

AARON R.,

Appellants,

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-22

OPINION

INTRODUCTION

Aaron R. (“Appellant”) appeals the decision of the Montgomery County Board of Education (“local board”) upholding the Superintendent’s decision to deny Appellant’s two Complaints concerning his child’s third period class. The local board filed a Motion to Dismiss. Appellant responded to the Motion, and the local board replied.

FACTUAL BACKGROUND

Aaron R. is the parent of █████ an 8th grade student at █████ Middle School (“█████ MS”). █████ enrolled in three courses which qualify for high school credit, Algebra 2, Spanish 3, and Foundations of Computer Science (“FOC”). Prior to the start of the 2019-2020 academic year, the administrators at █████ MS and █████ High School (“█████ HS”) considered the number of █████ MS students to be enrolled in the courses qualifying for high school credit and determined that based on the number of █████ MS students who would be enrolled in Algebra 2 and Spanish 3 for the 2019-2020 academic year, the instruction would be offered at nearby █████ High School. The students would then return to █████ MS for the remainder of the academic day. (Motion, Ex. 2). █████, Principal at █████ HS explained that the high school offered seats “in the math and world languages courses because the middle school is unable to offer the next course in sequence to their students because the numbers of students requesting the course are usually too few for the middle school to offer a full section.” (*Id.*).¹

█████ MS utilizes an alternating schedule for its classes. For the first two weeks of school, █████ attended the Algebra 2 and Spanish 3 classes at █████ HS, then returned to █████ MS where █████ took his FOC class. Because of the alternating schedule, █████ did not receive a full class period in FOC each day. Appellant raised this issue with administrators at █████ MS, who adjusted the schedule allowing █████ to receive full class periods of instruction for FOC on four out of the five days per week. (Motion, Ex. 6, p.1). █████’s FOC teacher reported that █████.

¹ Appellant was advised on multiple occasions as to why math and world languages courses were offered at █████ HS to accommodate middle school students, but not other courses in general. As noted in the Superintendent’s memorandum to the local board, “In MCPS, individual school schedules are determined through a collaborative effort that includes a school’s administrators, teachers, parents, guardians, and students. Decisions regarding school schedules are bound by negotiated agreements between employee associations and the Board of Education.” (Motion Ex. 9, p.9). The hearing officer reiterated that this was a partnership established by the two schools to accommodate the math and world languages core content areas, but did not extend to other courses within █████ HS because the school did not have the staffing available to handle the high school population and middle school students outside the two designated content areas. (Motion Ex. 5, p.2).

did very well with the class and was progressing toward meeting the course standards. (Motion Ex. 9, p.5). During the one day per week when the FOC course was not available due to the scheduling conflict, [REDACTED] attended an independent study session. (Motion, Ex. 9, p.8). Appellant was dissatisfied with the change and requested that [REDACTED] be permitted to take the FOC class during third period at [REDACTED] HS instead of the section being offered at [REDACTED] MS.

On October 7, 2019, Ms. [REDACTED] denied Appellant's request. She explained to Appellant by phone that the only courses offered at [REDACTED] HS for students at [REDACTED] MS were the advanced mathematics and world languages courses since there were not enough students taking the classes to justify individual sections at [REDACTED] MS. (Motion, Ex.2). The following day, Appellant filed his first Complaint ("Complaint 1") alleging that [REDACTED] MS and [REDACTED] HS denied [REDACTED] full instruction in his third period FOC class at [REDACTED] MS. (Motion, Ex.1). Appellant requested that [REDACTED] be permitted to take FOC at [REDACTED] HS, and then return to [REDACTED] MS for the remainder of the instructional day. Appellant stated that if the instructional spot at [REDACTED] HS for FOC was needed for a high school transfer student at a later date, then [REDACTED] could be sent back to finish FOC at [REDACTED] MS. (*Id.*).

