BEFORE LINDA McCULLOCH, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

* *

BOARD OF TRUSTEES, SCHOOL DISTRICT NO. 3, KIRCHER, MONTANA	)	
	)	OSPI 282-99
Appellant,	)	
	)	**DECISION AND ORDER**
-vs-	)	
	)	
JUDY ROOS,	)	
	)	
Respondent.	)	

* *

PROCEDURAL HISTORY

This is an appeal by the Board of Trustees of School District No. 3, Kircher, Montana ("the District"). On November 1, 1999, the Acting Custer County Superintendent of Schools denied the District's motion to dismiss Judy Roos' appeal of the District's Trustees' decision not to renew her teaching contract.

Ms. Roos was a non-tenured teacher employed by the District during school years 1996-97, 1997-98 and 1998-99. On May 20, 1999, the District's Trustees voted not to offer Ms. Roos a fourth contract for the 1999-2000 school year. Ms. Roos filed a grievance on June 15, 1999, which the District denied on July 15, 1999. On August 9, 1999, Ms. Roos filed an appeal with the Custer County Superintendent of Schools. On September 13, 1999, the District filed a motion to dismiss the appeal with a supporting affidavit from Rick Helm, the District's Board Chair. The parties briefed the motion. The County Superintendent denied the motion to dismiss and the District filed this appeal.

Having reviewed the record below and the parties' briefs, the State Superintendent issues the following Order.

DECISION AND ORDER

The November 1, 1999, decision by the Acting Custer County Superintendent denying the District's motion to dismiss is REVERSED, and the District's motion to dismiss is GRANTED.

STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in Mont. Code Ann. § 2-4-704 and adopted by the Superintendent in Admin. R. Mont. 10.6.125. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed to determine if the correct standard of law was applied. See, for example, Harris v. Trustees, Cascade County School Districts No. 6 and F, and Nancy Keenan, 241 Mont. 274, 277, 786 P.2d 1164, 1166 (1990) and Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, at 474, 803 P.2d 601, 603 (1990).

Granting a motion to dismiss based on lack of jurisdiction is a conclusion of law. On review, the Superintendent uses the standard that motions to dismiss are viewed with disfavor and are considered from the perspective most favorable to the opposing party. Buttrell v. McBride Land and Livestock, 170 Mont. 296, 553 P.2d 407 (1976). Bland v. Libby School District No. 4, OSPI 205-92, 12 Ed. Law 76 (1993).

MEMORANDUM OPINION

Summary of the Facts. The District employed Ms. Roos as a non-tenured teacher for school years 1996-97, 1997-98, and 1998-99. In the spring of 1999, the District asked its teachers to indicate whether they would accept employment with the District during school year 1999-2000. Ms. Roos informed the District that she was willing to accept employment during the 1999-2000 school year.

In 1999 the District had a policy that stated:

> During the first three (3) years of employment, a teacher has probationary status. Probationary teachers will be notified on or before the first day of May as to whether they will or will not be contracted for the next school year. The board will consider evaluations, administrative recommendations and community input when making its decision to offer a contract for a non-tenured teacher (20-4-206, MCA).
>
> A teacher receives tenure with acceptance of the fourth consecutive contract offered by the board. If the board decides not to rehire a tenured teacher, written notification of the decision must be submitted to the teacher on or before the first day of May.

District Policy No. 302.2.

The District's Board Chairman, Rick Helm, submitted an affidavit stating that he had been on the Board for nine years. He also stated that it "has always been my intent and the intent of the other trustees that board policy be consistent with state law in this matter." In 1997, two years prior to the controversy at issue in this appeal, the Montana Legislature amended Mont. Code Ann. §20-4-206, the statute referenced in the District's policy. Prior to 1997, state law required that teachers be notified of contract non-renewal by May 1. After the amendment to Mont. Code Ann. §20-4-206, the notification date became June 1. (See 1997 Mont. Law, Ch. 438, Sec. 5.) When Ms. Roos was notified of non-renewal of her contract on May 20, 1999, Montana law provided:

> 20-4-206. Notification of nontenure teacher reelection – acceptance – termination.
> (1) The trustees shall provide written notice by June 1 to each nontenure teacher employed by the district regarding whether the nontenure teacher has been reelected for the ensuing school fiscal year. A teacher who does not receive written notice of reelection or termination is automatically reelected for the ensuing school fiscal year.
> (2) A nontenure teacher who receives notification of reelection for the ensuing school fiscal year shall provide the trustees with written acceptance of the conditions of reelection within 20 days after the receipt of the notice of reelection. Failure to notify the trustees within 20 days constitutes conclusive evidence of the nontenure teacher's nonacceptance of the tendered position.

