S.K.	BEFORE THE
Appellant,	MARYLAND
v.	STATE BOARD
MONTGOMERY COUNTY BOARD OF EDUCATION	OF EDUCATION
Appellee.	Opinion No. 20-13

OPINION

INTRODUCTION

S.K. ("Appellant") filed two appeals of decisions made by the Montgomery County Board of Education ("local board"). We consolidated those appeals for review. Appellant filed a motion for the State Board to review her appeals separately, and a motion to change her name on the appeals to Jane Doe. The local board filed a response to the consolidated appeals. Appellant filed a reply, and the local board responded.

FACTUAL BACKGROUND

During the 2017-2018 school year, Appellant had two children enrolled in high school in Montgomery County Public Schools ("MCPS"). A situation arose wherein Appellant felt that one of her children was being verbally and emotionally abused and sexually harassed by his coach. Appellant's allegations were investigated and found unsubstantiated by multiple agencies. Appellant subsequently filed an MCPS *Complaint from the Public* alleging abuse, as well as retaliation by the school. The *Complaint from the Public* was denied by the local board. Appellant further appealed to the State Board and the State Board upheld the local board's decision. (*See S.K. v. Montgomery County Board of Ed*, MSBE Op. No. 19-14).

During the 2018-2019 school year, Appellant's two eldest children ("Child A" and "Child B") were no longer enrolled at the MCPS high school. Appellant had transferred Child A to a private school, and Child B had graduated from MCPS. However, Appellant had a third child ("Child C") who was enrolled in the ninth grade at the high school at this time.

Dr. Peter Moran, Director of Learning, Achievement, and Administration, reviewed *Complaint 1*. By email dated March 27, 2019, Dr. Moran advised Appellant that the defamation lawsuit was not an act of retaliation but was filed by the coach in response to statements made by the family on a public website. Dr. Moran did not find evidence that the lawsuit created a hostile educational environment for Child C. (Answer, Ex. 3).

On April 3, 2019, the Principal of Child C's high school emailed Appellant in response to *Complaint 2*. In the email, the Principal focused her investigation upon Child C.[1] The Principal

[1] Although Appellant's complaint referenced all three of her children, Children A and B were no longer MCPS students as discussed above.

found no evidence that MCPS staff had bullied or harassed Child C. Child C refused to provide names of students or specifics about situations in which he felt bullied; therefore, the Principal also found that there was no evidence of bullying by students. (Answer, Ex. 3).

On April 25, 2019, Appellant appealed Dr. Moran's decision on *Complaint 1* to Dr. Andrew Zuckerman, Chief Operating Officer of MCPS. Dr. Zuckerman assigned the appeal to Hearing Officer Mary Dempsey. Ms. Dempsey's June 3, 2020 report reviewed Appellant's objections to Dr. Moran's decision, found them to be without merit, and recommended that the appeal be denied. By letter dated June 7, 2020, Dr. Zuckerman informed Appellant that he was adopting Ms. Dempsey's recommendation and enclosed a copy of her report.

On April 30, 2019, Appellant filed an appeal of the Principal's decision on *Complaint 2* to Dr. Moran. At some point after filing the appeal, Appellant requested that Dr. Moran recuse himself and Dr. Moran forwarded the appeal to Ms. Dempsey. (Answer, Ex. 3). Ms. Dempsey reviewed the appeal of *Complaint 2* and, on June 12, 2019, issued a report recommending denial of the appeal. By letter dated June 14, 2019, Dr. Zuckerman advised Appellant that he was adopting Ms. Dempsey's report and recommendation to uphold the Principal's decision on *Complaint 2*. (Answer, Ex. 3).

On July 5, 2019, Appellant appealed Dr. Zuckerman's decision on the *Complaint 1* appeal to the local board. (Answer, Ex. 4). On July 15, 2019, Appellant appealed Dr. Zuckerman's decision on the *Complaint 2* appeal to the local board. (Answer, Ex. 5).

