

S.R.

Appellant,

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-18

OPINION

INTRODUCTION

S.R. (“Appellant”) appeals the decision of the Montgomery County Board of Education (“local board”) finding that: 1. A local board employee did not exhibit racially discriminatory behavior against Appellant during Central Placement Unit (“CPU”) meeting; and 2. No further action was necessary regarding Appellant’s other complaints because they were previously addressed. The local board filed a Motion to Dismiss the appeal for lack of standing. Appellant filed an Opposition to the Motion to Dismiss, and the local board did not respond.

FACTUAL BACKGROUND

Appellant is the non-custodial father of J.R., a student in Montgomery County Public Schools (“MCPS”) who has autism. (Appeal at 1). His complaint originates with a November 30, 2018 CPU meeting regarding J.R. and other meetings that followed.¹

November 30, 2018 CPU meeting

Appellant gives the following description of the November 30, 2018 CPU meeting conducted by G.M., an employee of the local board:

Throughout the meeting [G.M.] exhibited unfavorable facial expressions toward M.R. and me. [G.M.] kept interrupting both of us when we tried to speak, meanwhile he clearly demonstrated favoritism towards other attendees giving them ample time considerations with a more favorable attitude. [G.M.] failed to act neutral and conduct himself in a manner that demonstrates mutual respect without regard to an individual’s actual or perceived personal characteristics.

¹ The CPU coordinates and monitors the placement of students with disabilities into and out of intensive special education programs. It provides case management for students in nonpublic programs and accountability for tuition funds for nonpublic placements and monitors the cost of those programs.
<https://www.montgomeryschoolsmd.org/departments/special-education/programs-services/placement-and-assessment.aspx>

At one point during the meeting my son [M.R.] began addressing concerns over the treatment his brother is receiving at home with his mother. While speaking [G.M.] exhibited threatening facial expressions toward [M.R.], and angrily interrupted him by aggressively screaming ‘*stop...stop...you are really irritating me...you are really irritating me...*’ [G.M.] angrily proceeded to tell [M.R.] and I that “... *his mom died when he was 15 and will do anything to spend 15 minutes with her*” After screaming [G.M.] angrily and abruptly stood up and aggressively kicked his chair and declared the meeting was over.”

(Appeal at 2; Appellant Ex. D).

Resolution and Compliance Unit Review

On January 9, 2019, MCPS’s Resolution and Compliance Unit (“RACU”) Supervisor, Tracee Hackett, sent Appellant a letter about special education dispute resolution processes and how to request an Administrative Review (“AR”).² (Appellant Additional Docs., Hackett Letter). Appellant met with MCPS personnel from the RACU office on January 31, 2019, to address his concerns about the limited progress J.R. was making in school towards his IEP goals, G.M.’s conduct during the November 30, 2018 CPU meeting, an educational consultant report (“Blattner report”) that was discussed at the May 6, 2019 IEP meeting, and J.R.’s home environment. (Appeal at 4 and Appellant Ex. F).

On February 4, 2019, Associate Superintendent Kevin Lowndes sent Appellant the AR report and proposed settlement recommendations. *Id.* The report summarized the following concerns:

- The team’s decision to retain J.R. at Ivymount school;
- Admitting the Blattner report into the record because Appellant did not have an expert review the report;
- G.M.’s disallowance of discussion about J.R.’s home environment and consideration of a residential placement, and G.M.’s abrupt termination of the meeting; and
- M.R.’s frustration that G.M. interrupted and insulted him.

(Appellant Ex. F).

On February 7, 2019, Appellant agreed to the following recommendations as result of the AR:

² The RACU monitors and supports the provision of procedural safeguards under the Individuals with Disabilities Education Act (“IDEA”). The RACU seeks to engage parties with cooperative problem solving special education disputes. <https://www.montgomeryschoolsmd.org/departments/special-education/compliance/>. The AR involves reviewing all available records on the student and obtaining information required for clarification so that a decision that attempts to resolve the dispute in a way that is satisfactory to both parties can be offered. Local Board Policy BLC.

- Appellant will schedule a time with MCPS staff to review J.R.'s confidential file documents to include communications related to J.R.;
- J.R.'s IEP team will reconvene within 30 days of MCPS's receipt of the AR letter signed by Appellant. The purpose of the IEP meeting is to allow Appellant to request that the IEP team consider residential placement, updated assessments, and J.R.'s communication needs;
- Appellant will receive a copy of the Blattner report 5 days before the scheduled IEP meeting and Appellant can provide questions to the IEP team regarding the Blattner report; and
- The IEP team will record Appellant's requests in the meeting minutes

(Appellant Ex. F).

