S.K.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
MONTGOMERY COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 19-14

OPINION

INTRODUCTION

S.K.[1] (Appellant) appeals the decision of the Montgomery County Board of Education denying a complaint she filed alleging that two coaches abused her son. The local board filed a Motion to Dismiss the Appeal and a Motion to Seal the Record. Appellant opposed the motions and filed her own Motion to Omit Appellant Name From the Publication of the State Board of Education Decision. The local board replied.

FACTUAL BACKGROUND

Appellant is the mother of a high school student, Student X, who attended Montgomery County Public Schools (MCPS) during the 2017-18 school year. Student X participated in cross-country and track as a Student athlete. On February 21, 2018, Appellant filed a "Complaint from the Public," using a standard MCPS form, alleging that a coach, Coach A, had cursed, shamed, belittled, humiliated, and threatened male athletes, and gave female athletes favorable attention. The complaint alleged that the coach described athletes as performing like "shit" or "crap," stated that those who "suck" did so because they did not practice, and yelled out belittling remarks to Student X during practice, including telling him he was "crying like a baby" after he reacted negatively to criticism. Appellant claimed that her son suffered from mental stress as a result and that they sought professional counseling. She requested that MCPS fully investigate the matter and prevent the coach from working with students in the future. (Appeal, Complaint from the Public).

On March 5, 2018, Student X's high school principal denied the complaint. The denial stated, "Following [Child Protective Services] and MCPS investigation, no evidence of sexual nor child abuse was found." (Appeal, Complaint from the Public).[2]

Appellant appealed the denial to Jennifer Webster, director of Secondary Schools for

[1] Based on the confidential nature of the abuse allegations in this case, we shall refer to Appellant only with initials. We shall also avoid using identifying information for her son and the accused coaches.

[2] There is a dispute in the record about when, exactly, CPS began and ended its investigation. This dispute is not material to our decision because there is no dispute about CPS's conclusions.

MCPS. On April 30, 2018, Ms. Webster denied the complaint. She confirmed that, because Appellant alleged abuse, MCPS referred the matter to CPS (within the Montgomery County Department of Health and Human Services) for investigation. The Montgomery County Police Department also conducted an investigation. Ms. Webster's letter stated: "It is our understanding that CPS shared the results of its investigation with you . . . and that all allegations of child abuse were 'ruled out.'" In addition, the MCPS Office of Employee Engagement and Labor Relations conducted a separate investigation, including gathering additional information from Appellant that was not shared in the original complaint. The MCPS investigation found that some of Appellant's concerns were based on "inaccurate portrayals of the facts," and that the coach did not intend to be demeaning to students. None of the allegations raised by Appellant rose to the level of bullying, harassment, or intimidation as prohibited by MCPS policies. Despite this, MCPS addressed the complaint with the coach to insure that all of his future interactions would "align with our professional expectations." Separately, Ms. Webster found that school staff had worked diligently to provide support for Student X, including providing him with a "flash pass" that would allow him to leave class to talk to a school counselor at any time if he was upset. (Appeal, Complaint from the Public; April 30, 2018 Webster Letter).

On May 14, 2018, Appellant appealed to the superintendent of schools. The appeal significantly expanded the scope of her original complaint. Among new allegations against Coach A were that he sexually harassed female athletes (using phrases such as "You look good today"; "Are those new shorts?"; and "Run like fast ass bitches."); drove a student alone in a car and offered rides to other students; and caused serious injuries to students by telling them to "power through the pain." Appellant also complained about another coach, Coach B, who she alleged had been made aware of complaints about Coach A but did not sufficiently respond. She claimed that Coach B texted her son without her knowledge and used inappropriate language; gave students rides alone in his car; gave Student X a sweatshirt; shared personal information with male students; and shared music playlists with a student at lunch. She later alleged that these behaviors were consistent with those of a sexual predator "grooming" students to be future victims of child sexual abuse. Appellant alleged that MCPS retaliated against her for making complaints about the coaches by changing Student X's Section 504 plan[3] without her approval. Finally, Appellant complained that other students harassed and bullied Student X because of Appellant's complaints about the coaches. (Appeal, Appeal to Superintendent)

The superintendent's designee referred the matter to a hearing officer, who discussed the complaint with Appellant and reviewed the record. The hearing officer reviewed confidential personnel records related to the coaches as part of her investigation and found that MCPS followed its procedures during the investigation. She found no evidence that Student X was "groomed or sexually abused" by Coach A or Coach B. While MCPS did make some changes based on her complaints, there were no instances of deliberate violations of MCPS regulations or any intent to injure students. The hearing officer did not reveal whether the coaches received discipline because of the complaint. As to the Section 504 claims, the hearing officer found MCPS acted appropriately in removing an accommodation under Student X's Section 504 plan because he did not qualify for it. The hearing officer recommended denying the appeal, and the superintendent's designee adopted the recommendation. (Appeal, Hearing Officer

[3] Section 504 of the Rehabilitation Act requires public schools to provide each qualified person with a disability a free appropriate public education through the provision of regular or special education and related aids and services. 29 U.S.C. § 794(a); 34 C.F.R. § 104.33.

