

JARED H. AND MATTHEW MURGUIA,

Appellant

v.

MONTGOMERY COUNTY BOARD  
OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-37

## OPINION

### INTRODUCTION

The Appellant Jared H. filed an appeal of the Montgomery County Board of Education's (local board) decision denying his request to ban clothing and imagery of the Washington Redskins,<sup>1</sup> the National Football League team, from Montgomery County Public Schools (MCPS). In addition, Mr. H. sought a declaratory ruling that Maryland law prohibits wearing the Washington team's apparel in schools. The local board filed a Motion for Summary Affirmance arguing that its decision was not arbitrary, unreasonable, or illegal, and seeking dismissal of the petition for declaratory ruling. Mr. H. responded and the local board replied.<sup>2</sup>

Separately, Appellant Matthew Murguia filed a petition seeking a declaratory ruling interpreting COMAR 13A.01.04.03 as prohibiting all Maryland school systems from using the name of the Washington professional football team in their curriculum and prohibiting staff from displaying or wearing the team name. The local board filed a motion to dismiss, arguing that Mr. Murguia did not have standing to pursue the petition. Because the two cases raise similar issues, we have consolidated them for the purposes of this opinion.

### FACTUAL BACKGROUND

Mr. H. is a Native American who belongs to the Sault Ste. Marie Tribe of Chippewa Indians. At the start of the 2015-16 school year, Mr. H.'s son entered kindergarten at Highland Elementary School ("Highland"). On September 11, 2015, Mr. H. walked his son to school. Mr. H. and his son were greeted at the front door by the school's principal, who wore a polo shirt with the Washington team's name on the shirt sleeve. Other staff members, teachers, and students also wore team merchandise, including Mr. H.'s son's teacher. In addition, a school bulletin board was decorated with the team logo and team flags were hanging by several classrooms. (Appeal, at 1).

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<sup>1</sup> Much of the Appellants' arguments concern the offensiveness of the team name. Accordingly, we shall refer generally to the "Washington team" throughout the remainder of this opinion.

<sup>2</sup> Unprompted by the State Board, Mr. H. filed two additional responses to the local board's reply, the most recent of which was an emergency supplemental filing drawing the State Board's attention to a September 2016 incident involving racial slurs against African Americans in Montgomery County. In our view, these additional filings do not alter the conclusions reached in this opinion. Mr. H. may, however, wish to raise these points with the local board if it considers this issue at future board meetings through its quasi-legislative process.

In response, Mr. H. sent emails to school staff at Highland and to the local board complaining that the use of the team's name and logo violated school policies against the use of racial slurs and stereotypes in classrooms. After receiving no response, Mr. H. testified at the local board's October 13, 2015 meeting, during which he requested that MCPS's dress code be enforced so that students and staff would be prohibited from wearing the Washington team's apparel or using it to decorate the school or classrooms. (Appeal, at 3).

In response to his testimony and emails, Interim Superintendent of Schools Larry Bowers wrote to Mr. H. on October 21, 2015. Although Interim Superintendent Bowers did not explicitly address Mr. H.'s request for a change in policy, his letter stated the following:

When other parents have raised concerns about the use of the Washington football team's name and logo, our staff has worked to respond in a manner that is consistent with our core values of equity and respect, while also adhering to our obligation as a public school district to safeguard the right to free expression enjoyed by our students and staff.

As a large, diverse school district, we recognize that everyone may not like what they hear or see in a school environment. However, it is important that our students and their families feel comfortable raising concerns and that we understand and respond to those concerns appropriately. With regard to this particular issue, we will continue to monitor its impact, work with our schools, and benchmark against what is being done in other Washington-area school districts.

On October 30, 2015, Mr. H. met with the Highland principal to discuss the issue. The principal explained that the school had removed the bulletin board and flags and that school staff had voluntarily agreed not to wear team merchandise at school. (Appeal, at 3).

That same day, Mr. H. filed a formal complaint in which he requested that MCPS enforce its dress code districtwide to prohibit students and staff from wearing Washington team apparel and he requested that all MCPS staff undergo sensitivity training. The principal denied the complaint, referring Mr. H. to Interim Superintendent Bowers's October 21 letter. (Appeal, at 3).

