

RICHARD REGAN (Regan III,
IV, & V)

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-48

OPINION

Richard Regan has filed three more appeals against the Montgomery County Board of Education referenced herein as Regan III, Regan IV, and Regan V, challenging various depictions of American Indians as demeaning and offensive. Although these appeals have not been consolidated due to factual differences, we are addressing each seriatim in this opinion.

FACTUAL BACKGROUND

Regan III

Appellant submitted a *Complaint From The Public* with Montgomery County Public Schools requesting that the relationship between Poolesville Athletic Association (PAA) and Poolesville High School for use of the high school's stadium field be severed.¹ In his complaint, Appellant alleged that the Poolesville Athletic Association allows the use of American Indian depictions for its football, cheerleading, and pom-pom squads in a manner which he finds offensive and disrespectful. The principal of Poolesville High School denied Appellant's request.

On February 11, 2002, the PAA issued a press release stating that the team name for the team sponsored by the PAA was changed on February 4, 2002 from the Indians to the Falcons, and that all squads would have new uniforms for the upcoming season. No further PAA events were scheduled on Poolesville High School fields until fall, 2002.

On further appeal, the deputy superintendent found that the matter was moot stating as follows:

You stated your concern that the PAA continued to use team

¹Unlike other community groups, the PAA does not contract for fields through the Montgomery County Office of Community Use of Public Facilities. Rather, the PAA provides maintenance for the fields in exchange for their use. The agreement is a cooperative one similar to that in use at three other high schools in the county.

names, logos, and mascots offensive to American Indians and stated that the PAA teams were, in essence, school sponsored. You asked that Poolesville High School sever its relationship with the PAA and prohibit the PAA from using school facilities. I asked Dr. Wayne R. Fleeger, hearing officer, to investigate this matter and provide me with a recommendation. After carefully reviewing Dr. Fleeger's report, a copy of which is provided for your information, I have decided that your request for relief has been rendered moot by action of the PAA to adopt a new team name, mascot, and logo. Therefore, there is no reason for Poolesville High School to consider severing its relationship with the PAA, and no further action is required by my office.

Appellant appealed the decision of the deputy superintendent to the local board. In a unanimous decision, the local board determined that the appeal should be dismissed for the following reasons: (1) Appellant seeks to implement a new policy or change an existing policy of the board with respect to the use of certain mascot names by utilizing the appeal route which is an improper process for accomplishing that end; (2) Appellant has no standing as an unaffected individual to challenge the relationship between the PAA and Poolesville High School; and (3) Appellant's complaint is moot because the PAA changed its name from Indians to Falcons with new uniforms to be issued to the football, cheerleading, and pom squads for the next season.

On appeal to the State Board, Appellant maintains that the arrangement between the PAA and Poolesville High School for use of the athletic facilities violated local board policy ACA on Human Relations and COMAR 13A.04.05, Education that is Multicultural.

Regan IV

Appellant submitted a *Complaint From The Public* with Montgomery County Public Schools regarding the invitation of a member of the Washington Redskins' Marching Band to be a guest reader to children at Summit Hall Elementary as part of Maryland Reading Month. In the complaint, Appellant maintained that the presence of the individual violates local board policy ACA on Human Relations given that the term "Redskin" is offensive, derogatory, and demeaning to American Indians.

Acting as the superintendent's designee, the deputy superintendent referred the matter to hearing officer, Elaine Lessenco, for her review. Ms. Lessenco reported that Summit Hall Elementary School celebrated Maryland Reading Month in January by inviting celebrities to be guest readers at the school. Many individuals came to read to the children, including Representative Connie Morella, representatives from the offices of County Executive Douglas Duncan and Governor Paris Glendening, police officers and firemen, and Mr. Harry Jackson, a member of the Redskins' Marching Band. Mr. Jackson was introduced as a member of the Redskins' Marching Band, and he read a story selected by school staff that was a parody on the "Three Little Pigs." He was dressed in casual clothing and had his jacket, with its Redskins' logo, draped over a chair while he read to the children.

