

KRISNA B.

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No.: OR24-01

ORDER

Appellant challenges the decision of the Montgomery County Board of Education (“local board”) issued on September 21, 2023, affirming the decision of the superintendent’s designee denying the Appellant’s appeal seeking to pause construction work on the tarring of the Poolesville High School (“PHS”) roof during times that the school is occupied.

The appeal stems from a May 19, 2023, *Complaint from the Public* (“Complaint”), filed by the Appellant alleging that her two children who attend PHS have had “severe acute symptoms and possible long term effects of being exposed to tar fumes and other hazardous chemicals” associated with the tarring of the school roof at PHS. Appellant sought to have the tarring process and use of the materials discontinued while the school was occupied. She also sought to have Montgomery County Public Schools (“MCPS”) follow the filtration procedures in its indoor air-quality management plan (“IAQ”) whenever hazardous chemicals are used on campus, and to turn off the school’s HVAC system to prevent air intakes from drawing in contamination.<sup>1</sup> (Local Bd. Reply, Ex. 2).

The Complaint was referred to Hearing Officer, Dr. Natasha White Jones, who investigated the matter and recommended denial of the Complaint. On August 4, 2023, Dana E. Edwards, Chief of District Operations, acting as the superintendent’s designee, adopted Dr. Jones’ recommendation. The local board thereafter denied the Appellant’s Complaint, incorporating Dr. Jones report and the superintendent’s memorandum in response to the appeal into its decision.

The salient facts are as follows:

On February 14, 2023, the PHS roof was being tarred in two areas resulting in a strong odor that caused some individuals in the school to feel nauseas and/or experience headaches. Once school officials identified the source of the odor, the construction team ceased work and MCPS closed the school early. MCPS thereafter paused tarring of the roof from March through mid-April 2023. When tarring resumed, MCPS took measures to address the issue including: relocation of the tar truck; additional filtration on the mechanical equipment responsible for heating and cooling the school; evaluation of weather conditions, including wind direction; the use of odor neutralizing materials; redirection of ingress and egress to the school; temporary seals around doors and windows facing the construction zone; creation of a negative air zone;

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<sup>1</sup> Prior to filing the formal Complaint, Appellant and others wrote to the school principal and other MCPS officials raising concerns about the adverse effects of the tarring on students and staff.

and delay of tarring until after student dismissal. (Local Bd. Reply, Ex. 3 and PHS Letter, 4/14/23).

In addition, MCPS hired a third-party vendor to monitor air quality on the potential exposure to fumes related to the roofing work. Air quality sampling reports were generated and posted each week between April 13, 2023, and June 9, 2023. The reports indicated that even though the smell of tar was present, asphalt fumes and hydrogen sulfide gas levels were either not present, or they were at concentrations below the detectable range on the gas meter, and that oxygen levels were as expected. (Local Bd. Reply, Ex. 3). The vendor also monitored the Total Volatile Organic Compounds (“TVOC”) and posted those reports weekly from April 26, 2023, through June 5, 2023. The reports indicated that during roofing activities there were nondetectable to low TVOC concentrations throughout the exterior of the school and nondetectable to considerably low TVOC concentrations inside the school. *Id.*

During this time, PHS sent letters to the community to keep them apprised of the construction project, responded to numerous communications from parents, convened two parent meetings to answer questions and communicate steps taken to address concerns about the project, and provided written answers to questions arising from the meetings. *Id.* MCPS explained that the school system and its contractors strictly follow guidelines and procedures established by the National Institute for Occupational Safety and Health and the Federal and Maryland State Occupational Safety and Health Administrations. (PHS letter, 3/10/23). In addition, MCPS reported that it could not turn off the HVAC system while the school was occupied without violating legal requirements. (Superintendent’s Memorandum).

Dr. Jones’ report noted that this major capital improvement project at PHS aligned with the requirements of local board Policy FAA and MCPS Regulation FAA-RA - *Educational Facilities Planning*, for capital projects. The report also explained that the roofing work fell outside of the governing principles of the IAQ plan, but that the construction work followed the industry’s best practices to prevent infiltration into the school, which included the protection and filtration principles detailed in the IAQ plan. The HVAC equipment used, however, prevented application of the flushing principles in the IAQ plan. (Local Bd. Reply, Ex. 3).

MCPS completed the roof tarring at PHS before the start of the 2023-2024 school year.<sup>2</sup>

The local board has filed a Motion to Dismiss the appeal for failure to comply with the State Board appeal procedures and for lack of jurisdiction. In response to the local board’s Motion alleging failure to comply with the appeal procedures, the Appellant provided a more definite statement. Therefore, we will not dismiss on that basis, and we accept the appeal filings.

With regard to the issue of jurisdiction, in her appeal, Appellant alleges a myriad of violations of federal laws, including federal toxic substance and air quality laws; federal age and disability discrimination laws; federal laws pertaining to research on human subjects; and violations of federal criminal laws for false and fraudulent statements. As to the federal claims, the State Board declines to exercise jurisdiction where separate administrative and other forums exist to address grievances under federal law. *See Ashley J. v. Montgomery County Bd. of Educ.*,

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<sup>2</sup> We decline to dismiss the appeal as moot because it is capable of repetition yet evading review.

MSBE Order No. OR21-07; *Phil N. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 18-42 (2018).

Appellant also alleges violations of Maryland laws prohibiting the unlawful practice of medicine; violations of Montgomery County air quality laws; and claims of fraud and misrepresentation by MCPS and other governments officials. These 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.

As to Appellant’s allegations of violations of local board Policy *ACA-Nondiscrimination, Equity, and Cultural Proficiency* and MCPS Regulation *AFA-RA-Research and Other Data Collection Activities*, neither of these claims were raised before the local board or addressed in the local board’s decision. The State Board has consistently declined to address issues that have not been initially reviewed by the local board and we decline to do so here. *See Rosalia Huggins v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 19-13 (2019).

Finally, Appellant claims that MCPS failed to follow Policy FAA and its IAQ plan. These arguments were raised before the local board, and they were mentioned in Dr. Jones’ report and the superintendent’s memorandum, both of which the local board incorporated into its decision. However, the local board’s Motion fails to detail why we should dismiss these claims. Therefore, we direct the local board to provide a substantive response.

Accordingly, it is this 23rd day of January 2024, by the Maryland State Board of Education, ORDERED, that all claims except those alleging violations of local board Policy FAA and failure to follow the IAQ plan are hereby dismissed for lack of jurisdiction. *See* COMAR 13A.01.05.03B. We direct the local board to provide a response to the remaining claims to the State Board by February 12, 2024.

MARYLAND STATE BOARD OF EDUCATION

Signature on File:

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Clarence C. Crawford  
President