**STATE OF OHIO**
**STATE PERSONNEL BOARD OF REVIEW**

JOSEPH BENINCASA,

*Appellant,*

v.

Case Nos. 13-REM-02-0072
13-RED-02-0073
13-INV-02-0074
13-MIS-02-0075

STARK COUNTY BOARD OF DEVELOPMENTAL DISABILITIES,

*Appellee*

**ORDER**

These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that Appellee's motion is **GRANTED** and the three instant appeals and the instant request for an investigation are **DISMISSED**, pursuant to Ohio Revised Code Sections 124.03, 124.34, 124.56, and 5126.23.

Casey - Aye
Lumpe - Aye
Tillery - Aye

Terry L. Casey, *Chairman*

**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes ~~(the original/a~~ true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, June 12, 2013.

*Clerk*

6/12/13

***NOTE:*** *Please see the reverse side of this Order* ***or*** *the attachment to this Order for information regarding your appeal rights.*

**STATE OF OHIO**
**STATE PERSONNEL BOARD OF REVIEW**

JOSEPH BENINCASA,

*Appellant*

v.

STARK COUNTY BOARD OF DEVELOPMENTAL DISABILITIES,

*Appellee*

Case Nos. 13-REM-02-0072
13-RED-02-0073
13-INV-02-0074
13-MIS-02-0075

May 6, 2013

JAMES R. SPRAGUE
*Administrative Law Judge*

## REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These matters came on due to Appellant's February 27, 2013 filing of three appeals and a request for an investigation concerning his receipt of a written reprimand ("Written Notice of Failure to Perform") and an apparent corresponding 18-month bar from being able to be considered for any Special Olympics coaching position. With his filings, Appellant provided substantial material for the records in these matters.

On April 12, 2013, Appellee filed Appellee's motion to dismiss, memorandum in support, and various accompanying documents. These documents included the Affidavit of Constance M. Poulton, Appellee's Director of Human Resources. In these documents, Appellee asserts that Appellant is a management employee of Appellee with the classification of Workshop Production Manager and that Appellant has a management contract with Appellee under R.C. 5126.21. Appellant was provided with the requisite time in which to file a memorandum *contra* to Appellee's motion to dismiss but, to date, has not done so.

I find that the State Personnel Board of Review is without jurisdiction to hear these appeals pursuant to R.C. 5126.23. This is because management employees of County Boards of Developmental Disabilities may appeal requisite discipline internally and, if dissatisfied with the result therefrom, may then file an appeal to the pertinent court of common pleas. Further, because Appellant appears to have had a potential avenue of remedy under R.C. 5126.23 and because that avenue of

remedy does not appear to invoke or involve the authority set forth in R.C. Chapter 124., utilizing an investigation into this matter might not be appropriate under the facts and circumstances reflected in the instant records. It is also noted that Appellant failed to file his memorandum *contra* to Appellee's motion to dismiss, as required by O.A.C. 124-11-09 (A) (2) and (C).

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the three instant appeals and the instant request for an investigation, pursuant to R.C. 124.03, R.C. 124.34, R.C. 124.56, and R.C. 5126.23.

JAMES R. SPRAGUE
*Administrative Law Judge*

JRS: