JACK & PAM T.,

Appellant

v.

HOWARD COUNTY BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 09-38

OPINION

INTRODUCTION

In this appeal, the Appellants seek reversal of the Howard County Board of Education's ("local board") decision finding their son academically ineligible to participate in sports and extracurricular activities during the fall 2008 quarter. The Appellants also seek an overhaul of the local school system and disciplinary action against certain school system employees. The local board has filed a Motion to Dismiss based on mootness, the Appellants' failure to raise certain issues before the local board and the Appellants' lack of standing to request certain relief. The Appellants have filed a Response to the local board's motion.

FACTUAL BACKGROUND

During the 2007-2008 school year, the Appellants' son, A.T., was a freshman at Glenelg High School in Howard County. A.T. took Spanish I and received a passing "C" grade the first quarter, but struggled to pass the course for the remainder of the school year.

The Appellants state that they tried numerous times during the school year to get A.T. the assistance he needed from Glenelg staff to pass Spanish I. The Appellants further allege that A.T. was subject to abusive and retaliatory treatment by his Spanish teacher who refused to help him pass the course.[1]

Later in the school year, A.T. began receiving several supports from the school to help him improve his academic performance. He received tutoring twice a week after school from his Spanish teacher and peer tutoring through the National Honor Society. In addition, A.T.'s Spanish teacher

[1] A.T. alleged that the Spanish teacher hit him in the head with a book during class. The school investigated the allegation and reported it to the Department of Social Services. After meeting with the teacher, the principal determined that the teacher had tapped A.T. on the shoulder area with some rolled up papers to get his attention. The teacher was instructed to not touch A.T. in the future. (*See* Local Bd. Exh. 5.)

excused him from the requirement of completing 90% of the homework, and he did not grade A.T. on class participation during the fourth quarter. Moreover, several school officials contacted or met with the Appellants through the school year to address A.T.'s performance and behavior issues, and to develop strategies for success. (*See* Local Bd. Exh. 7.)

Despite these efforts, A.T. earned "E's" for the last three quarters of the year and failed Spanish I. A.T. desired to play football in the fall 2008 season, but his failing grade made him academically ineligible from doing so.

Local board policy 9070 governs eligibility standards for student participation in extracurricular activities. It provides:

> High school students: A full-time student earns academic eligibility to participate in extracurricular activities by passing all authorized courses for the marking period and maintaining a 2.0 grade point average **with no failing grades for the marking period which governs eligibility for that activity**. This provision does not apply to incoming 9th grade students for fall eligibility.

(Emphasis added.) Local board Policy 9070-PR provides that a student's grades from the last quarter of spring determine his eligibility for fall activities. (Local Bd. Exh. 8.)

At the end of the school year, the Appellants and A.T. met with Pamela Plantz-Poley, School Counselor/Instructional Team Leader, to discuss options for A.T. to make up the Spanish credit. Ms. Plantz-Poley informed the Appellants that A.T. had three options to change his grade in time to gain eligibility for fall activities: he could (1) take a full credit summer school course at the local community college, (2) take an original credit Spanish I course in another county, or (3) complete an online course through the Maryland State Department of Education. The Appellants chose the online course option and Ms. Plantz-Poley reviewed the information packet and required forms with them.

Around June 19, 2008, the Appellants registered A.T. to take the online course. School officials told the Appellants that A.T. had until August 16, 2008 to complete and pass the course to be eligible for fall extracurricular activities. The online credit course was designed to be completed in 32 weeks, but students could complete it at their own accelerated pace, and some students completed it in as little as eight weeks.

By the August 16, 2008 deadline, A.T. had not completed or passed the online course. A.T. completed only 59% of the first part of course with an 80% average. A.T. had not yet started the second section of the course. The Appellants requested that the school system permit A.T.'s temporary grade for part one of the course to replace his final failing grade for Spanish I.

The Appellants alleged that A.T.'s failure to complete the online course over the summer was due to various factors beyond his control: they were not informed about how long it would take for

him to complete the course; the school system improperly directed that the course be accelerated to A.T.'s detriment; A.T.'s teacher would not return his emails; A.T. could not progress as quickly as he wanted because the teacher set the pace; and A.T. was "locked out" of tests he needed to take. (Local Bd. Exh. 7.)