On November 11, 2015, Mr. H. filed an appeal of the principal's decision. On December 3, 2015, the superintendent's designee denied the appeal. The designee concluded that current circumstances did not warrant a prohibition against students and staff wearing Washington team apparel. The designee explained that the Highland principal had taken steps to address Mr. H's concerns. The designee pointed out that other parents at Highland had written to the local board requesting that they not adopt the type of ban proposed by Mr. H. The designee determined that Mr. H.'s request to ban Washington team apparel was not required under the MCPS dress code. The designee explained that MCPS could only ban specific types of clothing if it could show that the clothing would "materially and substantially disrupt the work and discipline of the school." Rather than enact a blanket ban, the designee stated that MCPS would continue to consider these types of issues on a case-by-case basis. As for the request to provide sensitivity training, the designee stated that the suggestion had been sent to the MCPS chief academic officer for consideration. (Appeal).

On December 21, 2015, Mr. H. appealed the decision of the superintendent's designee. On February 22, 2016, the local board affirmed the dismissal of Mr. H.'s request. The local board recognized "the strong feelings on issues surrounding the use of the name of the Washington NFL team," but concluded that "this appeal is not the proper forum in which those issues should be considered." The local board explained that its appeal procedures were meant to address "discrete disputes and particular applications of policy to discrete disputes" and that the board's authority "does not extend to the making or expanding of policy, rules, and regulations in the context of the appeal process." The board concluded that adopting a system-wide policy was a quasi-legislative activity that should be handled in a regular board meeting. The board declined to address the merits of Mr. H.'s proposal.

This appeal followed.

On February 16, 2016, Mr. Murguia, a Montgomery County resident, filed a petition for declaratory ruling. He supplemented this with an additional filing on March 10, 2016. Mr. Murguia requests that the State Board declare that the use of the Washington team name in a school curriculum, or if worn by school staff on their clothing, violates COMAR 13A.01.04.03. The local board opposes such a request, arguing that there is no ongoing case or controversy that would afford Mr. Murguia standing to pursue his petition.

#### STANDARD OF REVIEW

The State Board shall exercise its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.05E. In cases involving a decision of a local board concerning a local policy, the local board's decision is 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.01.05.05A.

#### LEGAL ANALYSIS

Mr. H. pursues this appeal through both §2-205 and §4-205 of the Education Article. These are two separate avenues for review by the State Board and we shall address each in turn. Because Mr. Murguia's request for a declaratory ruling overlaps with Mr. H.'s request, we shall decline the local board's request to dismiss his petition on the basis of standing and instead address the two requests for declaratory rulings together.

#### Section 4-205 appeal of local board's decision

Section 4-205 of the Education Article permits a local superintendent to "decide all controversies and disputes that involve the rules and regulations of the county board and the proper administration of the county public school system." Educ. §4-205(c)(2). A superintendent's decision may be appealed to a local board of education, and, in turn, to the State Board. Mr. H. challenges the local board's decision to dismiss his appeal.

## *Local board policies*

Mr. H. argues that several local board policies require it to prohibit all students and staff from wearing or displaying the name and logo of the Washington football team. In short, Mr. H.'s argument is that the Washington team name and logo convey a stereotyped and discriminatory image of Native Americans that is harmful and psychologically damaging to Native and non-Native children alike, in violation of multiple local board policies.

First, Mr. H. references the MCPS Human Relations Policy (MCPS Policy ACA). The policy states that its purpose is "to affirm that MCPS will not condone acts of insensitivity, disrespect, bias, verbal abuse, harassment, bullying, physical violence, or illegal discrimination toward any person, and to promote exemplary human relations for all without regard to race, color, gender, religion, ancestry, national origin, marital status, age, disability, or sexual orientation." MCPS Policy ACA. The policy's desired outcomes are that "(1) Every school and unit will demonstrate an atmosphere that promotes understanding, respect, and positive interaction among all individuals and groups; and (2) MCPS will be free of illegal discriminatory barriers to educational and employment opportunities based on race, color, national origin, religion, gender, age, marital status, sexual orientation, or disability." *Id.*

The Human Relations Regulation (MCPS Regulation ACA-RA) contains the procedures for implementing these policies.<sup>3</sup> Mr. H. also cites the MCPS Nondiscrimination Policy (MCPS Policy ACB).<sup>4</sup> Additionally, Mr. H. cites various provisions of the MCPS Student Rights and

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<sup>3</sup> The passages cited by Mr. H. are:

*Discrimination* is either treating one person unfairly over another, or disparate treatment, based on legally identified factors unrelated to their ability or potential, such as race, color, gender, religion, ancestry, national origin, marital status, age, disability, or sexual orientation.

