

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



NATHANIEL CHUKWU,

Charging Party,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-5495-E

PERB Decision No. 2269

May 31, 2012

Appearance: Nathaniel Chukwu, on his own behalf.

Before Martinez, Chair; Dowdin Calvillo and Huguenin, Members.

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Nathaniel Chukwu (Chukwu) from the PERB Office of the General Counsel's partial dismissal of his unfair practice charge. The charge alleged, in part, that the Los Angeles Unified School District (LAUSD) violated the Educational Employment Relations Act (EERA)¹ by issuing a performance evaluation report in retaliation for engaging in protected activity. The charge alleged that this conduct violated EERA section 3543.5. The Board agent determined that this allegation failed to state a prima facie case and issued a

¹ EERA is codified at Government Code section 3540 et seq.

partial dismissal, dismissing this allegation of the charge.² By letter dated May 14, 2012, Chukwu notified the Board that he wished to withdraw his appeal.³

The Board has discretion to grant or deny requests to withdraw and dismiss cases pending before the Board itself. (PERB Reg. 32320, subd. (a)(2) [“The Board itself may ... take such other action as it considers proper.”]; *State of California (Department of Personnel Administration)* (2010) PERB Decision No. 2152-S; *Grossmont-Cuyamaca Community College District* (2009) PERB Order No. Ad-380; *Oakland Unified School District* (1988) PERB Order No. Ad-171; *ABC Unified School District* (1991) PERB Decision No. 831b.) Based on our review of Chukwu’s letter and the entire record in this matter, the Board finds

² The Board agent dismissed other allegations of the charge including allegations of a denial of a tutoring opportunity and race discrimination. The former was dismissed on timeliness grounds, the latter on lack of jurisdiction. In addition, the Board agent dismissed, for failure to state a prima facie case, allegations that LAUSD personnel visited Chukwu’s classroom, sent him to classroom management training, and had a meeting with him in retaliation for engaging in protected activity, and other miscellaneous allegations. The components of the Board agent’s partial dismissal discussed in this footnote were not appealed.

As noted, Chukwu appealed from a *partial* dismissal, meaning that certain of his allegations were not dismissed. The Board takes notice of the official PERB file. On the same date the partial dismissal was issued, the Office of the General Counsel also issued a complaint, which was amended on January 11, 2012. The amended complaint alleged that, in retaliation for engaging in protected activity, LAUSD assigned Chukwu to teach seventh grade basic math in a class including students who were low-performing, had special needs and spoke English as a second language; that LAUSD assigned Chukwu to a new eighth grade program to teach classes including students who were low-performing, had special needs and spoke English as a second language; and issued him a conference memorandum. By letter dated January 30, 2012, Chukwu and LAUSD jointly requested that the appeal of the partial dismissal be placed in abeyance pending settlement discussions.

After an informal conference conducted by a PERB Board agent but before the formal hearing, Chukwu requested the unfair practice charge be withdrawn. On May 15, 2012, a Notice of Withdrawal, Dismissal of Complaint and Closure of Case was served on the parties.

³ Chukwu’s letter references the filing of “exceptions,” which we interpret to mean his appeal because there is no proposed decision in this case. Board review of a proposed decision of an administrative law judge after a hearing on a complaint is initiated by way of a statement of exceptions. (PERB Reg. 32300, subd. (a).) Board review of a dismissal is initiated by way of an appeal. (PERB Reg. 32635, subd. (a).) (PERB regs. are codified at Cal. Code Regs., tit. 8, sec. 31001, et. seq.)

withdrawal of the appeal is in the best interests of the parties and consistent with the purposes of EERA. Accordingly, the Board grants Chukwu's request to withdraw his appeal.

ORDER

The request by Nathaniel Chukwu to withdraw his appeal in Case No. LA-CE-5495-E is hereby GRANTED.

Members Dowdin Calvillo and Huguenin joined in this Decision.