May 6, 2019 IEP meeting

Appellant prepared an eight page review of J.R.'s background, J.R.'s current condition, 18 questions about the Blattner report, and five pages of detailed argument devoted to "Why a Residential Set Up is in the Best Interest of [J.R.]" for consideration at JR's May 6, 2019 IEP meeting. (Board Ex. 4). At the IEP meeting, he also raised concerns about J.R.'s home environment and G.M.'s conduct at the November 30, 2018 CPU meeting, and requested updated assessments. (Appeal at 4). The IEP team determined that formal assessments were not required until later transition planning. A July 2019 IEP meeting was scheduled during which the Appellant would be permitted to provide input and share educational information about J.R. (Appellant's Ex. G).

Appellant's Complaints to MCPS and MCPS Investigation

Thereafter, in June 2019, Appellant filed two "Complaints from the Public" with MCPS that led to this appeal. (Appeal at 4).³ In a June 6 Complaint, Appellant maintained that the Blattner report, discussed during the May 2019 IEP meeting, was "biased, inaccurate and misleading" and asked that MCPS review his document outlining issues and questions about the report. (Complaint from the Public, 6/6/19). In the June 10, 2019 Complaint Appellant repeated his claims about G.M.'s behavior during the November 30, 2018 CPU meeting. (Complaint from the Public, 6/10/19).

Andrew Zuckerman, MCPS Chief Operating Officer and superintendent's designee, assigned the matters to hearing officer Mary Dempsey to investigate action taken at the school level. (Board Ex. 6). Ms. Dempsey noted that Ms. Hoffman, CPU Supervisor, and the RACU unit investigated Appellant's complaints about G.M.'s conduct. Ms. Dempsey noted that any personnel action against G.M. was a confidential personnel matter and could not be shared with

³ Legal counsel to the State Board requested that the parties submit a copy of the June 6, 2019 Complaint because it was material to the issues in this case and was missing from the case record. In response to the request, Appellant sent a June 6, 2019 Complaint from the Public concerning the conduct of Joanne Hoffman at the May 6, 2019 IEP meeting and the inclusion of the Blattner report; a June 10, 2019 Complaint from the Public regarding GM's behavior at the November 30, 2018 CPU meeting; and an undated complaint that appears to be a request for clarification about the availability of mediation, and is not relevant to this appeal.

Appellant. She found that Appellant retained rights to participate in his child's education, but as the non-custodial parent, his rights to challenge decisions were limited by law. Ms. Dempsey recommended denying Appellant's complaints because his concerns had been addressed by MCPS personnel and no further actions were warranted. (Board Ex. 6). On June 25, 2019, Dr. Zuckerman advised Appellant that he accepted Ms. Dempsey's recommendation. *Id.*

On July 8, 2019, Appellant filed a "Complaint and Appeal to Montgomery County Board of Education." (Appellant Ex. D). Appellant reiterated his claims regarding G.M.'s conduct during the November 30, 2018, CPU meeting. (Appellant Ex. D).

On August 12, 2019, Appellant filed a memorandum to the local board entitled: "Discrimination Complaint: Disparate Treatment" in which he complained about Ms. Hoffman's behavior during the May 6, 2019 IEP meeting. (Board Ex. 7B). On August 13, 2019, Appellant filed another memorandum to the local board arguing that MCPS failed to inform him of its investigation, failed to develop and adopt a robust plan for frequent monitoring J.R.'s IEP progress, and failed to provide updated information about J.R.'s current progress. (Board Ex. 7c).

Local Superintendent Memoranda or Recommendation

In an August 15, 2019 memorandum to the local board, local superintendent Jack Smith addressed issues raised in Appellant's appeal. Dr. Smith explained: Ms. Hoffman addressed Appellant's concerns about G.M.'s behavior at the November 30, 2018 CPU meeting through the AR. MCPS interviewed participants in the November 30 meeting who reported that Appellant and M.R. were contentious and made deprecating remarks toward J.R.'s mother, and that G.M. became irritated and frustrated because Appellant continued to direct the meeting towards J.R.'s home environment and not his educational progress. G.M. commented about his own mother's early death in response to the Appellant and M.R.'s negative comments about J.R.'s mother. (Board Ex. 8a). None of the people MCPS interviewed observed G.M. make any discriminatory or racially biased comments or saw him kick a chair. *Id.* Dr. Smith stated that although Appellant and M.R. were offended by GM's actions, there was no evidence that G.M. exhibited racially discriminatory behavior. He further stated that Appellant's complaints were previously addressed by school system personnel and no further action was warranted. In addition, Dr. Smith noted that any conclusions about G.M.'s behavior are a confidential personnel matter. He recommended the local board deny the appeal. (Board Ex. 8a).