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### D. PROCEDURES

#### 1. Create an environment of respect

##### a) Increased awareness

(1) The Offices of the Deputy Superintendent of Schools, Deputy Superintendent for Strategic Technologies and Accountability, and the Chief Operating Officer will create a climate which is free of bias and discrimination and ensure that all schools, offices, and work locations under their auspices are provided with the staff development programs and services that foster cultural competence throughout the school system.

(2) The Office of School Performance will assist school based staff in creating a climate which is free of bias and discrimination and fosters positive human relations, cultural competence, skill in assessing human relations needs at the school level, and supporting programs and services which advance the goals of Policy ACA, *Human Relations*.

(3) The Office of School Performance will assist local schools in identifying and eliminating barriers that limit any student from participating in the full scope of the educational experience.

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Professional Development programs and services will prepare personnel to do the following:

- (1) Understand self as a cultural being by recognizing attitudes and patterns of thinking and behaving in one's own culture
- (2) Understand and respect the beliefs, values, and patterns of thinking and behaving in cultures other than one's own
- (3) Recognize and correct stereotyping, discrimination, bias, and prejudice as it impacts teaching and learning
- (4) Foster greater intergroup understanding.

<sup>4</sup> The pertinent provisions of that policy state:

The Board of Education is committed to ensuring that:

Responsibilities (MCPS Policy JFA-RA).<sup>5</sup> MCPS Policy JFA-RA contains a section on student “dress and grooming.”<sup>6</sup> It states:

1. Students have a responsibility to be dressed and groomed for school in a manner that contributes to a school environment conducive to learning and in accordance with the local school discipline policy.
2. Students may wear clothing associated with their religion or containing a religious message as long as the clothing is consistent with the requirements outlined in section 3 below.
3. Students may not be disciplined for their style of dress or grooming unless it—
  - a) is likely to cause a disruption to the educational environment;
  - b) causes a disruption to the educational environment;
  - c) endangers health or safety;
  - d) fails to meet a reasonable requirement of a course or activity;
  - e) is associated with gangs;
  - f) is lewd, vulgar, obscene, revealing, or of a sexual nature; or

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1. Public education is provided in an atmosphere where differences are understood and appreciated, and where all persons are treated fairly and with respect in an environment free of discrimination and threats of violence or abuse
  2. Acts of hate/violence, including but not limited to verbal abuse, slurs, threats, physical violence or conduct, vandalism or destruction of property, directed against persons because of their race, religion, national origin, ethnic background, sexual orientation, or disability will not be tolerated
  3. All staff members are aware of this policy and are accountable for its implementation
  4. School system staff work together and with students, parents, and community members to ensure that each school and unit is free of illegal discrimination and acts of hate/violence
  5. Parents are encouraged to ensure that their children behave in school in a way that is consistent with the intentions expressed in this policy

<sup>5</sup> The chief provisions cited by Mr. H are:

Students have a right to an environment that is free of bullying, harassment, or intimidation so that schools are safe places in which to learn. Bullying, harassment, or intimidation is disruptive to learning and can adversely affect academic achievement, emotional well-being, and school climate.

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F. Freedom of Inquiry and—

1. Speech

a) Students have a right to—

- (1) be presented with a variety of viewpoints on controversial topics within the limitations imposed by state or county curriculum documents;
- (2) express individual views so that they may weigh alternate ideas and form their own opinions; and
- (3) analyze and evaluate information before forming conclusions.

b) Students have a responsibility to—

- (1) consider seriously the topics presented in their courses and participate in class discussions to add their views to enhance the variety of viewpoints expressed on the topics under discussion;
- (2) respect different opinions and the right of each person to hold and express an individual viewpoint; and
- (3) refrain from the use of vulgar and abusive language which detracts from a positive learning and working environment, and which is inconsistent with the goal of maintaining an atmosphere of mutual respect.