On July 31, 2019, MCPS Superintendent Jack Smith issued a memorandum to the local board regarding both the *Complaint 1* (Appeal No. 2019-36) and *Complaint 2* (Appeal No. 2019-39) appeals. In his memorandum, the Superintendent recommended the board uphold the findings of Dr. Zuckerman for both complaints, which found no evidence of bullying or retaliation. (Answer, Ex. 3).

On October 8, 2019, the local board voted to affirm the decision of the Chief Operating Officer in Appeal No. 2019-36 (*Complaint 1*), finding that the private lawsuit did not constitute an act of retaliation. The local board also voted to uphold the decision in Appeal No. 2019-39 (*Complaint 2*). The local board believed Child C may have overheard some comments from students discussing the events of the prior school year, but nothing that rose to the level of bullying. (Answer, Ex. 1).

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.01.05.06(A).

ANALYSIS

Motion to Change Name

Appellant requests that her name be changed to Jane Doe for publication of this opinion. Appellant argues that the Board's practice of referring to parent appellants by their first name and the first initial of their last name, or even the use of initials, would not protect the identity of her family and would disclose confidential information. The local board did not file a formal objection to Appellant's request.

We note that much of the sensitive information, such as past allegations of abuse and sexual harassment by MCPS coaches against one of Appellant's children, was the subject of a prior decision by this Board. *See S.K. v. Montgomery County Board of Ed*, MSBE Op. No. 19-14 (2019). In that opinion, we decided to use the initials of the Appellant, and to forego inclusion of identifying details, such as the names of the high school and staff, to protect the privacy of all individuals. Appellant at that time did not object to the use of her initials to conceal her and her family's identity. Given these current appeals share a factual background that is already a part of the public record, we decline to change Appellant's name to Jane Doe, and instead adopt the naming convention and privacy protections used in our prior opinion.

Motion to Consider Appeals Separately

Appellant also requests that the Board consider her two appeals separately and objects to consolidation of the appeals. Appellant maintains that the fact that the local board decided to rule on "these issues separately requires these appeals to be kept fully separate for the State Board of Education appeal process." (Motion to Oppose Appeal Consolidation, p. 1). This Board has previously consolidated cases involving similar facts and issues. *See Jared H. and Matthew Murguia v. Montgomery County Bd. of Educ.*, MSBE Op. No. 16-37, p. 1 (2016). In the matters at hand, we note significant overlap in the facts and issues. Appellant even filed her original *Complaint from the Public* and *Bullying, Harassment, or Intimidation Form* with the same accompanying memo of facts. As such, we deny Appellant's motion and consolidate these appeals, while addressing both claims of retaliation and bullying.

Claims on Behalf of Unenrolled Students

Appellant filed her two appeals on behalf of her three children; however, given that Child A and Child B were no longer enrolled in MCPS during the 2018-2019 school year, MCPS declined to investigate and address claims related to those children. Appellant contends that MCPS' obligation to protect her children from retaliation and bullying does not end with their graduation or withdrawal from MCPS. We disagree.

In our view, local school systems are responsible for addressing behavior that creates a hostile educational environment for students. However, once a student is no longer enrolled in a local school system, either because of graduation or being transferred to another school system, the original local school system has no control over the student's educational environment, rendering the issue moot.

A legal question is moot when "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide." *In Re Michael B.*, 345 Md. 232, 234 (1997); see also *Arnold v. Carroll County Bd. of Educ.*, MSBE Op. No. 99-41 (1999); *Farver v. Carroll County Bd. of Educ.*, MSBE Op. No. 99-

42; *Chappas v. Montgomery County Bd. of Educ*., 7 Op. MSBE 1068 (1998). In cases where there is "no longer an existing controversy between the parties and no effective remedy that the State Board can provide[,]" this Board has dismissed the claim. *See D.G. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Order No. OR16-16 (2016).

