

BETH B.,

Appellant,

v.

CALVERT COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-35

OPINION

INTRODUCTION

Beth B. (“Appellant”) files an appeal of the decision made by the Calvert County Board of Education (“local board”) to deny her local board appeal on the basis that she did not have standing and any issues were moot. Appellant filed the appeal to the local board seeking to overturn the Superintendent’s finding that Northern High School did not violate Title IX regulations in regard to its girls’ sports teams. The local board filed a Motion to Dismiss and Supporting Memorandum to this appeal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

Appellant is the parent of ■■■■, a former student of Calvert County Public Schools (“CCPS”). ■■■■ attended high school at Northern High School (“NHS”) until her graduation on June 5, 2019. (Appeal, Opinion and Order). During her time at NHS, ■■■■ played girls’ tennis. At some point during her daughter’s senior year at NHS, Appellant became dissatisfied with the tennis facilities at NHS, which were slated to be moved as a part of construction at NHS on multiple athletic fields and courts.

In early May 2019, Appellant emailed NHS Principal Stephen Williams requesting assistance with the scheduling of her daughter’s AP exams and other senior class activities, as they conflicted with the tennis tournament schedule. Principal Williams directed NHS staff member, Ms. Bell, to look into the matter. Ms. Bell spoke with ■■■■ (Appeal, Ex. A). She did not raise Title IX concerns at this time.

On June 2, 2019, Appellant emailed Principal Williams a letter outlining concerns about the tennis facilities. Specifically, Appellant contended that there were not enough tennis courts for the tennis teams (boys and girls) to play on. Appellant was requesting that the school build two to four courts in addition to the six courts that would be available at the end of the tennis court construction project that was under way at the time. (Appeal, Ex. A). Principal Williams responded to Appellant advising that he had no authority over the construction project and that he would forward her concerns to the Director of Construction.

On September 8, 2019, after ██████ had graduated from NHS, Appellant wrote to Kim Roof, Director of Student Services, and expressed concerns that NHS was not in compliance with Title IX of the Education Amendments of 1972.¹ The tennis coaches were copied on the letter. (9/8/20 Letter). Ms. Roof met with the Appellant on October 3, 2019 to discuss these concerns. On October 25, 2019, Ms. Roof issued a letter responding to eleven questions raised by Appellant about the tennis facilities at NHS, including sports scheduling, condition of courts owned by the Calvert County Parks & Recreation, coach salaries, and district policies for purchasing championship rings. Ms. Roof shared that her investigation did not demonstrate any Title IX violations, and she provided Appellant with the right to appeal to the Superintendent. (10/25/20 letter).

On December 3, 2019, Appellant sent an email expressing her intention to file an appeal of Ms. Roof's decision to Superintendent Daniel Curry. (Appeal, Opinion and Order). Appellant sought changes, improvements, and/or additions to the boys' and girls' tennis facilities, as well as scheduling of the tennis tournament to ensure it did not conflict with academic activities and changes to the girls' softball team field. (Appellant Reply, Ex. A).

On January 13, 2020, Superintendent Curry informed the Appellant by letter that he reviewed the appeal of Ms. Roof's decision and did not find any violations of Title IX regulations. (Local Board Motion, Ex. 1).

On January 30, 2020, Appellant filed an appeal of Superintendent Curry's decision to the local board. Appellant sought relief in the form of changes in athletic facilities and services for the girls' sports teams at NHS. The tennis coaches signed the appeal form dated January 23, 2020. (Supt. Appeal Memo, p. 41). The Superintendent subsequently filed a motion to dismiss to the local board alleging the Appellant lacked standing to bring the appeal and any controversy was moot. (Supt. Appeal Memo). On March 9, 2020, Appellant filed an amended appeal to the local board including additional information responsive to the Superintendent's Motion to Dismiss on standing and mootness. (Appeal, Opinion and Order).

On April 22, 2020, the local board granted the Superintendent's Motion to Dismiss on the basis that the Appellant lacked standing to bring the appeal. The local board determined that Appellant's daughter had graduated from NHS before the Title IX complaint and appeal to the local board was filed, and was no longer a student in CCPS. The local board also considered whether the tennis coaches had standing in the matter. The local board concluded that the coaches lacked standing as they had not been a part of the initial appeal to the Superintendent and failed to exhaust their administrative remedies prior to signing the local board appeal form. (Appeal, Opinion and Order).

This appeal followed.

STANDARD OF REVIEW

When asked to interpret or explain Maryland's laws governing public education and State Board regulations, the Board exercises its independent judgment. COMAR 13A.01.05.06(E).

¹ On August 28, 2019, Appellant spoke with Ms. Roof, and her September 8, 2020 letter was a follow up to the conversation.