On August 21, 2008, Linda A. Wise, Chief Academic Officer and the local superintendent's designee, responded to the Appellants' request and other complaints about A.T.'s eligibility for fall activities. Ms. Wise reviewed the background of A.T.'s performance in Spanish class and noted that A.T. had been offered different types of assistance to address his performance concerns. A.T. had been offered after school tutoring during the school year and received peer tutoring later in the school year. In addition, A.T. was present at numerous meetings with his counselors to help improve his performance. The Appellants were also notified through the school year regarding concerns with A.T.'s performance. Consequently, Ms. Wise determined that A.T.'s failing grade was not an error and, because he did not complete and pass both sections of the online course, he remained academically ineligible for fall sports.

Undeterred, the Appellants took A.T. to the first week of football tryouts and insisted that he should be allowed to participate despite his failing Spanish I grade. The Appellants also appealed Ms. Wise's decision to the local board, asking the local board to find A.T. eligible to play and expunge A.T.'s failing grade from his record.

The local board determined that it did not expunge student records and the sole issue it would review was Ms. Wise's decision regarding A.T.'s ineligibility. The local board concluded that Ms. Wise's decision was consistent with local board policy and reasonable.

In addition, the local board considered the numerous other criticisms from the Appellants regarding how they and A.T. were treated by school system officials, including allegations of abuse, retaliation, unresponsiveness and general incompetence among the staff. The local board determined that none of those allegations were relevant to the appeal and that the record was clear:

> [A.T.] is academically ineligible for fall sports and extracurricular activities because he failed Spanish I. He had the power to apply himself, obtain assistance, and pass the course last semester. There was nothing illegal, unreasonable or arbitrary in the decision rendered by Ms. Wise.

(Local Bd. Decision at 5.) This appeal followed to the State Board.

In their State Board appeal, the Appellants reiterate many of the same allegations of mistreatment by and mismanagement of local school system officials. They recount in detail a host of issues they and A.T. have had with Glenelg staff from the beginning of the 2007-2008 school year. They also challenge the school system's use of an in house attorney, who they feel hindered their

investigation into the school's mistreatment of A.T. The Appellants ask the State Board to reverse A.T.'s ineligibility determination and provide a general overhaul of the school system:

> We seek that this be reviewed in it's [*sic*] entirety and that those members of HCPSS that both perpetrated these acts on our son [A.T.] as well as those in administrative positions that were aware of these incidents be properly disciplined. Further that an overhaul of the administration of the HCPSS is necessary and that if the HCPSS is to have an in house attorney then that position should be for the benefit of the children of Howard county and the advice rendered should be with their interest foremost and that parents shall have access to this council [*sic*].

The local board has filed a motion to dismiss on several grounds. First, the local board argues that it is undisputed that A.T. failed to meet the academic criteria of local board policy 9070 for participation in the fall 2008 sports season. The local board asserts that its policy and application of the policy to A.T. was reasonable, and the Appellants have been afforded full due process in their appeals on this issue.

In addition, the local board argues that the remainder of issues raised by the Appellants should be dismissed based on mootness, waiver and lack of standing. The board asserts that the fall 2008 sports season is over and there is no effective remedy left for the State Board to provide. In addition, the Appellants failed to first ask the local board to discipline certain school employees and overhaul the school system. Moreover, the local board contends that the Appellants lack standing to raise these issues before the State Board under Education Article §4-205(c).

In reply to the local board's motion, the Appellants argue that the issues in their appeal are not moot because "they have never been addressed and continue as well as effect [*sic*] many students". The Appellants reiterate many of their previous allegations and arguments, and for the first time, add citations to several other board policies that the school has violated.

STANDARD OF REVIEW

This appeal involves a decision of the local board involving a local policy, and therefore, the local board's decision is considered prima facie correct. The State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. A decision may be arbitrary or unreasonable if it is contrary to sound educational policy, or a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached. COMAR 13A.01.05.05; *Pamela M. v. Montgomery County Bd. of Ed.*, MSBE Op. No. 08-04 (2008).

LEGAL ANALYSIS

Mootness

The local board asserts that this appeal should be dismissed because the fall 2008 football season is over and there is no effective remedy left for the State Board to provide. The Appellants do not directly address this issue, nor do we find anything in the record that indicates that A.T. remains academically ineligible to play sports based on his Spanish I grade from last school year.