> (3) Subject to the June 1 notice requirements in this section, the trustees may nonrenew the employment of a nontenure teacher at the conclusion of the school fiscal year with or without cause (Emphasis added.)

Ms. Roos argued that it was the District's policy to give its teachers notice of termination one month earlier than required by state law. She also argued that, although there was no language to that effect in the policy and because the wording of section 206 states that a teacher who does not receive written notice of reelection by June 1 is automatically reelected, it must be assumed that it was also the District's policy to offer a contract to all teachers who were not notified of reelection or termination by May 1.

Issue: Did the County Superintendent err as a matter of law in denying the District's motion to dismiss? Yes, there were no material facts in dispute and the District was entitled to a ruling in its favor as a matter of law. While procedurally a motion for summary judgment may have been more appropriate, ultimately the outcome would be the same: as a matter of law, the District was not required to offer Ms. Roos a contract for school year 1999-2000.

The language of the District's policy at issue here was ambiguous. The policy stated notification had to be made by May 1, but it also cited Mont. Code Ann. §20-4-206, which established a June 1 deadline. As described in the affidavit of Chairman Helm, the District's Trustees interpreted the language of their policy to mean that the District had to provide notice of nonrenewal by the statutory deadline of June 1 set in Mont. Code Ann. §20-4-206. The supervision and management of a school district, including setting policy not in violation of state or federal law, is vested with the Trustees, not the County Superintendent.

The issue on appeal is not whether the County Superintendent, or this Superintendent, agreed with the District's decision not to renew Ms. Roos' contract. There is no issue regarding the District's compliance with state statute; the Trustees gave notice within the time required by

law. The only issue is whether the Trustees' actions were procedurally correct pursuant to the District's policy.

If the Legislature wants to establish a statewide standard that must be followed by all school districts it does so by statute. Trustees cannot enact policies in contravention of state or federal law. Otherwise, however, the supervision and control of schools is vested in locally elected trustees. Article X §8, Mont. Const. The District's Trustees had the authority to establish their District's policies and to interpret them.

The interpretation stated in Chairman Helm's affidavit is reasonable. The District's policy plainly cited a statute that had originally established a May 1 notification date, but had been amended to make June 1 the deadline. The District did not have a collective bargaining agreement that established deadlines or notification requirements other than state law. It was reasonable for the Trustees to interpret the policy as adopting the deadlines in statute, and it was within the authority of the Trustees to make that interpretation.

The District correctly moved to dismiss the appeal because the County Superintendent had no jurisdiction to hear this appeal. State law granting county superintendents jurisdiction over "all matters of controversy arising in the county as a result of decisions of the trustees" does not give county superintendents authority to set school district policy. Mont. Code Ann. §20-3-210. Elected Trustees have that power under both Montana's Constitution (Art. X, §8) and statute (Mont. Code Ann. §20-3-323). The process to set aside that policy is generally with the local voters, not the county superintendent.

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. Bland v. Libby School District No. 4, OSPI 205-92, 12 Ed. Law 76 (1993). As stated in

Althea Smith v. Board of Trustees, Judith Basin County School District No. 12, OSPI 200-90, 11 Ed. Law 65:

> Unless a claimant has a case in controversy (contested case), the administrative process is not invoked and the county superintendent is without jurisdiction to hear the complaint and the complaint must be dismissed. To find that §20-3-210, MCA, confers unlimited jurisdiction on a county superintendent leads to absurd results. I cannot believe that the legislature intended to subject every decision of a board of trustees to judicial review. If the county superintendent must hear an appeal on every decision of a board of trustees, this would be the result.

This remains the position of the State Superintendent.

Finally, it is worth noting that this controversy could have been avoided if the Trustees updated or corrected the District's written policy to match state law, as the Trustees intended. The Trustees behaved in a manner consistent with state law, thus establishing a modified District policy. Nonetheless, the Trustees are encouraged to review their written policies frequently and update as necessary.

CONCLUSION

The November 1, 1999, decision by Acting Custer County Superintendent denying the District's motion to dismiss is REVERSED, and the District's motion to dismiss is GRANTED.

Dated this 3rd day of December 2001.

/s/ LINDA MCCULLOCH
Superintendent of Public Instruction

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this _____ day of December 2001, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

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