By letter dated October 18, 2019, Ms. [REDACTED] responded to Complaint 1. She reiterated that [REDACTED] was accessing the requested course and that accommodations had been made to assist with the rotating class schedule:

I want to assure you that [REDACTED.] will have the opportunity to access all classes when he enrolls in high school next year. Furthermore, [A.R.] is enrolled in Foundations of Computer Science (FOC) at [REDACTED] Middle School, the course you are asking for him to enroll in here at [REDACTED]. Based on my conversation with [REDACTED], principal at [REDACTED], accommodations have been made for [REDACTED.] as [REDACTED.] transitions to [REDACTED] after taking classes at [REDACTED]. Thus, [REDACTED] will be able to earn the credit at [REDACTED]. Because [REDACTED.] has access to the course that you are requesting he takes here at [REDACTED] and because [REDACTED.] will have the opportunity to have access to all of the high school courses when he is enrolled at [REDACTED] next year, I am denying your request for [REDACTED.] to take a third class at [REDACTED] this year.

(Motion, Ex. 2).

Dissatisfied with this response, Appellant wrote to MCPS Superintendent Dr. Jack R. Smith on October 23, 2019, reiterating his request that [REDACTED] be permitted to take the FOC class at [REDACTED] HS instead of [REDACTED] MS. Alternatively, he requested that [REDACTED] be permitted to take an online class during third period at [REDACTED] MS with the school providing internet access and a room to study, with Appellant paying for the course. (Motion, Ex. 3). Appellant made a generalized reference that the schools' decision denying the requested class at [REDACTED] HS related to [REDACTED]'s race or social status. (*Id.*). Appellant asserted that [REDACTED] should have been at a magnet program instead of his local school, [REDACTED] MS, but was "held back" from the magnet program as an Asian student. (*Id.*). Appellant also expressed concerns that the rotating class schedule at [REDACTED] MS existed "to address the needs of 'habitually tardy' students," and again asserted that [REDACTED] had been

improperly denied admission to a magnet middle school program because MCPS, “developed a racial conscience and decided to hold back Asian kids.” (*Id.*, p.3).

MCPS delegated investigation of Complaint 1 to hearing officer, Betsy Brown. By Memorandum dated November 8, 2019, Ms. Brown detailed the efforts of the staff of █████ MS and █████ HS to find a positive solution to Appellant’s concerns and assure Appellant that █████ was able to access the FOC course and participate fully in the work required to be successful in the course without additional changes or accommodations. (Motion, Ex. 5, pp.3-4). Ms. Brown explained that the first three periods of the FOC course at █████ HS were either full or close to the cap of 33 students for the 2019-2020 academic year. (*Id.*). She also noted that a state-designed online FOC course is available for students to obtain high school credit in Maryland. (*Id.*, p. 4). The course is offered three times per year (fall, spring, and summer), and requires three face-to-face meetings offered on a weeknight at a high school within the district. (*Id.*, p. 4). The online option, however, would not offer the opportunity for group projects. (*Id.*). Ms. Brown recommended that █████’s FOC teacher continue to involve █████ in collaboration with the other students in the class. She further provided the instructions for Appellant to enroll █████ in the online version of the FOC course, and advised that Appellant should take those steps to enroll in December 2019 and advise the Principal of █████ MS of his plans. (Motion, Ex. 5, p.5). Ms. Brown concluded that the investigation supported the decision to deny █████ enrollment in the FOC course at █████ HS and that no further action was necessary. (*Id.*, pp.4-5).

On October 23, 2019, while the investigation of Complaint 1 was in progress, Appellant filed a second Complaint (“Complaint 2”), asserting that █████ HS’s Assistant Principal, █████, denied █████ the opportunity to sign up for the AP Computer Science Principles (CSP) exam. (Motion, Ex. 4). █████ was not enrolled in the AP CSP course, but wished to study independently and take the exam as offered by The College Board. As a remedy, Appellant requested that MCPS “[f]ind out how many students Mr. █████ blocked from taking AP exams then reprimand him accordingly.” (*Id.*). On November 13, 2019, Appellant wrote to the local board again requesting that █████ be permitted to take FOC at █████ HS, lamenting that █████ was not being appropriately challenged, and requesting that █████ be placed “into self-directed self-study during his third period where [█████.] will spend his time studying AP [Computer Science Principles] and take the exam.” (Motion, Ex. 7, p.1). Appellant also sought to clarify the statement attributed to him in Ms. Brown’s memorandum that MCPS “developed a racial conscience,” stating:

“The district developed a racial conscience” – Words matter! I never said this either. I used the word “conscious.” It is no secret that if we went by test scores and extra-curricular activities alone, the majority of students in the magnet programs would be Asian. In fact, up until 2016 when [█████.] entered the 6th grade, this was the case, we were racially blind and Asians dominated. Today we have an Asian quota. We decided that other students cannot compete with Asians so we must artificially hold Asians back.