Ms. Lessenco determined that there was nothing offensive in having a member of the Redskins' Marching Band read to a group of school children. Mr. Jackson was not in school to speak about the Redskins or their logo. He was there to help the children experience oral literature, as were the other individuals who were invited to read. Ms. Lessenco stated in her report that "[t]he school no more 'sponsored' the Redskins by inviting Mr. Jackson than it sponsored the Republican party by inviting Mrs. Morella." The deputy superintendent concurred with Ms. Lessenco's findings.

Appellant appealed to the local board. In a unanimous decision, the local board dismissed the appeal based on lack of jurisdiction and lack of standing. Alternatively, the local board found no basis to reverse the decision of the deputy superintendent stating, in part:

Individuals from all walks of life - education, government, politics, the media, the entertainment world, and sports - are routinely invited to read to our elementary students. Their participation is one way of giving back to the community and fostering a love of reading among our students. It is not as if the individual in question even came dressed in Native American garb; he was dressed in casual clothes and a Redskins jacket (versions of which are worn by many students in or schools). The book which he read has nothing to do with American Indians. As Ms. Lessenco stated in her report, the presence of this individual no more makes the event one sponsored by the Redskins, than the invitation to Congresswoman Morella made the event one sponsored by the Republican Party.

Local Board Decision at 2.

Appellant further appealed to the State Board maintaining that the depiction of American Indians as Redskins in Montgomery County Public Schools violates local board policy ACA on Human Relations and COMAR 13A.04.05, Education that is Multicultural.

Regan V

Appellant submitted a complaint objecting to the depiction of American Indians on the Dufief Elementary School website which contained pictures of students whose faces were painted and other activities as part of a fourth grade instructional unit activity on American Indians. He alleged that the depiction of American Indians in this way violated local board policy ACA on Human Relations. Appellant requested that the material, which he deemed offensive, be removed from the website and that an apology be issued. The principal of Dufief Elementary denied the relief requested by Appellant.

Appellant appealed to the superintendent. Acting as the superintendent's designee, the deputy superintendent referred the matter to hearing officer Jonathan Jones for further investigation. Mr. Jones recommended that the complaint be denied, stating as follows:

The school's web page devoted the equivalent of eight pages showing scenes from a Parent Teacher Association (PTA) sponsored, hands-on, fourth grade activity dealing with Eastern Woodland Native Americans. The section deemed offensive by Mr. Regan, entitled "Face Painting," was deleted from the school's web page on or about March 14. Additionally, the preponderance of the material on the site is intended to "encourage students to demonstrate appreciation and understanding of diverse individuals, groups, and cultures." The material depicted is the result of research by students into the culture and activities of certain Native American tribes. It was not intended to represent all tribes or all periods of history. The display has now been removed, but any offense taken by Mr. Regan would seem to be solely in the eyes of the beholder and I do not believe that an apology is appropriate. Since the offensive section was deleted and since no offensive message was intended, no apology should be issued.

The deputy superintendent concurred with the hearing officer's recommendation and denied the relief requested by Appellant.

On further appeal to the local board, Appellant's complaint was dismissed by unanimous vote. The local board noted that the face-painting section was removed from the website and therefore the appeal was moot as to Appellant's request to remove the content he deemed objectionable. The local board also determined that Appellant lacked standing to appeal the content of the website because he was an unaffected individual, and the appeal process was not the proper mechanism by which to direct the manner in which the school's website is used. Moreover, the local board found that the content of the website was appropriate.

Appellant further appealed to the State Board maintaining that the depiction of American Indians on the website violates local board policy ACA on Human Relations and COMAR 13A.04.05, Education that is Multicultural.

