

S.R.

Appellant,

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION  
(III-VI)

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-11

## OPINION

### INTRODUCTION

S.R. (“Appellant”) filed four appeals of decisions made by the Montgomery County Board of Education (“local board”) regarding special education matters and allegations of discrimination by staff against the Appellant. As all four appeals stem from an October 6, 2020 local board decision, we consolidated the appeals for review. The local board filed a Motion to Dismiss to the consolidated appeals. Appellant filed a reply, and the local board responded.

### FACTUAL BACKGROUND

Appellant is the non-custodial father of a student in Montgomery County Public Schools (“MCPS”). Appellant’s son is a student with a disability served under the Individuals with Disabilities Education Act (“IDEA”) with an Individualized Education Program (“IEP”).

On June 11, 2020, an IEP meeting was held for the student. Following the meeting, Appellant sent multiple emails to MCPS seeking changes to the Prior Written Notice<sup>1</sup> from the June 11 meeting. On June 26, 2020, Ms. Joanne Hoffman, Supervisor at the Central Placement Unit, emailed Appellant a response to the requested changes to Prior Written Notice, granting in part and denying his request in part. The letter also stated:

“This letter is also in reference to your acknowledgement that you audio recorded the June 11, 2020, IEP team meeting. Although MCPS permits audio recording of IEP team meetings, it only does so with notice and permission under MCPS Regulation, ABA-RB Schools Visitors located at: <https://www.montgomerycountyschoolsmd.org/departments/policy/pdf/abarb.pdf>.

In consultation with the Office of General Counsel, I am informing you that under the Maryland wiretapping law,

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<sup>1</sup> Prior Written Notice is a legally required document under the IDEA that provides the parent of notice of decisions made by the IEP team.

recordings of conversations, is only permitted where all of the parties to the communication have given prior consent. See Annotated Code of Maryland. Courts and Judicial Proceedings, Article. Section 10-402. As you did not inform the meeting participants that you were recording the meeting, you are not in compliance with state law. Please provide a copy of the audio recording within five business days to be included in [Student's] educational record. Additionally, going forward you are expected to adhere to all state and federal laws regarding audio recordings and should advise the school team in advance of the meeting your intention to record.” (Motion, Ex. A).

On June 26, 2020, in response to Ms. Hoffman’s letter, the Appellant filed a *Complaint from the Public* with MCPS. He subsequently filed two additional Complaints on July 3, 2020 and July 9, 2020. The substance of these Complaints addressed the requested change to the student’s educational record, issues with the IEP team, and allegations that MCPS staff treated the Appellant in a discriminatory and threatening manner by including the above language in the June 26, 2020 letter. The Appellant also alleged that an email from his ex-wife’s divorce attorney, which clarified the mother’s wishes that IEP meetings not be recorded without her permission, was evidence of collusion between MCPS and his ex-wife to intimidate him. (Motion, Ex. C).

The Complaints were assigned to Hearing Officer, Shari N. Perry, for investigation. On July 17, 2020, Ms. Perry emailed Appellant to set up a call to discuss his concerns. Appellant responded via email that he would not participate in a call unless the call was recorded. Ms. Perry responded that it was not the standard practice to record such conversations, thus she would rely on the written material he had submitted in drafting her report. (Motion, Ex. C).

On July 20, 2020, Ms. Perry issued her report containing facts based on her investigation. Ms. Perry noted that the allegations of discrimination were investigated and determined to be unfounded. She noted that the statement about audio recordings merely specified the law and was issued in conjunction with a discussion with the Office of General Counsel. It was not threatening in nature. She also noted that a scheduled July 9, 2020 IEP team meeting was not held because the Appellant refused to answer whether he was recording the meeting. MCPS staff believed that the Appellant had previously recorded meetings without the IEP team’s consent. Ms. Perry also found that communication on behalf of the mother’s attorney could not be addressed through the Complaint process as the communication was sent directly from the attorney to the Appellant. Finally, Ms. Perry found that the Appellant’s request for a Family Educational Records Privacy Act (“FERPA”) hearing was appropriately denied as the Appellant is a noncustodial parent without decision-making power, and therefore, he does not have standing to request a hearing. (Motion, Ex. C).

On August 5, 2020, Associate Superintendent of Operations, Essie McGuire, wrote to Appellant stating that she had reviewed Ms. Perry’s report, concurred with her findings, and was adopting her recommendation to deny the Complaint. (Motion, Ex. D). Appellant appealed

this decision to the local board. The local superintendent submitted a memorandum to the local board recommending the denial of the complaint on the basis it is moot. (Motion, Ex. E).

On October 6, 2020, the local board issued a decision and order on the appeal. After reviewing the written record, the local board determined that the evidence supported the decision to affirm the denial of the complaint. The local board found that the Appellant did not have standing to raise most of the issues regarding the IEP team and the educational records, as he is a non-custodial parent without educational decision-making authority. The local board also found that the allegations of discrimination were investigated and not supported by the evidence. (Motion, Ex. E).

These appeals 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.01.05.06A.

The State Board may dismiss an appeal if an appellant lacks legal standing or the Board lacks jurisdiction over a matter. COMAR 13A.01.05.03B(1). The Board exercises its independent judgment on the record before it in the explanation and interpretation of its own regulations. COMAR 13A.01.05.06E.