<sup>6</sup> The MCPS website contains an explanation of the dress code as follows: “Students are expected to wear appropriate clothing to school. Clothing that offends others or disrupts learning is inappropriate. Clothing that includes references to gangs, drugs, alcohol, and sex is not acceptable.” We agree with the local board that the official policy and regulations supersede any summaries of those policies on the school system website.

g) promotes tobacco, smoking, alcohol, drugs, or sexual activity.

Finally, Mr. H. cites to one passage of the MCPS Employee Code of Conduct. That provision states that “selected examples of expected conduct” include the expectation that an employee will “dress for work in a professionally appropriate manner.”

Mr. H. argues that “taken together, these policies establish a commitment to creating a positive learning environment for all students, an environment that is sensitive to cultural differences and is nondiscriminatory, and an environment that challenges students and school personnel to identify and eliminate racial stereotypes.” The local board explains that Mr. H.’s proposed ban on Washington team apparel would be an expansion of its existing policies. The board argues that its appeals process is meant to address discrete issues and particular applications of policy to specific disputes, not broad, system-wide policy changes. The local board contends that expanding its policy would be a quasi-legislative decision that should be handled through a regular board meeting rather than through the quasi-judicial review process.

### *Quasi-legislative versus quasi-judicial*

Local boards “perform some activities which are legislative in nature and thus have been dubbed as quasi-legislative duties” and boards also “make factual determinations and thus adjudicate . . . in a quasi-judicial capacity.” See *Citizens for a Responsible Curriculum v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-30 (2007). To determine whether an action is quasi-judicial or quasi-legislative, Maryland courts have considered “the nature of the particular act in which [the public body] is engaged” and “whether the decision itself is made on individual or general grounds.” *Dugan v. Prince George’s County*, 216 Md. App. 650, 660 (2014 (citing *Bucktail, LLC v. Cnty. Council of Talbot Cnty.*, 352 Md. 530, 545 (1999))). The more that a public body relies on “general” or “legislative facts,” the more likely it is that an act is legislative, as opposed to quasi-judicial actions, which focus on specific “adjudicative facts.” *Id.* (citing *Talbot Cnty. v. Miles Point Prop., LLC*, 415 Md. 372, 387 (2010)).

The State Board has long dismissed attempts to use a quasi-judicial process to force a change in a local board policy. Creating or amending local board policies is a legislative-type task that affects all students, whereas the quasi-judicial process involves considering the facts of individual cases and applying those facts to existing laws, regulations, and policies. See *Citizens*, MSBE Op. No. 07-30. This distinction matters because our review of quasi-legislative decisions is far narrower than our review of quasi-judicial ones. *Id.* In a quasi-judicial case, we consider whether a local board acted in an arbitrary, unreasonable, or illegal manner. *Id.* By contrast, in a quasi-legislative matter, we consider only whether a local board has acted within the legal boundaries of state or federal law. *Id.*

This case had its genesis in a specific incident, namely Mr. H.’s complaint that his son was exposed to school decorations using the Washington team name and logo and school staff wearing team apparel. The record shows that the school system provided Mr. H. with the relief he initially sought: the school principal agreed to remove Washington team decorations and school staff agreed to voluntarily stop wearing team apparel. This current appeal is not based on a specific incident and instead seeks a general, system-wide change in policy. We have previously determined that “a generalized grievance or complaint which calls into question, or seeks to modify curriculum, policies or procedures” should not be pursued through the appeals

process. *Regan v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-05 (2003); *see also Lindsay and Edward F. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-55 (2014). In our view, the relief Mr. H seeks must be obtained through quasi-legislative action of the local board, not through the §4-205 appeals process.

Given that this is a controversial issue with strong feelings on both sides, and that the merits of Mr. H's proposal were not addressed through this appeal, the local board may wish to consider whether Mr. H.'s policy proposal should be discussed at a future board meeting.

#### Section 2-205 request for a declaratory ruling

As an alternative argument, Mr. H argues that several provisions of state law should be interpreted as requiring the local board to prohibit students and staff from displaying the Washington team's name and logo. These provisions include Educ. §7-424 (defining bullying); COMAR 13A.01.04.03 (school safety); COMAR 13A.04.05.01 (multicultural education); COMAR 13A.04.05.04 (curriculum, instruction and staff development for multicultural education); and COMAR 13A.04.05.05 (Criteria for Instructional Resources). Mr. Murguia also argues that COMAR 13A.01.04.03 (school safety) should be interpreted in a similar fashion.