Given MCPS no longer had control over the educational environments of Child A and B during the 2018-2019 school year, we find MCPS appropriately limited the appeals to Child C.

Retaliation

Appellant argues that the lawsuit filed by the MCPS coach is an act of retaliation by an MCPS employee against her family for reporting the alleged abuse and bullying during the 2017-2018 school year. We have held that in order to establish a *prima facie* case of retaliation, the Appellant must show that (1) they engaged in a protected activity; (2) that the school system took a materially adverse action against them; and (3) that a causal connection existed between the protected activity and the materially adverse action. See *Jones v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15-33 (2015) (citing *Burling N. & Santa Fe. Ry. Co. v. White*, 584 U.S. 53, 68 (2006)). Appellant fails to meet this burden.

Appellant argues that her family engaged in a protected activity by reporting allegations of abuse and neglect against MCPS staff. In response, an MCPS coach filed a defamation lawsuit against Appellant's family. Dr. Moran investigated this allegation and found that the basis of the lawsuit was not Appellant's reporting of alleged abuse, but instead the coach filed his lawsuit in response to Appellant's on-line social media postings made on a public website against him. The local board affirmed that no retaliation had occurred.

We agree with the local board that there is no evidence that MCPS personnel took materially adverse actions against Appellant's child because she engaged in protected activity. The evidence in the record supports the conclusion that the coach's defamation lawsuit against the Appellant's family was the result of Appellant posting comments on a public website about the coach that he found defamatory. The coach filed his lawsuit in his private capacity and not on behalf of MCPS. There is no evidence in the record to support a *prima facie* case of retaliation by the school system or its employees against Appellant. Therefore, we find that local board did not act arbitrarily, unreasonably, or illegally in upholding the dismissal of Appellant's retaliation complaint.

Bullying

Appellant also argues that the local board inappropriately upheld the decision of MCPS to dismiss her claim for bullying against her children. In her complaint, Appellant listed a number of incidents that spanned the 2017-2018 and 2018-2019 school years. We have already explained why it was appropriate for MCPS to limit the bullying complaint to Child C, who was enrolled in the high school during the 2018-2019 school year. Appellant's initial complaint alleged certain MCPS coaching staff engaged in bullying. There is no evidence in the record that these MCPS coaches had any direct or individual communication with Child C, or that there was bullying.

Appellant also claimed that students made comments to Child C that created a hostile educational environment. These allegations were primarily related to incidents that happened prior to Child C's attendance at the school or out of the presence of Child C. Despite a lack of specificity, and Child C's unwillingness to share names of students or particular incidents where

he felt bullied, the Principal conducted a brief investigation which did not uncover any incidents of bullying. In reviewing the record before us, we do not find any evidence of bullying of Child C; therefore, we find that the local board did not act arbitrarily, unreasonably, or illegally in upholding the determination that there was no evidence of bullying.

Educational Records

Appellant requests as a part of the relief sought "an opportunity to examine all evidence found by MCPS that pertain to [her] children[.]" (Appeal #1 and 2, p. 15). We ruled on issues related to educational records and investigative materials in our prior opinion. See *S.K. v. Montgomery County Board of Ed*, MSBE Op. No. 19-14 (2019). As we stated in that opinion, access to student records is governed by the Family Educational Rights and Privacy Act (FERPA). Violations of FERPA should be addressed through the Family Policy Compliance Office of the United States Department of Education.

CONCLUSION

For the forgoing reasons, we affirm the decisions of the local board.

Signatures on File:

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Warner I. Sumpter
President

_____
Jean C. Halle
Vice-President

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Gail H. Bates

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Clarence C. Crawford

_____
Charles R. Dashiell, Jr.

_____
Vermelle D. Greene

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Justin M. Hartings

_____
Rose Maria Li

_____
Joan Mele-McCarthy

_____
Lori Morrow

_____
Michael Phillips

_____
David Steiner

March 24, 2020