In a subsequent memorandum to the local board dated August 28, 2019, Dr. Smith addressed Appellant's August 13th and 20th complaints. Dr. Smith stated that the investigation was conducted consistent with MCPS procedures and practices, and that staff responded to Appellant's concerns verbally and in writing. He explained that Appellant did not receive a draft of the MCPS investigation because the investigation report contained confidential personnel information. He stated that Appellant's new allegations against Ms. Hoffman were unfounded. Dr. Smith recommended that the local board deny Appellant's complaint. (Appellant Ex. H).

Local Board Decision

On September 23, 2019, the local board issued a Decision and Order affirming Dr. Zuckerman's decision. The local board found that various school system personnel had investigated and addressed Appellant's allegations regarding G.M.'s behavior at the November

30, 2018 CPU meeting at multiple levels and that there was no violation of Appellant’s due process rights or evidence that he acted in a racially discriminatory manner. The board also found that Appellant had sufficiently participated in the May 6, 2019 IEP meeting where his “numerous concerns and opinions were duly represented in the formal record. . . .” (Appellant Ex. A).

This appeal followed.

STANDARD OF REVIEW

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.

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.

LEGAL ANALYSIS

Motion to Dismiss for Lack of Standing

Standing Related to Appellant’s Participation in J.R.’s Education

The local board has filed a Motion to Dismiss, maintaining that Appellant lacks the required standing to appeal its decision that there was no violation of Appellant’s rights. The local board argues that Appellant lacks standing because he is not J.R.’s custodial parent and lacks education decision-making authority. (Motion at 2). We disagree with the local board.

The general rule on standing is that “for an individual to have standing, even before an administrative agency, he must show some direct interest or ‘injury in fact, economic or otherwise.’” *Adams, et al. v. Montgomery County Bd. of Educ.*, 3 Op. MSBE 143, 149 (1983). See also *Schwalm v. Montgomery County Bd. of Educ.*, MSBE Opinion No. 00-10 (2000). This showing of a direct interest or injury in fact 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).

There is no dispute that Appellant is J.R.’s non-custodial parent and that J.R.’s mother has legal custody to make final education decisions. (Opposition at 2). Although he is not able to make final education decisions, as the local board stated, Appellant is J.R.’s parent and “retains certain rights to participate in his child’s education.” (Board Ex. 6). Consistent with that, the local board permitted Appellant to participate in various aspects of J.R.’s education. It follows that Appellant has a direct interest in those matters related to his participation in J.R.’s education process, an interest that is different from the public generally. We find, therefore, that

in this case, the Appellant has standing to appeal matters related to his participation that were addressed by the local board, except as specified below.

Lack of Standing to Demand Discipline of MCPS Personnel

Appellant raises issues concerning the behavior of G.M. during the November 30, 2018 CPU.⁴ This Board has consistently held that parents do not have standing to appeal personnel matters decided by a local school system. *See Kristina E. v. Charles County Bd. of Educ.*, MSBE Op. No. 15-27 (2015)(citing previous cases). Under the law of standing, and our decisions, only the school system personnel who is subject of a personnel decision has the “direct interest” or suffers the “injury in fact” has standing to challenge the local school system’s personnel decision. *Taylor v. Montgomery County Bd. of Ed.*, MSBE Op. No. 07-32 (2007) quoting *Adams, et al. v. Montgomery County Bd. of Ed.*, 3 Op. MSBE 142, 149 (1983).

Under Maryland law, public employee personnel decisions are confidential. Gen. Prov. Art. §4-311, Md. Code Ann. *See Montgomery County Maryland v. Shropshire*, 420 Md. 362 (2011)(Public employee discipline are personnel records exempt from disclosure because there is a significant public interest in maintaining confidentiality in personnel investigation both in fairness to the investigated person and cooperating witnesses). Any personnel action taken by MCPS or the local board against G.M. is confidential and the result of the investigation and any discipline cannot be disclosed to Appellant. Accordingly, Appellant lacks standing before this Board to seek discipline of G.M. or to challenge the investigation process regarding claims against him.

