

This Opinion will address the preliminary issue of whether the record in this case is incomplete. LaForme asserts that the record is complete and that she is entitled to a de novo hearing by this court. LaForme contends that she was denied an opportunity at the June 1, 2004 hearing before the Board to inquire of and present any bias of the Board in that it may have reviewed and relied upon evidence not introduced at the hearing. The court finds the record to be incomplete and will remand the matter to the Board for further evidentiary proceedings.

A school district is a local agency for purposes of judicial review. *J.S. v. Bethlehem Area Sch. Dist.*, 807 A.2d 847, 853 (Pa. 2002); *Monaghan v. Bd. of Sch. Dirs. of Reading Sch. Dist.*, 618 A.2d 1239, 1241 (Pa. Cmwlth. 1992). “Any person aggrieved by an adjudication of a local agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure).” 2 Pa.C.S.A. §752. A court of common pleas has jurisdiction to hear an appeal from an adjudication of a local agency. 42 Pa.C.S.A. §933(a)(2); *Quinn v. Southeastern Pennsylvania Transp. Auth.*, 659 A.2d 613, 616 (Pa. Cmwlth. 1995).

A trial court’s scope of review regarding an appeal of a local agency adjudication is set forth in 2 Pa.C.S.A. §754. It provides:

- (a) INCOMPLETE RECORD. In the event a full and complete record of the proceedings before the local agency was not made, the court may hear the appeal de novo, or may remand the proceedings to the agency for the purpose of making a full and complete record or for further disposition in accordance with the order of the court.

(b) COMPLETE RECORD. --In the event a full and complete record of the proceedings before the local agency was made, the court shall hear the appeal without a jury on the record certified by the agency. After hearing the court shall affirm the adjudication unless it shall find that the adjudication is in violation of the constitutional rights of the appellant, or is not in accordance with law, or that the provisions of Subchapter B of Chapter 5 (relating to practice and procedure of local agencies) have been violated in the proceedings before the agency, or that any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence. If the adjudication is not affirmed, the court may enter any order authorized by 42 Pa.C.S.A. §706 (relating to disposition of appeals).

2 Pa.C.S.A. §754(a), (b).

A full and complete record exists when there is a complete and accurate record of the testimony presented so that the appellant has a basis upon which he may appeal, and the appellate court has a sufficient record upon which to rule on the questions presented. *Retirement Bd. of Allegheny Cty. v. Colville*, 852 A.2d 445, 451 (Pa. Cmwlth. 2004); *SSEN, Inc. v. Borough Council of Eddystone*, 810 A.2d 200, 206 (Pa. Cmwlth. 2002); *Monaghan*, 618 A.2d at 1241-42. It is only after finding that the record is incomplete may the trial court then exercise its discretion to determine the manner of implementing the deficient record. *Retirement Bd. of Allegheny Cty.*, 852 A.2d at 450; *Sparacino v. Zoning Bd. of Adjustment*, 728 A.2d 445, 447 (Pa. Cmwlth. 1999), *app. denied*, 775 A.2d 811 (Pa. 2001). The trial court may either hear the appeal de novo or remand the matter to the local agency for further proceedings to make a full and complete record. *Sparacino*, 728 A.2d at 447; *See also*, 2 Pa.C.S.A. §754(a). In any event, a trial court's "... authority to remand or hear a case de novo

is tied to a finding that a complete record was not made before the local agency.” ***Retirement Bd. of Allegheny Cty.***, 852 A.2d at 450.