(Motion, Ex. 7, p.2). As a remedy, Appellant requested that █████ be permitted to do independent study of AP CSP during third period rather than the FOC class, eliminate the rotating class schedule and preclude public schools from implementing that system in the future “because it hurts

the achievers.”² (*Id.*, p.3). Appellant requested that MCPS be “racially blind” in the admissions process to magnet programs. (*Id.*, p.4). Appellant concluded by demanding that “every administrator who has had a hand in this year’s 3rd period snafu” receive a 20% reduction in their pay. (*Id.*).

On December 11, 2019, Appellant provided additional correspondence to the local board concerning ██████ HS’s statement that only students enrolled in the AP CSP at the school could sit for the AP exam. Appellant alleged that Ms. ██████ and Mr. ██████ had incorrectly advised that ██████ could not participate in the AP CSP exam, and could not submit a digital portfolio required for the exam independently without supervision by teachers. (Motion, Ex. 8, p.1). Appellant included an excerpt from the College Board instructions for the AP Computer Science Principals Exam, and quoted the portions related to administering the exam to independent study and homeschooled students. (*Id.*, p.2). The instructions state, “The AP coordinator at your school will need to create an exam only section *if your school administers an AP Computer Science Principles Exam to students who aren’t enrolled in a course at your school.*”(*Id.*). Appellant accused the AP coordinator at ██████ HS of failing to understand how ██████ could take the exam as an independent study student based on incompetence, racism, or a combination thereof. (*Id.*).

The Superintendent filed a consolidated reply to the appeals on December 23, 2019. With respect to Complaint 1, the Superintendent noted that space and staffing considerations precluded ██████ from taking the FOC class at ██████ HS. To accommodate ██████, the class rotation at ██████ MS was adjusted so that ██████ could attend the class four out of five class periods per week. (*Id.*, p.5). This adjustment was made approximately three weeks into the school year. (*Id.*, p.7). He noted that Appellant had been advised that ██████ could take an online version of the FOC class for high school credit through MCPS Student Online Learning.³ (*Id.* pp.2, 5). He cautioned that Appellant’s potential third ██████, taking an online AP CSP course through self-study during ██████’s third period class at ██████ MS was permissible but could not count towards ██████’s high school credits, or towards satisfying MSDE’s graduation credit in computer science or technology.⁴ (Motion, Ex. 9, p.2). It further clarified that MSDE does not permit awarding high school credit via successful score on the AP CSP exam, but that ██████ might be able to receive college credit at a later point in time depending on the policies and procedures of ██████’s future postsecondary institution. (*Id.*, pp.2-3).

With respect to Complaint 2, the Superintendent acknowledged that the administrators had provided Appellant with incorrect information regarding the ability of independent study or home-schooled students to take the AP CSP exam, but concluded that they acted in good faith because they were simply telling the Appellant the information they had been told by The College Board. (*Id.*, p.3). He further noted that The College Board updated its website to correct the misinformation and offered to send a letter of apology explaining the inaccuracy of the information

² Appellant also requested that children who are “habitually tardy” be kicked out of school because “[i]t’s not fair that people who are absent are dragging down the averages.” (Motion, Ex.7, p.4). Appellant made unsubstantiated allegations that the rotating schedule utilized by ██████ MS was done to accommodate students with tardiness issues. Appellant stated, “If children are habitually tardy – kick them out – or tell them school is no longer free, they need to pay to play.”

³ ██████ MS offered Appellant the option to have ██████ switched out of FOC to a non-credit-bearing elective course, which Appellant declined. (Motion, Ex. 9, p.7).

