

MATTHEW HENSON ELEMENTARY
SCHOOL PARENT TEACHER ASSOCIATION,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Order No. OR10-05

ORDER OF DISMISSAL

The State Board received an appeal from the Matthew Henson Elementary School Parent Teacher Association ("PTA"), through Nicole Thomas, PTA President, challenging the decision of the Prince George's County Board of Education (local board) to close Matthew Henson Elementary School. The local board filed a Motion for Summary Affirmance. The Appellant did not file a response.

Because this appeal involved a school closing, the State Board referred the case to the Office of Administrative Hearings ("OAH") for an evidentiary hearing. COMAR 13A.01.05.07A(1).

OAH mailed notice of a prehearing conference to the Appellant at the address of record. The U.S. Postal Service returned the notice to OAH as undeliverable with no forwarding address. The Appellant's address of record was the address of Matthew Henson Elementary School, which had closed at the end of the 2008-2009 school year. At no time during the pendency of this appeal did the Appellant provide the State Board or OAH with an updated address of record.

The Administrative Law Judge ("ALJ") determined that Appellant's address of record was not viable at the time the State Board transmitted the case to OAH. As a result of this deficiency, the ALJ was unable to adjudicate the case. He recommended, therefore, that the State Board dismiss the appeal. The ALJ further recommended that the State Board affirm the local board's decision approving the closure of Matthew Henson Elementary School.

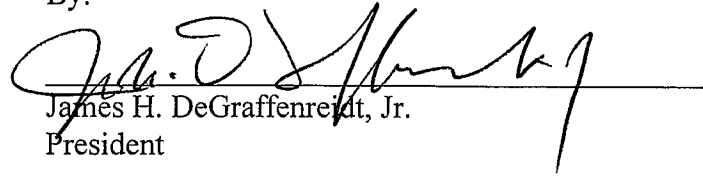
For the reasons stated in the ALJ's Proposed Order of Dismissal, we adopt the ALJ's recommendation that this case be dismissed. Because we are dismissing this appeal, there is no need to adopt the ALJ's recommendation that the State Board also affirm the local board's decision.

It is this 27th day of April, 2010, by the Maryland State Board of Education,

ORDERED, that the appeal referenced above be and the same is hereby dismissed. See COMAR 13A.01.05.03C.

MARYLAND STATE BOARD OF EDUCATION

By:


James H. DeGraffenreid, Jr.
President

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MATTHEW HENSON ELEMENTARY
SCHOOL PARENT TEACHER
ASSOCIATION (PTA),

APPELLANT

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION

* BEFORE STEPHEN J. NICHOLS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH No.: MSDE-BE-16-09-41604
*

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PROPOSED ORDER OF DISMISSAL

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STATEMENT OF THE CASE

On March 26, 2009, the Prince George's County Board of Education (the Board) approved the recommendation of Interim Superintendent William R. Hite, Jr., Ed.D., for a school consolidation plan closing eight schools in Prince George's County, Maryland. On April 24, 2009, an appeal of the closing of the Matthew Henson Elementary School, one school affected by the school consolidation plan, was received by the State Board of Education (State Board).¹ The party taking the appeal identified itself as the Matthew Henson Elementary School PTA (Appellant or PTA) and the appeal was forwarded to the State Board signed by Nicole Thomas, President of the PTA.

¹ A binder containing the appeal letter and other documents has an affixed label reading it was received by the Maryland State Department of Education on April 24, 2009.

On May 20, 2009, the Board filed a response to the appeal with the State Board that included a Motion for Summary Affirmance. On November 10, 2009, the State Board referred the matter to the Office of Administrative Hearings (OAH) so that a hearing could be conducted on the appeal.² On November 12, 2009, the OAH received the transmittal of this matter from the State Board. On November 30, 2009, the OAH mailed notice of a prehearing conference to all persons listed on the State Board's transmittal letter by first class mail. The notices stated that an in-person prehearing conference was scheduled for Wednesday, January 20, 2010, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland.

