

K.B.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 25-04

OPINION

INTRODUCTION

K.B. (“Appellant”) challenges the decision of the Montgomery County Board of Education (“local board”) affirming the denial of the Appellant’s *Complaint from the Public* (“Complaint”) concerning construction safety issues at Poolesville High School (“PHS”).¹ The local board filed a Motion to Dismiss the appeal. The Appellant responded and the local board replied.

FACTUAL BACKGROUND

This appeal arises out of a Complaint filed by the Appellant concerning safety issues at PHS, where her daughter attends school. PHS is currently undergoing a major capital project that includes renovation of the existing school building and the construction of an addition. The school has remained open during the construction.

On January 4, 2024, there was an incident that occurred while construction workers were working on the roof. The workers broke through the roof in an occupied area of the building and debris fell through the roof into the school hallway. Nobody was injured from the incident. Staff reported the incident which was immediately investigated and evaluated. (R. 4). A review of the investigation report was discussed at the School Construction Impact Team (“SCIT”) meeting on January 9, 2024. (R. 42). Crews completed the work in the area of the incident by the end of January 2024. (R. 4).

On February 5, 2024, the Appellant filed a Complaint regarding the January 4 incident maintaining that it was a “near miss” and that a student was almost struck by falling rocks. (R. 2). The Appellant claimed that Montgomery County Public Schools (“MCPS”) did not follow

¹ The Appellant had a previous appeal before this Board on similar claims concerning construction issues at PHS related to the tarring of the school roof. The State Board dismissed some of the Appellant’s claims in *K.B. v. Montgomery Cnty. Bd. of Educ.*, MSBE OR 24-01 (2024) and affirmed the local board’s decision denying her appeal in *K.B. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 24-11 (2024), finding no violation of Policy FAA – *Educational Facilities Planning* and no violation of the PHS Indoor Air Quality (“IAQ”) Plan. On petition for judicial review, the Circuit Court for Montgomery County affirmed the State Board’s decision. *In the Matter of [K.B.]*, Case No. C-15-CV-24-002783 (December 13, 2024).

procedures for investigation or reporting the incident to the public and requested that construction be halted until it could be safely completed. *Id.* She also sought other remedies, among which included creating new communication requirements concerning construction matters and accidents, developing new plans to prevent near-miss accidents, performing safety inspections, requiring investigations of incidents and reports to the community, allowing an outside agency provide oversight, and providing proof of compliance and implementation of plans before resuming construction. *Id.* The principal at PHS denied the Complaint on February 16, 2024. *Id.*

The Appellant appealed the decision to the Office of the Superintendent. Brian Hull, the Chief Operating Officer (“COO”), acting as the Interim Superintendent’s Designee, referred to the matter to Hearing Officer Adrian Charley for review and recommendation. (R. 9). During Ms. Charley’s investigation of the appeal, the Appellant sent an email adding to the Complaint issues with the use of the HVAC system during construction that she claims resulted in the introduction of fumes and particulate into the occupied spaces in the building. As part of her investigation, Ms. Charley conferred with the principal of PHS, the project manager from the Division of Design and Construction (“DDC”), the director of the Office of Facilities Management, and the executive director of the Office of the COO. (R. 10).

Ms. Charley made the following findings:

- A report and review of the January 2024 incident occurred under the existing process in place. In instances with no injury, Dustin Construction, a construction management firm, conducts an internal review and identifies and implements strategies and corrections to prevent future occurrences. A more formal review process exists for instances resulting in injury;
- New protocols have been put in place regarding buffer zones between areas of active construction and occupied spaces of the school building. DDC established an internal process to identify and mark buffer zones before beginning any roof work that is to be completed adjacent to occupied spaces. The DDC will identify any potential holes or gaps that may be exposed and seal off occupied areas adjacent to buffer zones to prevent dust and debris from entering occupied spaces;
- A new communication plan was initiated by PHS to increase communications with parents regarding the construction and parents/guardians of students directly involved in a construction incident will be notified whether there was injury or impact on school operations despite the requirements of MCPS Regulation COB-RA – *Incident Reporting* that requires such notification only in instances of student injury or impact on school operations;
- Regular inspections and appropriate oversight already occur. Safety Environmental Engineering (“SEE”), a third-party safety consultant contracted to Dustin Construction, performs bi-weekly Occupational Safety and Health Administration (“OSHA”) onsite safety inspections of the PHS construction and provides a report. Dustin Construction reviews the report with the onsite team and makes necessary and/or required corrections.