In contrast to the more narrow jurisdiction afforded under §4-205(c), the State Board has broad jurisdiction and authority under §2-205 of the Education Article. Section 2-205(e) establishes the authority of the State Board to explain the true intent and meaning of the provisions of the Education Article that are under its jurisdiction and the bylaws, rules and regulations adopted by the Board. *See In the Matter of Specialized Education Services, Inc.*, MSBE Op. No. 16-22 (2016). The State Board has the authority to decide all controversies and disputes that arise under these provisions.

#### *Md. Code, Educ. §7-424*

Educ. §7-424(a)(2) contains the following description of bullying:

“Bullying, harassment, or intimidation” means intentional conduct, including verbal, physical, or written conduct, or an intentional electronic communication, that:

(i) Creates a hostile educational environment by substantially interfering with a student's educational benefits, opportunities, or performance, or with a student's physical or psychological well-being and is:

1. Motivated by an actual or a perceived personal characteristic including race, national origin, marital status, sex, sexual orientation, gender identity, religion, ancestry, physical attributes, socioeconomic status, familial status, or physical or mental ability or disability; or
2. Threatening or seriously intimidating; and

(ii) 1. Occurs on school property, at a school activity or event, or on a school bus; or

2. Substantially disrupts the orderly operation of a school.

Mr. H. has not presented us with a specific instance of bullying behavior. Instead, he argues that the general act of wearing Washington team apparel, which we agree may happen throughout the year, constitutes bullying under Maryland law.

In order for conduct to be “bullying,” it must meet the definition in Educ. §7-424(a)(2). First, bullying is “intentional conduct.” “Intentional” means “[d]one with the aim of carrying out the act.” Black’s Law Dictionary (8th ed. 2004). In this case, the “act” is bullying, harassment or intimidation, which must be “motivated by an actual or perceived personal characteristic” or be “threatening or seriously intimidating.” In other words, conduct or communications cannot be considered “bullying” if the student lacks an intent to commit an act that is motivated by a student’s personal characteristic or is threatening or seriously intimidating.

In our view, the act of wearing Washington team apparel, without any additional facts, does not demonstrate the type of intentional conduct or communication required by the statute to constitute bullying. The general purpose behind wearing sports apparel is to show one’s support for that team. On this basis, we conclude that wearing Washington team apparel in the absence of other facts does not constitute bullying.

*COMAR provisions*

Mr. H also cites to several different provisions in COMAR. These provisions are COMAR 13A.01.04.03 (school safety)<sup>7</sup>; COMAR 13A.04.05.01 (multicultural education)<sup>8</sup>; COMAR 13A.04.05.04 (curriculum, instruction and staff development for multicultural

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<sup>7</sup> All students in Maryland’s public schools, without exception and regardless of race, ethnicity, region, religion, gender, sexual orientation, language, socioeconomic status, age, or disability, have the right to educational environments that are:

- A. Safe;
- B. Appropriate for academic achievement; and
- C. Free from any form of harassment.

<sup>8</sup> A. Assurance of success for all students in Maryland is dependent upon quality and equity in education, which empowers students to make decisions on important social and personal issues, and take action to help solve them. The intent of this chapter is to provide for local school systems' guidelines and goals for education that is multicultural, that will enable the school systems to provide curricula, instruction, staff development, and instructional resources that are multicultural while recognizing our common ground as a nation. These will enable students to demonstrate knowledge, understanding, and appreciation of cultural groups in the State, nation, and world.

B. Education that is multicultural is a continuous, integrated, multiethnic, multidisciplinary process for educating all students about diversity and commonality. Diversity factors include but are not limited to race, ethnicity, region, religion, gender, language, socioeconomic status, age, and individuals with disabilities. It encompasses curricular infusion and instructional strategies in all subject areas. Education that is multicultural prepares students to live, learn, interact, and work creatively in an interdependent global society by fostering mutual appreciation and respect. It is a process which is complemented by community and parent involvement in support of multicultural initiatives.

education)<sup>9</sup>; and COMAR 13A.04.05.05 (Criteria for Instructional Resources).<sup>10</sup> As noted previously, Mr. Murguia references COMAR 13A.01.04.03 (school safety) in his petition.

