IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PAUL SMITH, Appellant	:	No. 18-0197
	:	CIVIL ACTION - LAW
vs.	:	
MONTOURSVILLE AREA SCHOOL DISTRICT, Appellee	:	Motion to Dismiss Appeal

OPINION AND ORDER

Before the Court is Appellee's Motion to Dismiss Appeal, filed February 23, 2018. Argument on the motion was heard April 23, 2018.

Since 1996, Appellant has been employed by Defendant School District ("the District") as an "Education Technology Coordinator". On December 7, 2017,[1] Appellant was notified by the District Superintendent that he was being required to become certified as an Educational Specialist, obtain a Master's degree in Information Technology, and begin coursework thereon by December 17, 2017, at his own expense. He was also told by the Superintendent on that date that his job description was being "remodeled to meet PDE Guidelines", and that he would not be provided any security access to any District software.

On Friday, January 5, 2018, Appellant received a letter from the District's solicitor advising him that the Superintendent would be recommending to the School Board a modification to his job title and description on January 9, 2018, and advising him that if he wished to have a hearing on the issue prior to the Board's vote on the recommendation, he should present a demand for such to the

[1] On December 7, 2017, Appellant returned to work after having been placed on administrative leave without pay since September 11, 2017, and administrative leave with pay since August 25, 2017. Both periods of leave were imposed by the Superintendent in connection with her recommendation that Appellant be dismissed for various instances of alleged misconduct. After a hearing held on October 16, October 19 and November 15, 2017, the Board rejected the Superintendent's recommendation and terminated his administrative leave.

Superintendent no later than January 8. By email and letter dated Monday, January 8, 2018, Appellant's counsel responded and protested the short notice, as well as the lack of information being provided about the proposed changes.

On January 9, 2018, the Board approved a change in Appellant's job title, from "Education Technology Coordinator" to "Administrative Assistant to the Technology Department". According to Appellant, the Board also made the following changes in his job:

- changed his status from a supervisory level employee to a classified employee
- eliminated many of the functions he had previously performed proficiently
- added highly technical hardware and software essential functions which he is not qualified to perform proficiently
- added physical demands including lifting up to 90 pounds and carrying up to 30 pounds.
- changed his salary from $3012.50 bi-weekly to $2,868.57 bi-weekly
- eliminated the benefit of being entitled to paid health insurance through age 65 upon retirement
- eliminated the responsibility of attending School Board meetings and staff administrators' meetings

By memo dated January 24, 2018, Appellant notified the Superintendent that he wanted to appeal the Board's decision, and asked for a hearing. By letter dated February 2, 2017, the Board's solicitor responded that Appellant was not entitled to a hearing. Appellant then filed the underlying appeal.

In the instant motion to dismiss, the District contends that since Appellant was not entitled to a hearing before the Board, he is also not entitled to take this appeal. This argument necessarily requires the Court to consider the merits of the appeal itself: whether Appellant was entitled to a hearing before the Board voted on the proposed changes to his job, which Appellant argues constituted a

demotion.[2] Thus, in addition to addressing the motion to dismiss, the Court will also address the merits of the appeal.

The Local Agency Law provides in relevant part as follows:

> No adjudication of a local agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.

2 Pa.C.S. § 553. Further, "adjudication" is defined in relevant part as follows:

> Any final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made.

2 Pa. C.S. § 101.

The District argues that Appellant has no property right in a job modification, relying on the School Code's provision for a hearing only in the case of a dismissal but not a demotion, 24 P.S. § 5-514, but this argument misses the mark. The term "adjudication" also includes decisions affecting "privileges, immunities, duties, liabilities or obligations", and it is clear that the Board's decision in this matter affects Appellant's privileges, duties, liabilities and obligations.

In addition, as Appellant points out, the diminution in Appellant's job title and responsibilities could substantially diminish Appellant's reputation. Pennsylvania's Constitution specifically recognizes "reputation" as a protected personal interest, DeLuca v. Hazelton Police Department, 144 A.3d 266 (Pa.

[2] While the District contended at argument that the change was not a demotion, the Court finds that it was. *See* Hritz v. Laurel Highlands School District, 648 A.2d 108, 110 (Pa. Commw. 1994) (a demotion is a "reassignment to a position which has less authority, prestige or salary").

Commw. 2016), and "government action seriously criticizing a person could implicate a liberty interest and trigger due process rights where the government combined allegations of misconduct … with a concrete alteration of the person's legal status". Id. at 276. Applying these concepts to the situation before it, the Court in DeLuca held that a "stigma-plus" situation, criticism plus alteration of status, "would qualify as a type of privilege referenced in the definition of "adjudication" in the Local Agency Law", and entitle the person so stigmatized to a hearing and an appeal. Id. at 277. Here, Appellant's demotion, which came immediately after the Superintendent's criticisms leveled at him in the attempt to dismiss him, qualifies him under DeLuca to a hearing and an appeal.

ORDER

AND NOW, this **24th** day of April 2018, for the foregoing reasons, the District's Motion to Dismiss Appeal is hereby DENIED. Appellant's Appeal is GRANTED and this matter is REMANDED to the Montoursville Area School Board for a hearing on the Superintendent's recommendation to revise Appellant's job title and job description.[3]

BY THE COURT,

Eric R. Linhardt, Judge

cc: Levi Woodward, Esq.
Elliot A. Strokoff, Esq., 132 State Street, Harrisburg, PA 17101
Gary Weber, Esq. (Lycoming Reporter)

[3] Although in his Appeal Appellant sought a hearing de novo, asserting that the Board cannot be fair and impartial under the circumstances, that issue may be raised in the appeal from the Board's determination and the Court declines to address it now.