### LEGAL ANALYSIS

Appellant's consolidated appeals provide four arguments for overturning the local board's decision:

1. The student's IEP team failed to comply with the Maryland State Department of Education ("MSDE") Secondary Transition Planning Guide when developing the student's IEP;
2. The student's IEP team did not consider the Maryland Governor's Transitioning Youth Initiative when it refused to extend the student's attendance an additional year at his school;
3. Ms. Perry's refusal to hold a recorded phone conversation with the Appellant deprived him of his civil rights; and
4. The local board failed to properly address or investigate allegations of defamation, harassment, discrimination, and intimidation by MCPS staff.

The local board filed a motion to dismiss the appeals citing a lack of standing, jurisdiction, and justiciable controversy. We consider these arguments in turn below.

## *Special Education Matters*

The first two bases for the Appellant's appeal of the October 6, 2020 local board decision concern issues with his son's IEP team and special education matters under the IDEA. Appellant alleges that his son's IEP team failed to comply with the MSDE Secondary Transition Planning Guide and that the IEP team refused to provide his son with an additional year of school at his nonpublic placement. The local board argues that these allegations should be dismissed for a lack of jurisdiction and a lack of standing. We concur that the State Board lacks jurisdiction over issues concerning matters under the IDEA.

As this Board held in an earlier 2020 appeal filed by the Appellant, the State Board is not the appropriate forum to resolve special education matters under the IDEA. *See S.R. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 20-18 (2020) citing *Philip and Deborah W. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 11-48 (2011); *Matthew W. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-07 (2008); *Brado v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-23 (2006); and *Frye v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-30 (2001). This is because specialized forums exist through IDEA to resolve these complex and fact-intensive matters in a timely fashion. Parents may file a State complaint with the MSDE, a request for mediation, and/or a due process hearing at the Office of Administrative Hearings. COMAR 13A.05.01.15. The Appellant is free to exercise any rights he may have under the IDEA to these forums.<sup>2</sup>

For this reason, we dismiss the arguments related to the student's special education matters for a lack of jurisdiction. As this Board does not have jurisdiction, we decline to consider the Appellant's standing in these matters.

### *Investigation Procedures*

Appellant argues that Ms. Perry's decision not to hold a recorded phone call with him to hear his concerns as a part of her investigation deprived him of his civil rights. The local board contends that this allegation should be dismissed because the Appellant fails to bring a justiciable controversy or dispute that this Board may hear. Under Education Article §4-205(c), the local Superintendent has the authority to decide the true intent and meaning of the school law and the applicable bylaws of the State Board. These decisions may be appealed to the local board then to the State Board. While this provides the Superintendent (and thus the State Board) with broad scope, we agree with the local board that it does not mean "every decision made by a member of the MCPS staff presents a controversy and dispute subject to Section 4-205(c)." (Motion, p. 9). The Appellant generally claims that his civil rights were violated by Ms. Perry's actions, but he does not specify what civil rights were violated, nor does he point to a local board policy or regulation that was violated. As such, we find the claim fails to state a dispute or controversy under the purview of the State Board, and we dismiss the claim.

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<sup>2</sup> In the Appellant's response to the Motion to Dismiss, he provides evidence that he filed a State complaint with the MSDE on the secondary transition issues, which was investigated. The MSDE issued a letter of findings in September 2020 and ordered the IEP team to meet when schools re-open to address what compensatory education/recovery services the student may need.

*Discrimination*

Appellant claims that MCPS staff engaged in discrimination based on race/national origin and age. The local board argues that this claim should be dismissed for failure to present a justiciable controversy. The local board reasons that the fact that the Appellant disagrees with the lawful decision-making process for determining whether discrimination occurs, and requests remedies beyond the purview of the State Board, require the Board to view this claim as non-justiciable. In the alternative, the local board requests we summarily affirm the local board's decision.

The State Board has routinely heard cases involving allegations of discrimination, and we decline to dismiss for lack of a justiciable controversy. *See Semere D. and Yehdego K. v. Montgomery County Bd. of Educ.*, MSBE Op. No.17-09 (2017); *Weeks v. Carroll County Bd. of Educ.*, MSBE Op. No. 13-44 (2013).

In reviewing a claim of discrimination, we require that the Appellant offer evidence to support their allegations, as allegations alone are insufficient to support a claim of discrimination. *See Weeks*, MSBE Op. No. 13-44. Where the Appellant has provided evidence, the State Board considers whether the local board decision is arbitrary, unreasonable, or illegal. In this case, the Appellant points to the statement made by Ms. Hoffman in her June 26, 2020 letter as evidence of discrimination. However, the record demonstrates that the MCPS staff believed that the Appellant was recording IEP team meetings without their knowledge or consent based on his email communications. In response, Ms. Hoffman consulted with the Office of General Counsel to provide a statement that reflected the legal opinion of MCPS and referred the Appellant to local board policy on the matter. We do not find that this statement gives rise to an inference of unlawful discrimination such that the local board decision was arbitrary, unreasonable, or illegal. We affirm the local board decision on this matter.

CONCLUSION

For the reasons stated above, we dismiss those claims where there is a lack of jurisdiction or justiciable controversy. We otherwise affirm the decision of the local board because it is not arbitrary, unreasonable or illegal.

Signatures on File:

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Clarence C. Crawford  
President

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Jean C. Halle  
Vice-President

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Shawn D. Bartley

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Gail H. Bates

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Charles R. Dashiell, Jr.

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Susan J. Getty

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Vermelle Greene

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Rose Maria Li

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Rachel McCusker

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Joan Mele-McCarthy

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Lori Morrow

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Warner I. Sumpter

Absent:  
Holly C. Wilcox

March 23, 2021