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<sup>9</sup> A. The guidelines in §§B—D of this regulation have been developed to assist local school system personnel in the design, management, implementation, and evaluation of education that is multicultural in the context of the 5-year master plan and master plan annual update cycles. The guidelines are divided into three areas of curriculum, instruction, and staff development, each of which includes a goal statement and objectives.

#### B. Curriculum.

(1) Goal. To provide Pre-K—12 curriculum, which enables students to demonstrate an understanding of and an appreciation for cultural groups in the United States as an integral part of education for a culturally pluralistic society. The curriculum shall enable students to apply these skills to fully participate in the democratic process of their community, State, nation, and world. The curriculum includes the following content:

- (a) Emphasis on correcting the omissions and misrepresentations of African Americans, Asian Americans, Latinos, Native Americans, women, and individuals with disabilities;
- (b) The history of cultural groups and their contributions in Maryland, in the United States, and in the world;
- (c) Historic events, situations, conflicts, and interpretations from diverse perspectives;
- (d) Political, social, and economic conditions which cultural groups have experienced and continue to experience in the United States; and
- (e) As appropriate, issues of racism, sexism, bias, and prejudice as these affect the behavior and experience of individuals and groups.

(2) Goal. To provide Pre-K—12 curriculum, which develops the valuing of cultural groups in the United States as an integral part of education for a culturally pluralistic society. The curriculum shall provide opportunity for students to demonstrate the following attitudes and actions:

- (a) Valuing one's heritage;
- (b) Valuing the uniqueness of cultures other than one's own;
- (c) Valuing the richness of cultural diversity and commonality;
- (d) Respecting diverse cultural groups throughout the world;
- (e) Awareness of and sensitivity to individual differences within various cultural groups; and
- (f) Eliminating stereotypes related to race, ethnicity, region, religion, gender, socioeconomic status, age, and individuals with disabilities.

#### C. Instruction.

(1) Goal. To provide Pre-K—12 instruction which will enable students to develop an understanding of and appreciation for cultural groups as an integral part of education for a culturally pluralistic society.

(2) The instructional program shall:

- (a) Promote a school climate that reflects the diversity of the community;
- (b) Promote a school climate in which different cultural linguistic patterns are respected;
- (c) Promote grouping of students to reflect cultural diversity;
- (d) Ensure that a student may not be denied access to equally rigorous academic instruction on the basis of cultural background;
- (e) Use instructional activities which recognize and appreciate students' cultural identities and learning styles;
- (f) Address racism, sexism, bias, discrimination, and prejudice;
- (g) Use organizations promoting cultural and ethnic understanding;
- (h) Use instructional activities that promote an understanding of and a respect for a variety of ways of communicating, both verbal and nonverbal;
- (i) Use instructional materials which reinforce the concept of the United States as a pluralistic society within a globally interdependent world while recognizing our common ground as a nation;
- (j) Incorporate multicultural instructional materials in all subject areas; and
- (k) Provide opportunities for students to analyze and evaluate social issues and propose solutions to contemporary social problems.

#### D. Staff Development.

(1) Goal. To include in staff development experiences that prepare school system personnel to design, manage, implement, and evaluate multicultural education.

Mr. H. cites generally to these multiple COMAR provisions and requests that the State Board declare these regulations require a school system to prohibit students from wearing or displaying the Washington team's name and logo. Although Mr. H. provides a detailed rationale for the policy he wishes the State to adopt, he has not explained the legal basis on which the State Board should declare that these regulations require school systems to prohibit Washington team apparel. Similarly, Mr. Murguia also cites to a provision in COMAR without providing a rationale for the applicability of the regulation in this matter. In previous declaratory ruling cases, we have exercised our authority to decide narrow questions about the interpretation of specific statutes and regulations. See *In the Matter of COMAR 13A.05.09.02B*, MSBE Op. No. 14-28 (2014) (declaring that DJS youth at the Harriet Tubman facility satisfy the homeless student definition in COMAR); *In the Matter of Educ. Art. 7-104*, MSBE Op. No. 14-29 (2014) (declaring that a local board policy concerning a moment of silence violated the Maryland Code); *In Re: Petition for Declaratory Ruling*, MSBE Op. No. 12-28 (2012) (declaring that the power to hire and fire is non-delegable under Educ. 6-201).