Pennsylvania courts have determined that a record is not incomplete in certain situations. The admission of evidence in technical violation of the rules of evidence does not render the record incomplete. ***Springfield Sch. Dist. v. Shallem***, 328 A.2d 535, 537 (Pa. Cmwlth. 1974). A record is not incomplete because it lacks evidence that did not exist until after or was not discovered until after the hearing. ***Monaghan***, 618 A.2d at 1242. A record is not incomplete because it lacks evidence that the appellant had available to him, but failed to present. ***Retirement Bd. of Allegheny Cty.***, 852 A.2d at 851; ***Powell v. Middletown Twp. Bd. of Supervisors***, 787 A.2d 617, 622 (Pa.Cmwlth. 2001), *app. denied*, 797 A.2d 918 (Pa. 2002); ***Kelly v. Warminster Twp. Bd. of Supervisors***, 404 A.2d 731, 733-34 (Pa. Cmwlth. 1979). Furthermore, in this situation, a court lacks the authority to give the appellant a second opportunity to present the evidence he should have in the first place. ***Retirement Bd. of Allegheny Cty.***, 852 A.2d at 851. However, an appellant may be given an opportunity to present evidence that he was not permitted to present at the hearing. In order to do this, the appellant must have raised the issue at the prior hearing and that issue must not have been addressed and made a matter of the record. ***In re: Appeal of Disciplinary Action by Lawrence Twp. Bd. of Supervisors***, 544 A.2d 1070, 1073 (Pa. Cmwlth. 1988); ***Pittsburgh Bd. of Pub. Educ. v. MJN***, 524 A.2d 1385, 1387 (Pa. Cmwlth 1985), *app. denied*, 541 A.2d 1392, (Pa. 1988).

The Court finds that the record in this case is not full and complete as would relate to the issue of the Board’s bias. The record does not indicate what, if any, documents outside

those presented on the record at the hearing the members of the Board reviewed and to what extent the members relied upon those documents in making their decision to terminate LaForme. LaForme shall be given an opportunity to inquire into this area.

LaForme raised the issue of bias at the June 1, 2004 hearing. During the testimony of Daphne Ross, the principle of the Montgomery Area Middle School/High School, LaForme's counsel noticed that one of the Board members, Douglas N. Engleman, had in his possession a stack of documents, which had not been introduced at the hearing. Notes of Testimony, 41-42 (June 1, 2004). LaForme objected to the Board considering any evidence that was not presented at the hearing. N.T., 42, 44-45. In addition to the objection, LaForme thought that there should have been a cautionary instruction to the Board that they should not be considering anything which was not presented as evidence at the hearing. N.T., 43

The extent to which the Board may have relied upon documents not presented at the hearing was not addressed and made of record at the June 1, 2004 hearing. LaForme attempted to inquire into the matter by requesting to voir dire the Board members to determine "... the extent to which they did review that documentation before making a determination decision in this case, and the extent to which they have relied upon any of it." N.T., 45. This request was denied. Ibid. Counsel for the School District, Gareth B. Everett, Esquire, stated that the documents Mr. Engleman had were provided to the Board when it made its preliminary decision to terminate LaForme months before the hearing. N.T., 42. Attorney Everett went on to state that while the documents had been provided to the members of the Board, he had "... no idea what the board based their decision on." N.T., 43. All that can be determined from the record on this issue is that the Board members had documents in their possession. What cannot

be determined is if these documents were introduced at the June 1, 2004 hearing and to what extent the Board may have relied on the documents in making its determination.

Accordingly, the case shall be remanded for the Board to conduct further evidentiary proceedings to complete the record.

ORDER

It is hereby ORDERED that the local agency adjudication of Anita LaForme shall be remanded back to the Montgomery Area School Board for further evidentiary proceedings. The evidentiary proceedings shall be limited to determining what documents outside of those introduced at the June 1, 2004 hearing the members of the Board reviewed and the extent to which the Board relied upon any of those documents.

Within fourteen (14) days of notice of this Order, the Montgomery Area School Board shall:

- (1) Identify all documents Board members reviewed as would relate to Anita LaForme's termination.
- (2) Provide Anita LaForme with copies of those documents, if they have not already been provided.
- (3) Provide Anita LaForme with verified statements from every member of the Board indicating what documents the member reviewed and to what extent the member relied upon particular documents in making the determination to terminate LaForme.

A hearing shall be held before the Board within thirty (30) days from notice of this Order. At the hearing, LaForme shall have the opportunity to examine members of the Board as to what documents they reviewed and to what extent the members relied on those documents in making their determination. LaForme shall also have the opportunity to present contrary

evidence to that which was contained in any documents not introduced at the June 1, 2004 hearing.

Upon completion of that hearing, the Board shall supplement the record and promptly submit it to the Court.

A case flow conference shall be held on April 5, 2005 at 1:30 p.m. in Courtroom 3 of the Lycoming County Courthouse to determine an appropriate schedule for disposition of the appeal.

BY THE COURT:

William S. Kieser, Judge

cc: Garth D. Everett, Esquire
Jeffrey Dohrmann, Esquire
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)