On Wednesday, January 20, 2010, at 9:30 a.m., Stephen J. Nichols, Administrative Law Judge (ALJ), assigned to this matter by the OAH, and Roger C. Thomas, Esquire, Attorney for the Board, were present in the designated location at the OAH and ready to proceed with the prehearing conference. No one else appeared for the prehearing conference. After waiting fifteen minutes, the prehearing conference was conducted and the matters discussed were the non-appearance of Nicole Thomas, the PTA, and the procedural posture of this case before the OAH. After review of the State Board's transmittal letter, the Appellant's Official Appeal of Matthew Henson Elementary School Consolidation Plan (submitted April 2009), the Board's Motion for Summary Affirmance, the Board's Prehearing Information Report, the OAH notices of a prehearing conference, and after discussion with counsel of record, the ALJ determined that an order of dismissal should issue in this case.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for State Board hearings, and the OAH Rules of

² On November 5, 2009, an initial referral was sent by the MSDE to the OAH. The November 12, 2009 referral of the appeal revised the transmittal of the matter to the OAH and correctly identified the statutory authority to adjudicate the subject matter of the dispute at hand.

Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009); Code of Maryland Regulations (COMAR) 13A.01.05.07, 13A.01.05.08; COMAR 28.02.01.

ISSUE

Whether an administrative adjudication can be conducted on the State Board's transmittal of the appeal in this matter.

FINDINGS OF FACT

Based on the record, the ALJ finds the following to be fact:

1. On April 24, 2009, an appeal of the Board's decision to close the Matthew Henson Elementary School was filed by the Appellant with the State Board. The only mailing address for the Appellant listed in the appeal was 7910 Scott Road, Hyattsville, Maryland 20785.

2. On May 20, 2009, the Board filed a response to the appeal with the State Board that included a Motion for Summary Affirmance. On May 20, 2009, the representative for the Board mailed a copy of the Motion for Summary Affirmance to the PTA, in care of Nicole Thomas, 7910 Scott Road, Hyattsville, Maryland 20785.

3. On November 12, 2009, the OAH received the transmittal of this matter from the State Board. The Appellant was listed on the State Board's transmittal of appeal letter as Nicole Thomas, 7910 Scott Road, Hyattsville, Maryland 20785.

4. On November 30, 2009, the OAH mailed notice of a prehearing conference to all persons listed on the State Board's transmittal letter by first class mail. The notices stated that an in-person prehearing conference was scheduled for Wednesday, January 20, 2010, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. A copy of the notice was mailed to Nicole

Thomas, 7910 Scott Road, Hyattsville, Maryland 20785. On December 8, 2009, the notice of prehearing conference that had been mailed to Nicole Thomas was returned to the OAH marked by the U. S. Postal Service as “RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD.”

5. On January 7, 2010, another copy of the notice for the prehearing conference was mailed by the OAH to Nicole Thomas, 7910 Scott Road, Hyattsville, Maryland 20785. On January 20, 2010, the additional copy of the notice of prehearing conference that had been mailed to Nicole Thomas was returned to the OAH marked by the U. S. Postal Service as “RETURN TO SENDER ATTEMPTED – NOT KNOWN UNABLE TO FORWARD.”

6. The mailing address of the Matthew Henson Elementary School was 7910 Scott Road, Hyattsville, Maryland 20785. The Matthew Henson Elementary School building was closed as a school at the end of the 2008-2009 school year.

7. The representative for the Board has had no contact with Nicole Thomas or anyone else purporting to represent the PTA in this matter.

DISCUSSION

“The purpose of [the Administrative Procedure Act] is to . . . ensure the right of all persons to be treated in a fair and unbiased manner in their efforts to resolve disputes in administrative proceedings . . . [and] promote prompt, effective, and efficient government.” Md. Code Ann., State Gov’t §§ 10-201 (2009). “**Promptly** after receipt of a request for a contested case hearing, an agency shall . . . transmit the request to the [OAH] so that the [OAH] shall conduct the hearing in accordance with the agency’s delegation[.]” Md. Code Ann., State Gov’t § 10-205(c) (2009) (emphasis added). “An agency or the [OAH] shall give all parties in a

contested case reasonable written notice of the hearing.” Md. Code Ann., State Gov’t § 10-208(a) (2009). A party’s absence at a prehearing conference can be grounds for a default:

If, **after receiving proper notice**, a party fails to attend or participate in a prehearing conference, hearing, or other stage of a proceeding, the judge may proceed in that party’s absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party.