ANALYSIS

Regan III

The local board has filed a Motion to Dismiss based on mootness. 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 Arnold v. Carroll County Board of Education*, MSBE Opinion No. 99-41 (September 22, 1999); *Farver v. Carroll County Board of Education*; MSBE Opinion No. 99-42 (September 22, 1999); *Chappas v. Montgomery County Board of Education*, 7 Op. MSBE 1068 (1998).

On February 4, 2002, the Poolesville Athletic Association Board Members voted to change the organization's team name from the Indians to the Falcons. *See* 2/11/02 Press Release. The football, cheerleading, and pom squads will be receiving new uniforms before any additional games will be played by the PAA team on Poolesville High School fields. Because the relief requested by Appellant has already been granted, there is no controversy between the parties and no effective remedy that the State Board can provide. Accordingly, we find that the appeal is moot.

Regan IV

Based on the evidentiary record in this case, we do not find that Appellant has satisfied his burden of proof that the local board's decision violated either the MCPS policy on human relations or the State Board regulation on multicultural education. What Appellant sets forth in his appeal is a generalized grievance or complaint which calls into question, or seeks to establish or modify curriculum, policies, or procedures utilized by MCPS, even though his appeal is based on the presence of a guest reader at Summit Hall. We agree with the local board that the appeal process is the inappropriate vehicle in this instance. *See Regan v. Mont. Cty. Bd. of Ed.*, MSBE Op. 02-29; *Astrove v. Mont. Cty. Bd. of Ed.*, MSBE Op. 02-14 (attempt to change existing policy is quasi-legislative matter not subject to 4-205 appeal process).

Additionally, we find nothing offensive or derogatory about inviting Mr. Jackson to read to the children. Neither the marching band with which the reader is affiliated nor his jacket was related to his reason for being at the school. Individuals from all walks of life are invited to read to the students of Summit Hall Elementary. Such invitations do not imply endorsement or promote the affiliations or beliefs of the invited guest.²

Regan V

Based on our review of the record, we do not find that Appellant has met his burden of proving that the posting of pictures from the instructional activity on the website violates either the MCPS policy on human relations or the State Board regulation on multicultural education.³ In this regard, we concur with the reasoning of the local board:

[There is] no basis to reverse the decision of the deputy

²Because the appeal is properly dismissed on other grounds, the State Board need not address the issue of standing.

³If Appellant is attempting to challenge the way in which a unit on Native Americans is taught in the Montgomery County Public Schools, the appeal process is the inappropriate vehicle to achieve modification of the existing curriculum or the adoption of a new policy governing teaching of the curriculum. *See Regan v. Mont. Cty. Bd. of Ed.*, MSBE Op. 02-29; *Astrove v. Mont. Cty. Bd. of Ed.*, MSBE Op. 02-14 (attempt to change existing policy is quasi-legislative matter not subject to 4-205 appeal process).

superintendent finding that the content of the website is appropriate. The website simply highlights a cultural arts activity that supplements a fourth grade instructional unit taught at the school to recognize the history, lifestyle, and contributions of Native Americans in our nation's cultural history. Contrary to complainant's assertion that the website is violative of Policy ACA, this activity and unit serves to foster a greater appreciation of diversity and an understanding of Native Americans.

Appellant has provided no evidence of any fact showing harm suffered by a student from the posting of the information on the website.

Moreover, to the extent that Appellant's appeal concerns objections to website postings regarding the section on face painting, such claims are moot since that material has been deleted from the Dufief Elementary School website. *See In Re Michael B.*, 345 Md. 232, 234 (1997) (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.").

CONCLUSION

Regan III: For the reasons noted above, we dismiss the appeal as moot. *See* COMAR 13A.01.01.03J(2)(b).

Regan IV: For the reasons noted above, we dismiss the appeal on jurisdictional grounds. *See* COMAR 13A.01.01.03J(2)(c).

Regan V: For the reasons noted above, we dismiss the appeal on jurisdictional grounds as well as mootness. *See* COMAR 13A.01.01.03J(2)(b)&(c).

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September 25, 2002