Memorandum).

On July 26, 2018, Appellant appealed to the local board. In addition to the arguments raised previously, she disputed many of the conclusions reached by the hearing officer. She also informed the board that she transferred Student X to a nonpublic school and she sought $27,576 in restitution from MCPS to pay for his tuition, in addition to approximately $2,000 for mental health treatment. (Appeal, Appellant's Appeal to Local Board).

On September 11, 2018, the local board dismissed the appeal. The local board declined to fire the two coaches, as requested by Appellant, stating that the public complaint process was not the proper venue for resolving personnel issues. The board found that Appellant's allegations of child abuse had been investigated by multiple parties, including CPS, the Montgomery County Police Department, and MCPS. None found evidence of child abuse. MCPS also did not find Appellant's claims of bullying to be credible, though the local board observed that MCPS had taken steps to support Student X as a result of the bullying complaint, including the use of the "flash pass." The local board found that the change to Student X's Section 504 plan came because he did not qualify for the accommodation, not because of retaliation by MCPS. The board suggested Appellant follow the Section 504 appeals process if she wished to pursue claims related to provision of those services. Finally, the board agreed that MCPS appropriately addressed any violation of its policies by the coaches and that any personnel action taken would be confidential because it was part of the employees' personnel records. (Appeal, Local Board Decision).

This appeal followed.

STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

Motion to Seal the Record and to Omit Appellant's Name

The local board requests that the record in this matter be sealed because it involves discussion of a CPS investigation and its results, which are to remain confidential under State law. *See* Md. Code, Human Services Article § 1-202. The local board maintains that the two coaches, who CPS and MCPS cleared of child abuse allegations, would be unfairly maligned if the information were not sealed. Appellant objects to sealing the record, arguing, in part, that the local board already violated State law by disclosing the result of the CPS investigation. She does not, however, object to concealing her name, as well as the names of the coaches, from our final opinion. Appellant asks, though, that the record be open to public inspection. She maintains that this will assist the public in being able to evaluate the actions of MCPS in a transparent manner.

In our view, the local board and Appellant have provided strong rationales for sealing the record and omitting the parties' names from this case. Appellant makes allegations of child

abuse against two coaches. Because he is an alleged victim, we decline to use her son's name. We agree with Appellant that using her first or last name, coupled with the facts of this case, could potentially reveal her son's identity. The coaches, meanwhile, have been cleared of abuse by CPS and we conclude that to use their names in connection with allegations that were not sustained would be highly prejudicial and unnecessary to the resolution of this appeal. We further decline to name the specific MCPS school where these actions took place to protect the privacy of all individuals involved. The gravamen of Appellant's complaint, as well as the actions MCPS took, can be gleaned from our decision without these more specific details. This properly balances the privacy interests of all involved while still making the outcome of our review of the local board's decision public. The record in this case will be sealed.

New evidence

On appeal, Appellant seeks to introduce new evidence in the form of a September 30, 2018 letter from a licensed psychologist who treated Student X during weekly therapy sessions beginning in May 2018. She indicates in the letter that, in addition to earlier diagnoses of ADHD and an adjustment disorder, Student X has post-traumatic stress disorder as a result of "the verbal and emotional abuse" from his coach Coach A. The psychologist offered her opinion that psychological abuse is as harmful, if not more so, than sexual or physical abuse, and opined that Student X suffered at least 14 symptoms of PTSD, including nightmares, flashbacks, panic attacks, difficulty sleeping, and suicidal thoughts. The psychologist concludes that it was necessary for Appellant to remove Student X from his prior high school so he could attend "an independent school."

COMAR 13A.01.05.04 permits the State Board to consider additional evidence if it is material and there is a good reason for failing to introduce the evidence before the local board. Although the letter was not written until after the local board's decision date (September 11, 2018), the psychologist indicates that she had been treating Student X since May 2018. In other words, Appellant could have included such a letter as part of her appeal filed in July 2018. Accordingly, we find there was not good cause to fail to include the additional evidence and we decline to consider it as part of the appeal. *See Towle v. Carroll County Bd. of Educ.*, MSBE Op. No. 17-31 (2017) (declining to consider new evidence that could have been, but was not, presented to the local board).

