

S.R.

Appellant,

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION  
(VII-IX)

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-45

## OPINION

### INTRODUCTION

S.R. (“Appellant”) filed three appeals of decisions made by the Montgomery County Board of Education (“local board”) regarding special education matters, requests to amend records, and allegations of discrimination by staff against the Appellant. As the three appeals stem from two local board decisions relying on similar legal arguments, we consolidated the appeals for review. The local board filed a motion to dismiss the appeals and a request to strike certain documents from the record. 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”). Appellant’s ex-wife maintains exclusive educational decision-making authority. During the 2020-2021 school year, Appellant made a number of requests related to his son’s special education programming and records.

On December 29, 2020, Appellant filed a *Complaint from the Public* with MCPS alleging that his son’s IEP was amended without his input and inclusion, and that this violated his due process and civil rights. Appellant requested that any remarks attributed to him be removed from the amended/revised IEP and that MCPS cease in discriminating against him as an “Arab American male parent over the age of 70 years.” (Appendix, 1).

On December 30, 2020, Appellant filed a second *Complaint from the Public* with MCPS. In this complaint, Appellant alleged a number of issues including that MCPS staff failed to include a series of emails between his ex-wife and son’s twin brother in the son’s educational records. He also took issue with the length of time it took to receive responses to his multiple emails. Appellant requested the “authority(s)/opinion(s)/ruling(s)/policy(s)/procedure(s)/regulation(s)/law(s)” used to deny his request to include the emails in his son’s educational record. (Appendix, 2).

On January 6, 2021, Appellant filed a third *Complaint from the Public* with MCPS. This complaint also concerned the refusal of staff to include emails from his son's twin brother in his son's educational records. Appellant alleged MCPS was required to include these communications under 20 U.S.C. §1414(b).<sup>1</sup> (Appendix, 3).

On the morning of January 12, 2021, Ms. Shari Perry from the Appeals/Transfer Team emailed Appellant acknowledging the various Complaints filed by the Appellant. Ms. Perry requested Appellant send her some times that would work for a telephone call to discuss his concerns. Appellant responded the same day by email indicating that he was not comfortable having a phone call or meetings with MCPS because his "input is seriously distorted[.]" Appellant informed Ms. Perry that he would only be comfortable corresponding by email, through a recorded phone call that was preserved for the record, or a phone conversation to be transcribed by an independent individual at his expense. (Appendix, 4).

Ms. Perry responded on January 13, 2021, declining to record any phone call. She explained that recording and transcribing phone calls was not the MCPS' standard practice. Ms. Perry offered to include a summary of any additional written input Appellant wanted to provide. Appellant again responded via email requesting that Ms. Perry conduct an interview in writing. The next day Ms. Perry responded that she would summarize Appellant's three complaints and include any additional written input he would like to submit. Appellant responded he would like the written policies that prevent Ms. Perry from conducting an interview in writing. Ms. Perry responded, referring the Appellant to MCPS Policy KLA-RA: *Responding to Inquiries and Complaints from the Public*. (Appendix, 4).

On the evening of January 15, 2021, Appellant filed a fourth *Complaint from the Public* with MCPS. In this complaint, he raised concerns about Ms. Perry's refusal to accommodate his request for a recorded phone call or to conduct an interview via email. (Appendix, 4).

Appellant followed this with a fifth *Complaint from the Public* on January 18, 2021. Appellant again reiterated his concerns that he was neither invited to participate in an amendment to his son's IEP nor provided with IEP documents in violation of his rights. He also asked that the IEP documents be amended to correct input attributed to him. (Appendix, 5).

On January 19, 2021, Ms. Perry submitted a memorandum to Associate Superintendent of Operations, Essie McGuire. In this memo, Ms. Perry described the December 29<sup>th</sup> Complaint regarding Appellant's allegation he was not invited to participate in his son's IEP amendment. Ms. Perry spoke with the MCPS Central Placement Unit, which informed her that the amendment was completed with the agreement of the student's mother, the custodial parent. (Local Board, Ex. B).