It is well established that a 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 Ernie M. v. Carroll County Bd. of Educ.,* MSBE Op. No. 08-27 (2008); *Sachs v. Howard County Bd. of Ed.*, MSBE Op. No. 03-16 (2003); *Fromille v. Harford County Board of Education*, MSBE Opinion 02-33 (2002); *Arnold v. Carroll County Board of Education*, MSBE Opinion No. 99-41 (1999).

We agree with the local board that because the fall 2008 football season is over, there is no existing controversy between the parties on this issue and no effective remedy that the State Board can provide. *See, e.g., Ernie M. v. Carroll County Bd. of Educ.,* MSBE Op. No. 08-27 (2008); *Lynn Sachs v. Howard County Bd. of Ed.*, MSBE Op. No. 03-16 (2003). In the usual case we would dismiss this appeal as moot and decline to address the merits. But, because of the state of the record in this case and in order to provide the local board with finality on the merits of the Appellants' assertions, we will review and decide the merits of Appellants' case.

Merits

On the merits of this appeal, it is our view that the local board's application of Policy 9070 was absolutely reasonable.

We have found no indication in the record that the Appellants or A.T. accept an ounce of responsibility for A.T.'s failure to apply himself diligently to the task of passing Spanish I in order to participate in the 2008 football season. It remains undisputed that A.T. failed Spanish I during the 2007-2008 school year and he did not complete the online Spanish course offered over the summer by the August 16, 2008 deadline given by the school. The Appellants reason that A.T. was in that position due to a variety of alleged mistreatment and mismanagement by school system officials. However, our review of the record indicates that the school provided numerous resources to help improve A.T.'s performance, kept the Appellants informed about A.T.'s status and responded to the continual stream of concerns raised by the Appellants during the school year.

It is well settled that participation in extracurricular activities, including athletics, is a privilege, not a right. *See Sachs v. Howard County Bd. of Ed.*, MSBE Op. No. 03-16 (2003); *Bloch v. Board of Education of Howard County*, 7 Op. MSBE 388, 390 (1996). Courts have clearly held that student participation in interscholastic athletics or other extracurricular activities is not a

constitutionally protected liberty or property interest. *See Denis J. O'Connell High School v. Virginia High School*, 581 F.2d 81, 84 (4th Cir. 1978); *Mitchell v. Louisiana High School Athletic Association* 430 F.2d 1155, 1158 (5th Cir. 1970).

Therefore, A.T. had no inherent right to play football last year. The local board's policy reasonably outlined the requirements for A.T. to be eligible to play football. We have found nothing in the record that indicates A.T.'s failing grade was issued in error, that the school sabotaged his efforts to improve his academic performance, or that he was denied any adequate due process at each level of this appeal. In our view, the local board correctly concluded that A.T. "had the power to apply himself, obtain assistance, and pass the course last semester."

The Appellants also request that the State Board impose appropriate personnel discipline against certain unnamed school employees. It is not in the State Board's power to initiate employee discipline or other personnel actions. Moreover, the State Board has consistently held that persons other than the employee at issue lack standing to challenge personnel matters regarding a school system employee under § 4-205 of the Education Article. *See Ernie M. v. Carroll County Bd. of Educ.*, MSBE Op. No. 08-27 (2008) (denying parents' request to remove athletic coach and trainer); *Schlamp v. Howard County Bd. of Educ.*, MSBE Op. No. 04-04 (2004) (denying parents' request to terminate school principal); *Gartner v. Howard County Bd. of Educ.*, MSBE Op. No. 01-41 (2001); *Tompkins v. Montgomery County Bd. of Educ.*, 7 Op.MSBE 476 (1996).

Last, the Appellants request that the State Board overhaul the school system, which was also not raised before the local board. That is not the role of the State Board, nor is that an appealable issue under § 4-205 of the Education Article.

Moreover, the Appellants failed to raise both of these issues before the local board. The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See, e.g., K.W. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-20 (2007) (failure to address negative interactions between son and his teacher constituted waiver on appeal); *Miller v. Howard County Bd. of Educ.*, MSBE Op. No. 06-02 (2006); *McDaniel v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-22 (2003); *Hart v. St. Mary's County Bd. of Educ.*, 7 Op. MSBE 740 (1997).

CONCLUSION

For all these reasons, we affirm the decision of the Howard County Board of Education.

James H. DeGraffenreidt, Jr.
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