Moreover, we have previously stated that this Board will not "sift through the record to make the Appellant's argument." *Hill-Gilchrist v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 12-52 (2012). Thus, we shall not review multiple regulations in order to construct a legal argument for an appellant as to why those regulations compel a specific result. In our view, simply citing to a host of regulatory provisions and asking the State Board to declare that they require a change in local policy is insufficient to support a declaratory judgment petition.

### *2001 resolution*

Finally, Mr. H. references a resolution passed by this Board in 2001 that encouraged local school systems to eliminate logos, mascots, and team names related to Native Americans. That resolution was not binding on local school systems and did not require them to prohibit students and staff from wearing Washington team apparel. While such a resolution may be an argument in favor of the prohibition Mr. H. seeks, it does not compel such a result.

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(2) The experiences in §D(1) of this regulation include:

- (a) Activities which involve professional and support staff in exploring attitudes and feelings about their own cultural identity;
- (b) Activities to identify instructional strategies, techniques, and materials appropriate for education that is multicultural;
- (c) Training in assessing the prior knowledge, attitudes, abilities, and learning styles of students from varied backgrounds in order to develop multicultural instructional programs;
- (d) Training to recognize and correct stereotyping, discrimination, bias, and prejudice;
- (e) Training for fostering greater intergroup understanding;
- (f) Training to recognize and correct the omissions and misrepresentations of groups and individuals in curriculum and instruction;
- (g) Training to recognize and correct inequitable participation in school activities by students and staff from different backgrounds; and
- (h) Training to identify human resources for education that is multicultural.

<sup>10</sup> A. Goal. To provide instructional resources which assists students in demonstrating an understanding of and appreciation for cultural groups.

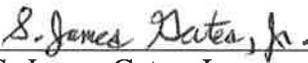
B. Selection of multicultural resources includes all of the following minimal criteria:

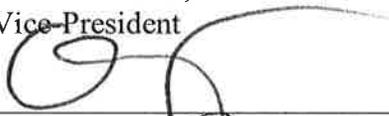
- (1) Materials that avoid stereotyping, discrimination, bias, and prejudice;
- (2) Materials that reflect the diverse experiences relating to cultural groups and individuals;
- (3) Instructional materials in all content areas that represent society as multicultural; and
- (4) Human resources to help students demonstrate an understanding of and respect for cultural diversity.

CONCLUSION

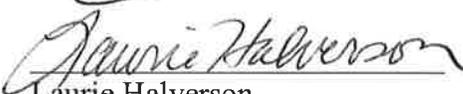
For these reasons, we affirm the judgment of the local board declining to consider Mr. H.'s appeal because the board's decision was not arbitrary, unreasonable, or illegal. In addition, we declare that wearing Washington team apparel, without any additional facts, does not constitute bullying as defined by Md. Code, Educ. §7-424. We decline to issue a declaratory ruling on the remainder of both Appellants' requests.

  
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Andrew R. Smarick  
President

  
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S. James Gates, Jr.  
Vice-President

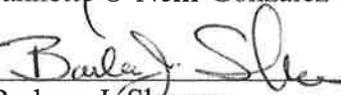
  
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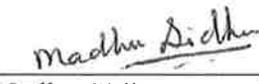
  
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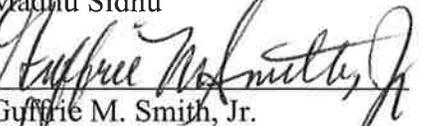
  
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Laurie Halverson

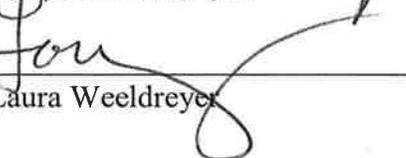
  
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Stephanie R. Iszard

  
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Jannette O'Neill-González

  
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Barbara J. Shreeve

  
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Madhu Sidhu

  
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Guffie M. Smith, Jr.

  
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Laura Weeldreyer

September 27, 2016