

IN THE MATTER OF
OUTDOOR EDUCATION
FEES

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 19-39

OPINION

INTRODUCTION

Mr. Louis Wilen filed a Petition for Declaratory Ruling asking whether charging fees for food and lodging at an overnight Outdoor Education program violated the constitutional and statutory requirement that public schools be “free.” Art. VIII, Sec. I of the Maryland Constitution; Ed. Art. §7-101(a). The Montgomery County Board of Education (local board) filed a Response to the Petition. Mr. Wilen filed a Response to which the local board filed a Reply.

FACTUAL BACKGROUND

Montgomery County Public Schools (MCPS) offers a three-day, two-night residential outdoor environmental education program to 6th graders. The program takes place in three locations in the county. “While in residence, students study various aspects of the local environment as they participate in outdoor investigations that are directly connected to the grade six curriculum and the Maryland State Department of Education (MSDE) environmental standards.” (Response at 1).

Students do not have to participate in the Outdoors Education Program. “Students who choose not to participate at all are given alternative assignments pursuant to the curriculum.” (Response at 7, n.8). Students who choose to participate have two options. They can attend the Outdoor Education Program during the day only, or they can stay overnight at the residence. Day students are charged \$1.60 for insurance. They can pay for breakfast, lunch and dinner (approximately \$44 for three days); or they can pay a per meal charge if they only have some meals on site; or they can bring food from home. (Response at 2-3). Students staying overnight pay for insurance, and a fee of \$32 for lodging, plus the \$44 for food. A student who cannot afford those fees can request a fee waiver. (Response at 2-3).

STANDARD OF REVIEW

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.06E.

LEGAL ANALYSIS

Whether we should address the merits of this case depends on whether Mr. Wilen has legal standing to assert the issue. Having standing to present an issue for resolution is like having skin-in-the-game. The petitioner must have a sufficient connection to and experience actual harm from the action challenged. His interest in the action must be distinct from the interests of the general public.

As we said in *Sartucci v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-31 (2010):

[T]he 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’.” See *Schwalm v. Montgomery County Board of Education*, MSBE Op. No. 00-10 (February 23, 2000); *Vera v. Board. of Education*, 7 Op. MSBE 251 (1996); *Way v. Howard County Board of Education*, 5 Op. MSBE 349 (1989). This showing of a direct interest or injury in fact requires that the individual 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 Appeals*, 247 Md. 137, 144 (1967).

Id. at 8 citing *Clarksburg Civic Association v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-34, pp. 2-3 (2007).

Mr. Wilen bases his standing on his being a resident and taxpayer in Montgomery County “directly impacted by the cost of public education.” (Wilen’s Response at 3). He asserts that students who have to pay for the Outdoor Education Program are deprived of a free education and “are more likely to become public charges and thereby increase the burden on the rest of the residents of the State.” (Appeal at 1).

We agree with the local board that Mr. Wilen’s assertion of “harm” to “residents of the State” is generalized, “vague and unsupported.” It is based on speculation about what might happen to students in the future if they are not given free access to the 3-day Outdoor Education overnight program. (Response at 6). The harm, if there is any, is not specific to Mr. Wilen. As a result, Mr. Wilen lacks standing to pursue this action.

CONCLUSION

For all these reasons, this Petition for Declaratory Ruling is denied for lack of standing.

Signatures on File:

Warner I. Sumpter
President

Jean C. Halle
Vice-President

Gail H. Bates

Clarence C. Crawford

Charles R. Dashiell, Jr.

Vermelle D. Greene

Justin M. Hartings

Michael Phillips

David Steiner

Absent:
Rose Maria Li
Joan Mele-McCarthy

December 3, 2019