Ms. Perry also addressed the January 15 and 18 Complaints filed by Appellant, which she concluded were appropriately consolidated in her memo, as "the concerns and desired outcomes are the same." She found that Ms. Tracee Hackett, supervisor in the Resolution and Compliance Unit, had communicated to the Appellant that as the noncustodial parent he may submit written

---

<sup>1</sup> 20 U.S.C. §1414(b) refers to the evaluation procedures under the Individuals with Disabilities Education Act ("IDEA").

rebuttal to be shared with the student's mother and included in the student's special education record. She also wrote that Appellant's allegations of discrimination were investigated, and found that MCPS staff had followed standard procedures. Appellant did not produce any evidence of discrimination. She finally informed Ms. McGuire that she followed standard procedures when denying Appellant's request for a recorded call. In conclusion, she recommended Ms. McGuire deny the Complaints. (Local Board, Ex. B).

Also on January 19, 2021, Ms. Perry submitted a second memorandum to Ms. McGuire addressing the December 30 and January 6 Complaints. Ms. Perry wrote that she looked into Appellant's allegations that MCPS refused to include emails from his son's twin brother into his educational records. Ms. Perry spoke with Ms. Joanne Hoffman, supervisor in the Central Placement Unit, who explained that the standard for amending student records is whether the record is inaccurate or misleading. In the case at hand, Appellant was requesting documents to be included which did not pertain to his son's educational program. Furthermore, Appellant's ex-wife, who is the sole educational decision-maker, objected to emails being included in the record. Ms. Perry reiterated that allegations of discrimination were not sustained, and that she followed standard procedures in completing her investigation of the Complaints. She recommended that the Complaints be denied. (Local Board, Ex. D).

On January 25, 2021, Ms. McGuire sent Appellant two letters stating that she had reviewed Ms. Perry's two reports. In both instances, Ms. McGuire concurred with Ms. Perry's findings, and adopted her recommendation to deny the Complaints. (Local Board, Exs. B, D). The Appellant appealed these decisions to the local board. The local superintendent submitted a memorandum to the local board for both appeals recommending the denial of the Complaints. (Local Board, Exs. C, E).

On April 21, 2021, the local board issued a decision and order on the appeal of the December 29, January 15 and 18 Complaints. After reviewing the written record, the local board determined that the evidence supported the decision to affirm the denial of the Complaints. The local board found: Appellant was not excluded from an IEP meeting; he was provided with an opportunity to submit input on the IEP, but chose not to do so; he failed to produce evidence of discrimination or retaliation; and that as a non-custodial parent without educational decision-making authority, he lacks standing to request amendments to the student's educational record. (Local Board, Ex. C).

Also on April 21, 2021, the local board issued a second decision and order on the appeal of the December 30 and January 6 Complaints. After reviewing the written record, the local board determined that the evidence supported the decision to affirm the denial of the Complaints. The local board found: the emails in question related to a family dispute and were not appropriate for the student's educational record; Appellant failed to produce evidence of discrimination and retaliation; and that the Appellant lacked standing, as the noncustodial parent, to request amendments to the student's educational record. (Local Board, 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 involve five primary allegations:

1. Failure of the MCPS staff to invite him to participate in his son's IEP process;
2. Failure of the MCPS to amend his son's educational records and add emails submitted by Appellant;
3. Violation of Appellant's civil rights by failing to provide him with a recorded phone call in investigation of his Complaints;
4. Violation of local board policy in responding to his filed Complaints; and
5. Discriminatory and retaliatory behavior by MCPS staff.

The local board filed a motion to dismiss the appeals citing a lack of jurisdiction and justiciable controversy.

### *Local Board's Request to Strike Documents*

Before addressing these arguments, we must resolve a request by the local board to strike from the record, or maintain under seal, various documents submitted by Appellant. Specifically, the local board would like the following documents stricken: copies of the student's November 2021 IEP; copies of the student's March 20, 2012 psychological assessment; correspondence between Appellant's ex-wife and the student's brother; a May 5, 2020 special education progress report; a July 1, 2020 letter from the ex-wife's attorney; and a set of invoices for legal services provided by the ex-wife's attorney regarding discovery and child support. The local board argues that the documents violate the student's privacy and are unnecessary for resolution of these appeals. Appellant objects to the local board's request. After careful consideration, we agree that these documents are not necessary for resolution of the appeals. Given the highly sensitive nature of these documents and the strong public interest in preserving the privacy of students, we see no reason not to grant the local board's request. The documents will be stricken from the record.