Decisions of a local board involving 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. Under COMAR 13A.01.05.03(B)(1)(b)-(c), the State Board may dismiss an appeal if it has become moot or the appellant lacks standing.

LEGAL ANALYSIS

The basis of Appellant's initial complaint to CCPS and the local board were alleged violations of Title IX of the Education Amendments of 1972, 20 U.S.C. sec. 1681 *et seq.* ("Title IX").² Specifically, Appellant sought remedy to address "the inequity of cash disbursement in funding for sports accommodations for the students at Northern High School (NHS), based on Title IX." (Appeal, p. 8). Without considering the merits of Appellant's claims, the local board denied Appellant's appeal on the basis that Appellant lacked standing. As Appellant is appealing the local board's decision based on standing, this Board shall not consider the merits of the underlying Title IX claim. This Board is limited to determining whether the local board's decision to dismiss Appellant's appeal was arbitrary, unreasonable or illegal. However, before addressing those considerations, we must deal with the local board's motion to dismiss the appeal to the State Board claiming lack of standing and mootness.

Standing

In order for an individual or organization to bring an appeal before this Board, the individual or organization must have standing (i.e. the right to challenge the actions of another in a legal forum). We have held that the general rule on standing is that "for an individual to have standing... he must show some direct interest or 'injury in fact, economic or otherwise.'" *S.R. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 20-18 (2020) quoting *Adams, et al. v. Montgomery County Bd. of Educ.*, 3 Op. MSBE 143, 149 (1983). This requires the individual to 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. See *Bryniarski v. Montgomery County Bd. of Educ.*, 247 Md. 137, 144 (1967); see also *Lockwood v. Howard County Bd. of Educ.*, MSBE OR No. 17-12 (2017).

The local board argues that Appellant lacks standing in this appeal because (1) she no longer has a child enrolled in CCPS; and (2) her daughter is over the age of 18 years and no longer a minor under the legal control of Appellant, thus requiring the daughter to bring this action under her own name. The local board relies on prior decisions by this Board finding that Appellants without children enrolled in a school impacted by a school decision and generally concerned citizens lack standing to file an appeal. See *Abbe Milstein, et al. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-35 (2015) and *Cassandra Marshall v. Baltimore City Bd. of Educ.*, MSBE Op. No. 03-38 (2003).

Appellant argues that when she filed her complaint, her daughter was enrolled in CCPS and under the age of 18 years. She points to the email exchanges between her and the NHS

² Title IX is a federal civil rights law that protects students from sex-based discrimination in the educational setting. This law is enforced by the Office for Civil Rights ("OCR") at the Department of Education, where an aggrieved party may file a complaint for investigation. 34 C.F.R. §100.7. Information on filing a discrimination complaint with the OCR can be found at: <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt>.

principal regarding the tennis courts in early June as evidence that she made CCPS aware of her concerns while her daughter was still a student.

We agree with the local board that Appellant lacks standing to file this appeal. First, there is no evidence in the record to support that the Appellant filed her Title IX complaint prior to her daughter's graduation from CCPS on June 5, 2020. While Appellant raised concerns to the Principal in May of 2020 regarding the number of tennis facilities prior to her daughter's graduation, these concerns were for both the girls' and boys' tennis teams together. Appellant did not raise alleged gender disparity claims until her September 8, 2020 letter to Ms. Roof, after her daughter was no longer a student in the school system. Because Appellant does not now have a child in attendance at any of the schools at issue in this case, she does not meet the requirements for standing. *Cassandra Marshall v. Baltimore City Bd. of Educ.*, MSBE Op. No. 03-38 (2003).

Appellant additionally argues that the three tennis coaches continue to have standing even if she and her daughter do not. We do not find that the tennis coaches are party to this appeal. While the tennis coaches signed the appeal to the local board, they have not joined Appellant in her appeal to the State Board. Appellant sent courtesy copies to the tennis coaches' names and addresses on the appeal and responses, and the filings are signed only by the Appellant. The State Board has received no communication from the coaches supporting their involvement in this case. Moreover, neither Appellant nor the coaches have demonstrated that the coaches have raised a Title IX claim in their own right such that they have a direct interest or injury in fact in this appeal. Thus, we dismiss the appeal for lack of standing.³

CONCLUSION

For the foregoing reasons, we dismiss the appeal on the basis that Appellant lacks standing to bring the action.

Signatures on File:

Clarence C. Crawford
President

Jean C. Halle
Vice-President

Shawn D. Bartley

Gail H. Bates

³Because we are dismissing the appeal for lack of standing, we do not address the local board's argument regarding mootness. Nor do we reach the merits of the case. Nevertheless, we encourage the local board to examine whether gender disparity issues in athletics exist at NHS.

Charles R. Dashiell, Jr.

Susan J. Getty

Vermelle D. Greene

Rose Maria Li

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

September 22, 2020