Section 504, IDEA, ADA, and Title IX violations

Appellant alleges generally that MCPS violated Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act (IDEA). We have long declined to extend our jurisdiction to resolve special education disputes because there are other existing forums available. *See Jon N. v. Charles County Bd. of Educ.*, MSBE Op. No. 17-19 (2017). The record indicates that MCPS made Appellant aware of these avenues of appeal. Accordingly, we decline to address issues regarding Section 504 or IDEA as part of this appeal.

In addition, Appellant appears to allege a complaint under the Americans with Disabilities Act (ADA) and Title IX of the Education Amendments of 1972, which prohibit discrimination on the basis of sex. There is no indication that Appellant raised ADA or Title IX complaints before the local board. We therefore decline to address those issues for the first time

on appeal. *See Goines v. Prince George's County Bd. of Educ.*, MSBE Op. No. 17-16 (2017) (issue waived on appeal by failing to raise it before the local board).

Access to records

Appellant argues that MCPS failed to grant her timely access to Student X's student records. The Family Educational Rights and Privacy Act (FERPA) governs access to student records in a public school setting. We have previously declined to consider FERPA violations because federal law provides for a separate forum to address those grievances — the Family Policy Compliance Office of the United States Department of Education. *See* 34 C.F.R. 99.63; *Phil N. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 18-42 (2018).

Additionally, Appellant argues that she did not have access to all of the records relied upon by the local board. This appeal is unusual in that it involves two types of confidential records – reports of child abuse made to State authorities and employee personnel records. *See* Md. Code, Human Services Article § 1-202; Md. Code, General Provisions Article § 4-311. The local board relied on both, to some degree, in reaching its conclusions and neither type of record is open for public disclosure. In our view, the local board acted appropriately in attempting to address Appellant's complaint while maintaining State-mandated confidentiality of CPS and personnel records.

Requested relief

The remainder of Appellant's arguments concern the type of relief available in a complaint such as this one. Appellant asks that the State Board require MCPS to pay the cost of Student X's private school tuition, as well as his mental health treatment. The tuition cost is approximately $27,576 per year and the therapy costs are approximately $3,000 so far and "open ended." The State Board routinely declines to award monetary judgments through the administrative appeals process. *See J.B. v. Harford County Bd. of Educ.*, MSBE Op. No. 17-01 (2017) (declining to award attorney's fees). Accordingly, we decline to require the local board to pay the cost of Student X's private school tuition or his therapy bills.

Appellant also asks the State Board to remove Coach A and Coach B as coaches for any school system, and to revoke the teaching certification for Coach B. Over the course of many years, this Board has ruled consistently that parents have no standing to appeal a personnel decision made at the local level. *See Kristina E. v. Charles County Bd. of Educ.*, MSBE Op. No. 15-27 (2015) (citing cases). We base that conclusion on the fact that the employment relationship is between two parties, the local school system and the employee, and on the law that establishes that personnel decisions are confidential. Md. Code, Gen. Prov. § 4-311. Under the law of standing, an individual "must show some direct interest or 'injury in fact, economic or otherwise.'" *Taylor v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-32 (2007) (quoting *Adams, et al. v. Montgomery County Bd. of Educ.*, 3 Op. MSBE 142,149 (1983)). While parents may have an interest in the decision about whether or not to discipline a teacher or staff member, that interest is not the type of "direct interest" or "injury in fact" required for standing. *See Kristina E.*, MSBE Op. No. 15-27. Only the teacher or staff member who is the subject of the personnel decision has the "direct interest" or suffers the "injury in fact" and may appeal personnel actions. *Id.*

Similarly, the local board that employs an individual, a nonpublic school employer, or the Maryland State Department of Education (MSDE) are the only entities that may initiate the suspension or revocation of an educator's professional certificate. *See* COMAR 13A.12.05.03. The State Superintendent of Schools has sole authority to take final action on any educator's certificate. Requests for suspension or revocation of an educator's certificate frequently rely on the same type of confidential personnel information discussed above. For that reason, a parent does not have standing to challenge a decision by the local board not to pursue the suspension or revocation of an educator's license.

In short, we cannot grant any of the relief that Appellant requests. The local board reached a similar conclusion when it decided to dismiss Appellant's appeal. In our view, the local board did not act in an arbitrary, unreasonable, or illegal manner by doing so.

CONCLUSION

We affirm the decision of the local board because it was not arbitrary, unreasonable, or illegal.

Signatures on File:

Justin M. Hartings
President

Gail H. Bates

Vermelle D. Greene

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

Absent:
Stephanie R. Iszard
Vice-President

March 26, 2019