COMAR 28.02.01.20A (emphasis added).

This case was transmitted to the OAH for a hearing over six months after an appeal of the Board’s decision was undertaken. The Appellant was listed on the State Board’s transmittal of appeal letter as Nicole Thomas, 7910 Scott Road, Hyattsville, Maryland 20785.³ The mailing address of the Matthew Henson Elementary School was 7910 Scott Road, Hyattsville, Maryland 20785 and that school building closed as a school at the end of the 2008-2009 school year, presumably during the summer of 2009. The two notices for the prehearing conference that were mailed to Nicole Thomas at 7910 Scott Road, Hyattsville, Maryland 20785 could not be delivered by the U. S. Postal Service and were returned to the OAH. It seems more likely than not that the address listed for the Appellant on the State Board’s transmittal letter was not a viable address for either the PTA or Nicole Thomas when this case was referred to the OAH for a hearing.

No one appeared on behalf of the Appellant at the scheduled prehearing conference in this matter. Two copies of a notice for the prehearing conference were mailed to Nicole Thomas at the last known address for the Appellant, but the copies could not be delivered and were returned to the OAH. There was, however, a considerable delay in the transmittal of this matter

³ With the exception of Nicole Thomas, no other members of the PTA were identified. It is unclear whether the organization, itself, is incorporated and has standing to pursue this appeal separately from its members. Although section 9-1607.1 of State Government Article allows corporations to be represented by non-attorneys in a limited number of specific administrative hearing types, the law does not permit this practice generally. If the appeal is that of the PTA as an organization, it could only appear through an attorney. See Md. Code Ann., State Gov’t § 9-1607.1 (2009).

to the OAH for a hearing. It is unclear whether it was customary for the PTA to use the mailing address of the Matthew Henson Elementary School. Conceivably, the address listed for the Appellant was a valid address when the appeal was filed and for some time thereafter, before the Matthew Henson Elementary School building closed as a school. Clearly, neither Nicole Thomas nor the PTA received “proper notice” of the prehearing conference. COMAR 28.02.01.20A

“‘Initial pleading’ means a notice of agency action, an appeal of an agency action, or any other request for a hearing by a person.” COMAR 28.02.01.02B(7). “[T]he [OAH] acquires jurisdiction over a matter when an initial pleading is filed with the [OAH] by . . . [a]n agency” COMAR 28.02.01.03A(1). “A hearing request shall include and be accompanied by the following . . . [t]he mailing address of the person requesting the hearing[.]” COMAR 28.02.01.04B(2). “If a hearing request is received without the address of the person requesting the hearing, the case **shall** be dismissed.” COMAR 28.02.01.04C(2) (emphasis added).

A viable address for the Appellant was not listed in the State Board’s transmittal letter when this case was referred to the OAH for a hearing. No other address is included in the appeal filed with the State Board. No information is available that suggests an alternative means of notifying the PTA or Nicole Thomas that this administrative adjudication is pending before the OAH. This case must be dismissed pursuant to COMAR 28.02.01.04C(2).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, the ALJ concludes as a matter of law that an administrative adjudication cannot be conducted on the State Board’s transmittal of the appeal in this matter and that the Appellant’s request for a contested case hearing must be dismissed. COMAR 28.02.01.04C(2).

PROPOSED ORDER

IT IS RECOMMENDED that the instant appeal received by the State Board on April 24, 2009 be DISMISSED, and that the March 26, 2009 decision by the Prince George's County Board of Education approving a school consolidation plan closing the Matthew Henson Elementary School be AFFIRMED.

January 27, 2010
Date Order Mailed
#111043v1

Stephen J. Nichols
Administrative Law Judge

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this Proposed Order of Dismissal has the right to file written exceptions within fifteen days of receipt of the decision; parties may file written responses to the exceptions within fifteen days of receipt of the exceptions. Both the exceptions and the responses shall be filed with the Maryland State Department of Education, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

Nicole Thomas
7910 Scott Road
Hyattsville, Maryland 20785

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