Merits of Case

Appellant’s Claims Regarding Lack of Participation

Despite Appellant’s claims to the contrary, the record demonstrates that he repeatedly exercised his parental rights to participate in J.R.’s education to the extent permissible without having final education decision making authority. He participated in the special education process through attending the CPU meeting, IEP team meetings, requesting an AR, and meeting with RACU personnel. Even the agreed upon AR resolution document set forth several participatory actions. In addition, Appellant submitted several complaints that proceeded through various levels of review up through the local board. Appellant did not achieve the results he wanted for J.R. by his involvement and advocacy, but this does not mean that MCPS excluded him from involvement in the educational process. We find that Appellant exercised his rights to participate in J.R.’s education and affirm the local board’s determination on this issue.

Review of the CPU and IEP Team Decisions

To the extent Appellant’s appeal concerns special education matters, such as those arising out of the special education proceedings of the November 2018 CPU and May 2019 IEP meeting, this Board is not the appropriate forum to resolve special education matters under the IDEA. *See, e.g. Philip and Deborah W v. Prince George's County Bd. of Educ.*, MSBE Op. No. 11-48 (2011). *See Matthew W. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-07

⁴ Because Appellant’s appeal does not raise issues regarding Ms. Hoffman’s conduct at the May 6, 2019 IEP meeting, the State Board will not address such issues herein.

(2008); *Brado v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-23 (2006); *Frye v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-30 (2001).

We have long declined to extend our jurisdiction to resolve special education disputes. See *Parents R. & Z. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-67 (2014). This is because specialized forums exist through IDEA to resolve these complex and fact-intensive matters in a timely fashion. In *Parents R. & Z.*, we explained the various options that parents have to challenge special education decisions:

The IDEA has created specialized forums for challenging school system decisions concerning a student's rights under IDEA. There are three specific processes in place for resolving special education disputes. There is a due process hearing conducted at the Office of Administrative Hearings, the results of which are appealable directly to court. 20 U.S.C. §1415(f); COMAR13A.05.01.15C. In connection with or in lieu of the due process hearing, there is a mediation process. 20 U.S.C. §1415(e); COMAR 13A.05.01.15(B). There is also a complaint investigation process in place at the Maryland State Department of Education (MSDE). COMAR 13A.05.01.15A.

Under the IDEA, Appellant's avenues for special education due process may be limited. *Fauconier v. Comm. on Special Educ., Dist. 3, New York City Bd. of Educ.*, 112 Fed. Appx. 85, 86 (2d Cir. 2004)(A noncustodial parent cannot litigate claims under IDEA on behalf of the child if the parent does not have rights under a court order). But, the extent of his rights to seek IDEA dispute resolution is precisely the type of question appropriately handled by those specialized forums. In declining to address the IDEA issues we render no opinion about whether Appellant has a meritorious IDEA claim. *Semere D. & Yehdego K., v. Montgomery County Bd. of Educ.*, MSBE Op. No. 17-09 (2017).

Racial and National Origin Discrimination

Appellant argues that G.M.'s behavior during the November 30, 2018 CPU meeting demonstrated anti-Arab animus and national origin discrimination. He refers here to his allegations that G.M. made negative facial expressions towards Appellant and his son, interrupted Appellant and his son when they spoke, showed favoritism towards other attendees, failed to act neutral or conduct himself in a manner demonstrating mutual respect, stated that Appellant was irritating, kicked a chair, and declared the meeting over. (Appellant Ex. D). G.M.'s behavior may have been rude and inconsiderate, but it does not give rise to an inference of unlawful discrimination.

CONCLUSION

For the forgoing reasons, the State Board affirms the decision of the local board because it is not arbitrary, unreasonable or illegal. The Board dismisses those claims for which the Appellant lacks standing and for which the Board lacks jurisdiction to review.

Signatures on File:

Warner I. Sumpter
President

Jean C. Halle
Vice-President

Gail H. Bates

Clarence C. Crawford

Charles R. Dashiell, Jr.

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Justin M. Hartings

Rose Maria Li

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Joan Mele-McCarthy

Lori Morrow

Michael Phillips

David Steiner

April 28, 2020