We now turn to the merits of this case.

### *Special Education Matters*

As this Board held in the 2020 and 2021 appeals 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. (III-VI)*, MSBE Op. No. 21-11 (2021) and *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). As we discussed in response to Appellant's prior appeals, 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. For this reason, we dismiss the arguments related to the student's special education matters for a lack of jurisdiction.

### *Student Records*

Appellant made multiple requests to amend and add to his son's educational record, which the local board denied. Appellant is a noncustodial parent without education decision-making authority. He has failed to identify any legal basis for asserting such a request.

### *Investigation Procedures – Recording Calls*

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. This board has already ruled on this issue in Appellant's prior 2021 appeal. *See S.R.*, Op. No. 21-11. We found that Appellant failed to cite a specific civil rights violation, or identify a violation of local board policy or regulation; thus, he failed to state a dispute or controversy under the purview of the State Board. Appellant makes the same arguments as before; therefore, we dismiss the claim for the same reasons.

### *Response to Complaints*

Appellant argues that MCPS failed to respond to his Complaints within the timelines set out in local board policy. Specifically, he alleges that MCPS failed to communicate with him about his Complaints "within 3 business days and send a letter of findings within 10 business days." (Appeal VIII, p. 3). Appellant does not specify which local board policy he believes was violated, but the local board highlighted their policy - MCPS Policy KLA-RA: *Responding to Inquiries and Complaints from the Public*. (Local Board, Ex. F). Pursuant to this policy, when a complaint is assigned to the Appeals/Transfer Team, a hearing *may* be scheduled with five working days of receiving the request for review. The Appeals/Transfer Team is expected to issue a decision within 15 working days, unless they require additional time.

We do not find that MCPS or Ms. Perry violated MCPS Policy KLA-RA. Pursuant to the policy, Ms. Perry had the option to offer the Appellant a hearing, but she was not required to do so. Ms. Perry did reach out to the Appellant to offer an opportunity to discuss his Complaints, but he chose not to participate because he objected to the format of the investigation. Given the winter holidays and break, we do not see evidence that MCPS failed to comply with the 15 working days to issue a decision. However, even if the MCPS did not comply with the 15 working days, the policy allows additional time when necessary. Therefore, we do not find a violation of MCPS Policy KLA-RA.

*Discrimination*

Appellant claims that MCPS staff engaged in discrimination based on race/national origin and age. We previously addressed Appellant’s allegations of discrimination and retaliation. As noted in the earlier 2021 decision, we require the Appellant to offer evidence to support his allegations, as allegations alone are insufficient to support a claim of discrimination. *See S.R.*, MSBE Op. No. 21-11 citing *Weeks v. Carroll County Bd. of Educ.*, MSBE Op. No. 13-44 (2013). 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 proffers two facts as evidence of discrimination.

First, Appellant highlights that his son’s IEP team is comprised solely of Caucasian women. Appellant argues that this is not representative of the Arab-American community. The mere fact that Appellant’s son’s educational team is not the same race, nationality, gender, or age as Appellant does not automatically mean the team’s decisions are discriminatory. Appellant also introduces evidence that MCPS issued a Request for Proposal to the public for an “Anti-Racist Audit.” (Appellant Response, p. 13). Appellant argues it is “ironic” that MCPS commissions such an action but finds it did not engage in racial discrimination in regards to his case. While the Appellant may find the action “ironic”, it does not follow that the actions of the individual staff members are discriminatory. Appellant fails to produce sufficient evidence to demonstrate 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.

---

Clarence C. Crawford  
President

---

Shawn D. Bartley

---

Gail H. Bates

---

Chuen-Chin Bianca Chang

---

Charles R. Dashiell, Jr.

---

Susan J. Getty

---

Vermelle Greene

---

Jean C. Halle

---

Rachel McCusker

---

Joan Mele-McCarthy

---

Lori Morrow

---

Warner I. Sumpter

---

Holly C. Wilcox

August 24, 2021