⁴ The only four classes offered by MCPS that MSDE accepts for the technology credit required for high school graduation are Foundation of Technology, the FOC course in which ██████ was enrolled, Introduction to Engineering Design; and AP CSP. (Motion, Ex. 9, p.5).

it provided. (*Id.*, p.3,6). Part of the confusion at The College Board stemmed from the fact that ■■■ is only in 8th grade and it was “an outlier situation.” (*Id.*, p.7). Because the information had been corrected, no further action was required. Aside from being unwarranted, the reply explained that the requested twenty percent salary reductions of the administrators involved in handling Appellant’s complaints was governed by negotiated agreements between the local board and employee associations and subject to the due process requirements of MCPS. (*Id.*, p.10).

The Superintendent responded to the remaining actions requested by Appellant by citing to MCPS policies and noting compliance therewith. Specifically, the reply quoted from the core values of the local board for the school system, discussed the multipoint and varied time frames for analyzing student placement and performance, explained that individual school schedules, including the implementation of rotating schedules, are based on collaborative decision making and “bound by negotiated agreements between employee associations and the [local board],” and reiterated that MCPS has “a moral and legal obligation to educate all students.” (Motion, Ex. 9, pp.8-9). With respect to Appellant’s accusations of anti-Asian admissions to magnet programs, the reply explained that student demand for the programs exceeds the number of spaces available and that MCPS follows a “name-blind, school-blind, and race-blind” review process which includes “test scores, performance data and teacher recommendations” when rendering admissions decisions. (*Id.*, p.10).

On December 28, 2019, Appellant filed a reply letter, repeating his concerns with the rotating schedule at ■■■ MS, tardy students, unsubstantiated allegations that the magnet programs are not racially blind, and continuing grievance related to the independent study of the AP CSP and AP exam, and then included a tangential argument related to the AP Computer Science A (Java) course which Appellant stated had been “conveniently left out” of the list of four courses that qualified for MSDE’s technology credit required for graduation, along with additional hyperbole unsupported by facts accusing MCPS of anti-Asian policies and conduct. (Motion, Ex. 10).

MCPS responded to Appellant’s letter solely to confirm that Appellant had not offered any “new or compelling information” and to clarify that MCPS does not include AP Computer Science A (Java) as an approved course for the technology education or advanced technology credit required by the State for graduation. (Motion, Ex. 11). Appellant submitted another seven-page letter regurgitating the prior arguments and expressing a bevy of policy concerns related to the courses which do satisfy MSDE’s technology credit graduation requirements versus Appellant’s beliefs about what should satisfy that requirement. (Motion, Ex. 12).

The local board issued its Decision and Order on February 24, 2020, and advised Appellant of his right to appeal via correspondence on February 25, 2020. (Motion, Ex. 13). The local board acknowledged that Appellant was dissatisfied but the decisions and options offered by ■■■ MS for ■■■’s third period class were within MCPS regulations and policies. (Motion, Ex. 13, p.2). The local board concluded there was no reason to investigate the administrators who provided incorrect information regarding the AP CPS Exam to Appellant because they were given the incorrect information by the College Board. (Motion, Ex. 13, p.3). The local board concluded that the remainder of Appellant’s arguments and requests were without merit. (*Id.*).

Appellant filed his appeal the same day he received the local board’s decision. To remedy the litany of repeated concerns, Appellant requests that the State Board order the following:

1. Direct MCPS to eliminate use of rotating schedules
2. Require that the local board to change its admissions policies for magnet programs;
3. Direct the placement of █████ in the third period AP Computer Science Principles class at █████ HS;
4. Require that █████ MS allow █████ to study for the AP Computer Science Principles exam; and
5. Reprimand MCPS administrators for denying █████. “proper placement,” “denying ability to evaluate students,” “denying ability to take AP exams,” and assorted claims related to “lack of integrity,” intimidation, and racial animosity, for referring to Appellant as “Mr. Hall” in the local board’s order, and for not having mandatory oral arguments on appeals to the local board.