(R. 10-11). Ms. Charley also noted that since March 2022, the SEE conducted 44 safety inspections of the construction project and there have been site visits from both the Maryland

Department of the Environment and Montgomery County Department of the Environment, none of which have resulted in any citations, violations, or recommendations for corrections. (R. 11). She recommended that the Complaint be denied. *Id.* On April 29, 2024, after reviewing Ms. Charley's report, Mr. Hull advised the Appellant that he concurred with Ms. Charley's findings and adopted her recommendation to deny the Complaint. (R. 9).

The Appellant appealed Mr. Hull's decision to the local board maintaining that the safety processes identified in Ms. Charley's report are inadequate; that there is no documentation to support that there was an internal review of the January 4 incident; and that the HVAC for the entire building should be turned off during construction per the IAQ Plan. (R. 12-39).

The Interim Superintendent of Schools, Monique Felder, responded to the appeal by Memorandum to the local board. (R. 40-42). In response to additional concerns raised by the Appellant about particulate matter in the school, Dr. Felder noted that MCPS has installed IAQ sensors in schools to monitor various IAQ parameters and the PHS IAQ data shows no extended periods of elevated PM_{2.5} dust levels. (R. 41). As to fumes smelled by Appellant's daughter in the gym in May 2024, the construction project manager investigated immediately and could find no known source of the fumes and found no elevated levels of volatile organic compounds, the best surrogate for the odors described. *Id.* Also, as to the Appellant's concerns about the IAQ Plan, the project manager explained that per code, the school HVAC system cannot be turned off while the school building is occupied and that MCPS follows the industry's best practices to prevent infiltration into the schools, including protection and filtration principles detailed in the IAQ plan. The Appellant submitted a response in opposition to the Memorandum. (R. 43-106).

In a decision issued August 19, 2024, the local board affirmed Mr. Hull's decision to deny the Complaint adopting Mr. Hull's findings and Dr. Felder's Memorandum. (R.108-109). The local board stated:

The record shows that the requests in Ms. [B's] Complaint have either been accepted and resulted in a change in practice (i.e. the use of buffer zones and updates to the communications plan), or were already being done by Dustin Construction, the firm completing the renovations, and [MCPS] (i.e. safety inspections and oversight by an independent third-party). As it concerns the allegations in her e-mail amendment that the indoor air quality (IAQ) plan is not being followed and the HVAC system needs to be inoperable when construction work is being done, the Board directs Ms. [B] to its September 21, 2023, decision that was issued in response to Ms. [B's] Complaint during the 2023-2024 school year specifically related to this topic. The State Board of Education affirmed the Board's decision on May 21, 2024. In short, the Board determined that, regardless of construction work being completed, the HVAC system cannot be turned off when the building is occupied. Further, the Board feels that the IAQ plan is being followed, including the use of air quality sensors that monitor the amount of particulate matter in the air.

Id.

This appeal followed. The Appellant seeks relief in the form of requiring the relocation of all PHS students while PHS is undergoing construction or requiring the performance of construction activities only while the building is unoccupied and requiring that MCPS produce SDS sheets on welding fumes, gym floor coating product, stair paint, and all Attune sensor data.

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. 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 Appellant has the burden of proof by the preponderance of the evidence. COMAR 13A.01.05.06D.

LEGAL ANALYSIS

The Appellant makes a myriad of claims in her appeal to the State Board including that “continued past and potential future safety issues that have occurred during the [PHS] construction project, namely approximately 60 days of exposure to probably carcinogenic asphalt roofing fumes (as described in my previous formal complaint), rocks and dust falling through their ceiling, hazardous welding fumes filling hallways and the gym.” (Appeal at 2). She also claims that MCPS did not undertake “required air testing before occupancy of the new wing, (resulting in headaches, nausea from paint and other fumes), higher than WHO and EPA particulate levels in the school, an accidental near-miss asbestos release, a gas leak, more hazardous adhesive-based roofing work during school.” She asserts that the alleged issues constitute “a violation of state or county laws involving Abuse and Neglect, Montgomery County Air Quality ordinance, Building Codes, Public Nuisance laws, and a violation of Board Policy FAA, ACA, Regulation JHC-RA, and the [PHS] IAQ plan, contributory Employee Code of Conduct violations/negligent misrepresentation and conspiracy to cover up and continue abuse and neglect.” *Id.*

The Appellant disagrees with the local board’s decision regarding her Complaint. Based on the evidence in the record, however, we find that MCPS appropriately investigated and responded to the Appellant’s concerns. The record discloses that MCPS properly investigated and acted on the January 4 incident in accordance with school system policy. MCPS has instituted new protocols regarding buffer zones and created a new communication plan that exceeds the notification requirements of MCPS policy. The IAQ sensor at PHS which monitors various IAQ parameters shows no extended periods of elevated PM_{2.5} dust levels at PHS. Regarding the IAQ Plan, the project manager explained that per code, the school HVAC system cannot be turned off while the school building is occupied and that MCPS is following the industry’s best practices to prevent infiltration into the school. The evidence also discloses that regular inspections and oversight already occurs as SEE performs regular safety inspections and Dustin Construction and MCPS DCC staff perform quality checks. Moreover, MCPS has received no citations, violations, or corrections from State and local environmental authorities despite numerous safety inspections of the construction project. The Appellant’s disagreement with all of these findings does not equate to the local board’s decision being arbitrary, unreasonable, or illegal.

