionally protected by due process must be at stake . . . When the Legislature intends to provide contested case proceedings it enacts a statute stating that there is a right to a hearing.

Citing *Bland v. Libby School District* (1993) (OSPI 205-92, 12 Ed. Law 76)

As addressed above, the Montana Legislature specifically removed the right of a nontenured teacher to a hearing for contract nonrenewal.

Hendrickson also challenges the way the Board conducted the meeting at which they voted to accept the Superintendent's recommendation not to renew his contract. Hendrickson alleges he was denied adequate opportunity at the school board meeting to make a record of various violations of his constitutional rights. However, there was no "hearing" to address the recommendation of the District Superintendent regarding nonrenewal of his contract, as no hearing is required under the Board's policies or state law. The Board considered the nonrenewal of Hendrickson's contract for the following school year as recommended by the Superintendent and placed as an action item for the Board on their publically noticed agenda.

A county superintendent does not have jurisdiction to rule on any issues outside of Title 20, MCA. "Constitutional questions are properly decided by a judicial body, not an administrative official..." *Jarussi v. Bd. Of Trustees of School Dist. No. 28*, 204 Mont. 131, 135-36, 664 P.2d 316, 318 (1983). Hendrickson's allegations of constitutional violations related to free speech, equal protection, due process and public participation are not appropriately before the County Superintendent in this case. Hendrickson filed a complaint with the Montana Human Rights Commission to address allegations of discrimination and unfair treatment by the Polson School District and its Board.

Finally, Hendrickson alleges the County Superintendent "issued an order upon unlawful procedure" by issuing his decision prior to receiving Hendrickson's brief in response to the Board's Motion to Dismiss. Although the County Superintendent issued his decision prior to receiving Hendrickson's brief, that procedural error does not alter the correct legal conclusion that he lacked jurisdiction to hear the matter appealed. While this matter could be remanded to the County

Superintendent for consideration of the briefs, such an order would not affect the outcome of the case:
The County Superintendent does not have jurisdiction to hear the matter.

For the reasons addressed herein, the County Superintendent properly determined he did not have jurisdiction to hear this matter. Dismissal of Hendrickson's appeal is affirmed.

DATED this 26th day of September, 2011.

/s/ Dennis Parman, Deputy Supt. for Denise Juneau
Denise Juneau,
Superintendent of Public Instruction

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 26th day of September, 2011, 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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