(Appeal, pp.6-7).⁵ Appellant purports to be arguing on behalf of █████, but also on behalf of 25 of █████’s Asian peers. (*Id.*, p.7).

On April 15, 2020, the local board filed a Motion to Dismiss and Memorandum in Response to the Appeal. The local board requested dismissal on the grounds that the appeal is moot, the Appellant lacks standing to bring the Complaint, and that the State Board does not have jurisdiction to decide the matter. (Motion, p.1). Appellant replied to the local board’s Motion to Dismiss on April 19, 2020, and the local board responded.

This appeal followed.

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving local policies, the local board’s decision is considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board in this case unless the decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. Appellant bears the burden of proof on the issues raised by a preponderance of the evidence. COMAR 13A.01.05.06D.⁶

The State Board may dismiss an appeal for various reasons, including mootness, lack of standing, and lack of jurisdiction. COMAR 13A.01.05.03(B).

⁵ In the local board’s Order denying Appellant’s requested relief, one sentence appeared to contain a typographical error referring to Appellant as “Mr. Hall” instead of by his last name. (Motion, Ex.13, p.2). Appellant has raised this issue on Appeal alleging that this was an intentional reference to a character from the 1995 movie “Clueless” and was intended to ridicule him for requesting oral argument in the matter. (Aaron R. Appeal, p.7). Appellant concluded his allegations by stating, “Sunlight is the best disinfectant – when parents ask for oral arguments it should not be optional but mandatory and televised.” (*Id.*).

⁶ We note that Appellant requested oral argument on this matter before the State Board, as he did before the local board. The local board decided the matter on the papers. (Motion, Ex. 13). There is no right to oral argument either at the local board or before this Board. We shall also decide this matter on the papers. *See* COMAR 13A.01.05.09(B).

LEGAL ANALYSIS

Local Board's Motion to Dismiss

A. Mootness

As a preliminary matter, we address the local board's Motion to Dismiss Appellant's Complaint surrounding ██████'s third period class placement at ██████ Middle School as moot. A case is moot when the case or controversy between the parties ceases to exist so that there is no longer a remedy which could be provided. *Merci I. v. Howard County Bd. of Educ.*, MSDE Op. No. 18-15 (2018); *D.G. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Ord. No. 16-16 (2016); *Mallardi v. Carroll County Bd. of Educ.*, MSBE Op. No. 00-07 (2000); and *In Re Michael B.*, 345 Md. 232, 234 (1997).

Due to the COVID-19 pandemic, March 13, 2020 was the last day that public school students received instruction inside Maryland's public schools. On March 30, 2020, MCPS shifted to remote learning only. The scheduling conflict ██████ experienced one day per week due to the travel back to the middle school from his math and world languages studies at the high school ceased to exist upon shifting to the remote learning environment. Because ██████ will be moving on to high school for the 2020-2021 academic year, no further case or controversy exists for which the Board could provide a remedy. *Sheree L. v. Prince George's County Board of Educ.*, MSDE Op. No. 18-29 (2018).

The same analysis holds true for Appellant's complaints related to perceived defects in MCPS's admissions policies for magnet programs. We note that Appellant failed to offer any evidence that MCPS had not used racially blind admissions process at the time ██████ applied to the middle school magnet program three years earlier as a 5th grader at ██████ Elementary School. Appellant's unsupported challenge to the admissions policies to middle school magnet programs is untimely and moot in the final weeks of ██████'s middle school tenure.

Even if the issues surrounding ██████'s 8th grade third period schedule were not moot at this point in time, we conclude that the local board's decision that the administrators at ██████ MS and ██████ HS acted consistent with local policies was not arbitrary, unreasonable or illegal. The rotating schedule and classes were adjusted promptly to provide ██████ with instruction in the FOC class at ██████ MS on four out of five school days per week while maintaining his enrollment in the advanced math and language courses at ██████ HS. Appellant was informed that ██████ could enroll in the online FOC course as an alternative to the class at the middle school. There is no statute, regulation or local policy which would allow individual middle school students to select courses to take a la carte at high schools within the school system. Accordingly, MCPS was under no obligation to allow ██████ to take the identical course for which he was registered at ██████ MS at ██████ HS instead.