The Appellant maintains that MCPS violated various local board policies and regulations that include Policy FAA – *Educational Facilities Planning*, Policy ACA – *Nondiscrimination, Equity, and Cultural Proficiency*, Policy JHC and Regulation JHC-RA - *Child Abuse and Neglect*, and the MCPS Employee Code of Conduct. The Appellant’s arguments are misplaced and do not support her appeal.

As we explained in the Appellant’s prior appeal to this Board, the “healthy” and “safe” school environment reference in Policy FAA concerns facility design and is not relevant to the PHS construction issues which are beyond the facility design stage. *See K.B.*, MSBE Op. No. 24-11. As to the Appellant’s argument that MCPS failed to foster a safe environment for learning in violation of Policy ACA, the Policy aims to combat discrimination and promotes equity, inclusion, and diversity in education. There is no evidence in the record of any such violation. Policy JHC and its regulation set forth the procedures for employee recognition and reporting of cases of suspected child abuse and neglect which again is not applicable here.

With regard to allegations that various school system personnel violated the MCPS Employee Code of Conduct related to their statements and responses on PHS construction matters, the Code sets forth the expectations for employee behavior, and the disciplinary and due process procedures for employees related to such conduct and is irrelevant here. Further, parents have no standing in the personnel matters of the local school system. *See Thompson v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 12-42 (2012) (parents have no standing to seek personnel action); *see also Kristina E. v. Charles Cnty. Bd. of Educ.*, MSBE Op. No. 15-27 (2015)(and cases cited therein).

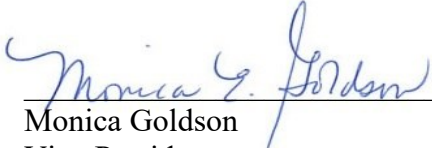
As in her prior appeal, the Appellant again alleges that MCPS has failed to properly implement the PHS IAQ Plan. To the extent that the allegations deal with construction pertaining to the roof, we have already stated that the IAQ Plan is inapplicable. *K.B.*, MSBE Op. No. 24-11. As to any other concerns, we rely on the opinions of the school system design and construction experts, which were reiterated by the Superintendent and adopted by local board. The Appellant has failed to submit sufficient evidence demonstrating any violations.


The Appellant also submits a laundry list of other laws that she maintains were violated by MCPS, including Montgomery County air quality ordinance, building codes, and public nuisance laws, and she raises claims of negligent misrepresentation and conspiracy by MCPS officials. As we stated in the prior appeal, “[t]hese claims are not appropriate here as they are not within the enforcement power of the State Board. Although the State Board has broad visitatorial powers, it is not a court of general jurisdiction that adjudicates all matters under law.” *K.B.*, MSBE Order No. OR 24-01 at 3. Further, to the extent the appeal raises claims concerning federal law violations, the State Board declines to exercise jurisdiction where separate administrative and other forums exist to address grievances under federal law. *Id.* at 2-3. Accordingly, we dismiss such claims.


CONCLUSION

For the reasons stated above, we uphold the local board’s decision because it is not arbitrary, unreasonable, or illegal. We also dismiss the Appellant’s various claims as identified above over which the State Board lacks jurisdiction.



Joshua L. Michael
President

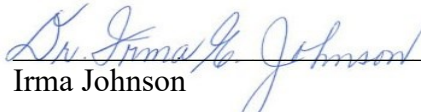

Monica Goldson
Vice-President

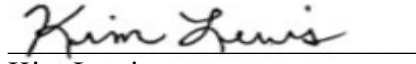

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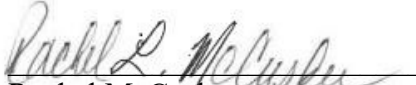

Kenny Clash



Clarence C. Crawford


Nick Greer

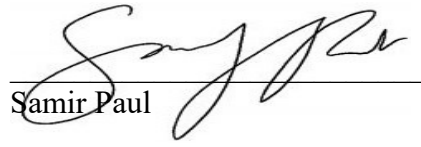

Irma Johnson


Kim Lewis


Rachel McCusker


Joan Mele-McCarthy


Xiomara Medina



Samir Paul

Absent:
Chuen-Chin Bianca Chang

January 28, 2025