

New Hampshire Board of Education

Teacher/Winnisquam Sch. Dist.

SB-FY-10-10-002

**Hearing Officer Report and Recommendation**

**I. Overview/Facts**

This case involves a teacher who takes issue with the school district superintendent's decision to not allow the students in the district to view President Obama's September 8, 2009 speech live during the school day. The teacher contends that the superintendent and principal of his school directed teachers to not show the speech live in class and to instead download and save the speech for optional viewing for students who wanted to view it. The teacher contends that speeches by other previous presidents were not treated in the same manner and were shown to students live. The teacher contends that the directive to not show the speech live violates academic freedom and school district policies.

The teacher took his complaint to the local school board and asked the board to hold a public hearing on the matter. The school board discussed the matter in closed session and decided not to hold a public hearing on the matter. The teacher contends that the school board's decision to not hold a hearing violates Ed 204.01 and he appeals to the State Board of Education under Ed 204.01.

In this proceeding, the school district filed a motion to dismiss contending that the teacher was not teaching a class where the President's speech would have been shown to students on September 8, 2009. The school contends that he was teaching an SAT Prep class and, as a result, his academic freedom rights were not violated and he does not have standing to raise any claims. The school also contends that these matters are employment related and Ed 204.01 does not give the teacher a right to a local school board hearing in this case. The school contends that these matters should be addressed through the grievance process delineated in the district's collective bargaining agreement with its teachers.

**II. Analysis/Recommendation**

I recommend that the board grant the school district's motion to dismiss.

The teacher notes that Ed 204.01 has a broad title of "Proceedings at the School Board Level to Resolve Disputes Between Individuals and the School System," and that he is an individual and should get the benefit of the due process protections noted in the regulation. The school district notes that the regulation was not intended to replace or supplant avenues that school district employees have such as the grievance process in collective bargaining agreements.

The State Board of Education has generally found that general education regulations like Ed 204.01 that provide for a process to resolve disputes before a local school board and have broad terms such as "individuals" or "any party" do not include teachers or employees because there are a variety of other

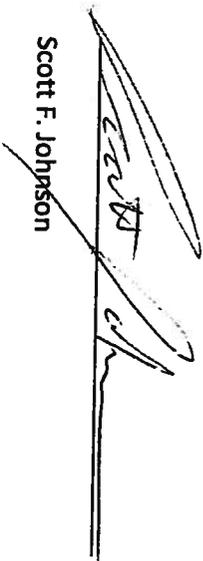
specific processes available to them to resolve disputes with their employer. For example, in Teacher/Portsmouth Sch. Dist., SB FY 03-009 and Teacher/Newmarket School Dist., SB-FY-09-05-016, teachers argued that Ed 206.01 and RSA 21-N:11(II) which have language stating that the state board would hear appeals of decisions of "any dispute between individuals and school systems" meant that they should be entitled to a state board hearing regarding their dismissals.

The State Board of Education rejected these arguments noting that the legislature provided an avenue of relief for dismissals in state court in RSA 189:14. Similarly, in this case the teacher as part of their contract and collective bargaining agreement has a set process to follow for grievances related to their employment which is what this matter involves.

Secondly, the teacher's main claim here is a constitutional claim that his, or others, rights to academic freedom were violated. Such a claim belongs in court and is not something that the State Board of Education can resolve. "Administrative agencies have no power to decide questions of federal constitutional law." *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494, 525 (1977).

March 9, 2010

Date

  
Scott F. Johnson