B. Lack of Standing

Appellant does not have standing on behalf of hypothetical future students at ██████ MS, or on behalf of the 25 unidentified Asian students he references throughout his pleadings to appeal the scheduling or magnet program admission issues. Appellant's pleadings fail to show a "direct interest or 'injury in fact economic or otherwise'" related to prohibiting rotating schedules at ██████

MS, or at any other school within MCPS, with respect to admissions policies or procedures for the middle school magnet programs, or in demanding punitive action against various MCPS staff members with regard to this unnamed “group” of individuals. *Schwalm v. Montgomery County Bd. of Educ.*, MSDE Op. No. 00-10 (2000). To show a “direct interest or injury in fact requires that the individual be personally and specifically affected in a way different from the public generally and is, therefore, aggrieved by the final decision of the administrative agency.” *Taylor v. Montgomery County Bd. of Educ.*, MSDE Op. No. 07-32 (2007).

Moreover, Appellant has no standing to appeal the personnel decisions of the local board finding that various administrators and staff acted in good faith attempting to answer Appellant’s questions related to the AP CSP Exam and the rules and procedures for the exam as established by The College Board. *S.K. v. Montgomery County Bd. of Educ.*, MSDE Op. No. 20-13 (2020); *Kristina E. v. Charles County Bd. of Educ.*, MSBE Op. No. 15-27 (2015). Accordingly, we conclude that Appellant has no standing on these issues and dismiss Appellant’s claims pursuant to COMAR 13A.01.05.03B(1)(c).

C. Lack of Jurisdiction

With regard to Appellant’s request that we direct MCPS to cease using rotating schedules or direct the local board’s policies related to the admissions and running of magnet programs, these are matters of local board policy which Appellant is free to advocate for at the open meetings of the local board. It is the long-standing position of this board that the appeals process is not the appropriate mechanism for seeking policy changes of a local board of education. *Jon N. v. Charles County Board of Education*, Op. No. 17-19 (2017)(challenging local board policy on academic performance eligibility for extracurricular activities); *Jared H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 16-37 (2016)(seeking to ban the wearing or use of NFL’s Washington Redskins gear in the schools); *Lindsay and Edward F. v. Montgomery County Bd. of Educ.*, MSBE Op. 14-55 (2014)(challenging local board policy on transfer requests due to hardship). As noted in our decision in *Jared H.*, *supra*, “[c]reating or amending local board policies is a legislative-type task that affects all students, whereas the quasi-judicial process involves considering the facts of individual cases and applying those facts to existing laws, regulations, and policies.” *Id.* In the present matter, Appellant sought quasi-judicial relief from the local board with respect to ■■■■■’s third period class schedule which evolved into demands for relief of a quasi-legislative nature which would include sweeping changes or prohibitive edicts to local school system policies. Accordingly, Appellant’s requested relief to mandate broad-sweeping changes to local school system policies falls outside our jurisdiction in a case such as this and shall be dismissed.

D. Discrimination

As this matter progressed from initial complaint through the present appeal, Appellant has offered bald assertions of racism and discriminatory treatment. We have repeatedly stated that allegations of discrimination, whether motivated by age, disability, race, national origin, or sex, must be supported by evidence. *Weeks v. Carroll Co. Board of Educ.*, MSBE Op. 13-44 (2013). Where, as here, only unsupported allegations have been offered, we conclude that the argument lacks merit. *Semere D. & Yehdego K. v. Montgomery Co. Board of Educ.*, MSBE Op. 17-09 (2017).

CONCLUSION

For the reasons stated above, we dismiss those claims that are moot, where there is a lack of jurisdiction, and where Appellant has lack of standing to bring the claims. We otherwise affirm the decision of the local board because it is not arbitrary, unreasonable or illegal.

Signatures on File:

Warner I. Sumpter
President

Jean C. Halle
Vice-President

Gail H. Bates

Clarence C. Crawford

Charles R. Dashiell, Jr.

Vermelle D. Greene

Justin M. Hartings

Rose Maria Li

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Michael Phillips

David Steiner

May 27, 2020