

DARREN L.,

Appellant,

v.

WICOMICO COUNTY
BOARD OF EDUCATION
(II)

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-48

OPINION

INTRODUCTION

Darren L. (“Appellant”), a parent of a high school student enrolled in Wicomico County Public Schools (“WCPS”), challenges the decision of the Wicomico County Board of Education (“local board”) to affirm the Superintendent’s dismissal of his complaints regarding a pair of surveys administered to his son. The local board filed a motion for summary decision requesting that the State Board uphold its decision. Appellant responded and the local board replied.

FACTUAL BACKGROUND

Appellant is the parent of a WCPS high school student who was enrolled in an Advanced Placement (“AP”) United States Government and Politics course (“Government”) during the 2020-2021 school year. Early in the school year, the WCPS high school sent students a link to a Fall Survey, developed by Equal Opportunity Schools (“EOS”). EOS works with schools across the country to improve the inclusion of students from varied backgrounds and abilities in AP courses. The stated purpose of the Fall Survey was to:

- Understand student aspirations and expectations;
- Identify students who would benefit from more challenging courses (like AP);
- Explore awareness about college and career readiness; and
- Gather information about how the student would like to be supported in their academics.

(Appeal, Ex. C). The AP Government teacher offered extra credit to students to incentivize participation. (Local Bd., Ex. 3).

On November 18, 2020, Appellant sent a letter to the local board regarding the Fall Survey and perceived ethical issues with its implementation. Appellant alleged that “the questions [were] designed to politically and racially profile students centered on their feelings, identity, gender, and race,” and that the local board was “using students as spies, in order to identify and rat out teachers who are not implementing critical race theory in their classrooms.” He also alleged that the survey allowed the school to collect private, personal information about students’ families, and worried that “students and parents [could] be categorized and targeted”

based on the responses. Appellant alleged the survey was designed “to recruit more minorities into AP classes, and to support a second set of standards.” Appellant requested that the local board stop the practice of giving any students a grade or extra credit as an inducement to fill out surveys, and that the any grade provided to a student for filling out the survey be rescinded. (Local Bd., Ex. 1).

On December 7, 2020, the AP Government teacher asked the class to complete the “Political Compass” survey (“Political Compass”). Political Compass is an online tool that uses responses to a series of ideological propositions to place users on a four-quadrant plane across two axes - social and economic. (Local Bd., Ex. 2). The teacher plotted the group’s results on a graph to demonstrate how a wide range of political beliefs can exist in a group of individuals. The plotted graph did not contain any student names. (Local Bd., Ex. 3).

On December 14, 2020, Appellant sent a second letter to the local board, supplementing the November complaint. Appellant argued that the use of Political Compass invades student privacy and violates their civil rights by “discover[ing] and assess[ing] the political ideology and political spectrum of each student and document[ing] it for the profit of political gain.” Appellant also asserted that the survey violated the local board policy BOE-GEN-PL-023: *Political Solicitations in Schools*. Appellant requested a response and corrective action plan from the local board. (Local Bd., Ex. 2).

On January 11, 2021, the WCPS Superintendent issued a letter responding to Appellant’s grievances regarding both surveys. The Superintendent refuted the allegation that the Fall Survey was designed to politically and racially profile students, finding that it was intended to assist the school in “better understand[ing] students’ academic experiences, conditions, and aspirations, in order to better support their journeys toward equitable learning opportunities.” Moreover, she maintained that the awarding of extra credit was the teacher’s choice to offer in order to incentivize participation, which did not constitute bribery or coercion. The Superintendent did not find any violation of federal or state law or any school system policy. (Local Bd., Ex. 3).

In response to Appellant’s allegations regarding Political Compass, the Superintendent found that it was not used in an attempt to indoctrinate or profile any students. Instead, the teacher used it as a tool to “help students use critical thinking skills to place *themselves* along the political spectrum,” and “understand[] where their political beliefs fall in terms of ideology.” Even though the Superintendent believed Appellant’s concerns were “unfounded,” she nonetheless informed Appellant that she instructed the supervisor of social studies to review Political Compass to determine if it was the best instrument available to accomplish the same purpose. She also notified Appellant of his right to appeal. (Local Bd., Ex. 3).

On January 15, 2021, Appellant appealed the Superintendent’s decision to the local board. He asserted that the Fall Survey was mandatory because teachers offered the students extra credit for completing it. He also asserted that both the Fall Survey and Political Compass violated the federal Protection of Pupil Rights Amendment (“PPRA”). Appellant stated that the PPRA specifies the school system must notify parents and obtain parental permission before conducting survey, analysis, or evaluation. Appellant maintained that the Fall Survey and

Political Compass fell under the types of surveys covered by the PPRA,¹ and that the WCPS failed to provide him with the statutorily required notification and opt-out opportunity. Appellant formally requested to opt his student out of any future surveys or questionnaires without his prior consent. He also requested the local board create a policy and opt-out procedure for conducting surveys. (Local Bd., Ex. 4).

On February 25, 2021, the Superintendent advised the local board of new developments since Appellant's filing. The Superintendent explained that she directed WCPS staff to develop appropriate policies and procedures, consistent with the PPRA, regarding the use of surveys that collect covered information. She also directed WCPS staff not to administer any survey until the policies and procedures were developed. She went on to reiterate that the Fall Survey did not involve any of the protected categories of information under the PPRA. She asked that the appeal of Political Compass be dismissed for mootness, as she directed WCPS to stop using surveys covered by the PPRA until the local board adopted appropriate policies and procedures. (Local Bd., Ex. 5).

On April 13, 2021, the local board issued its Opinion and Order in the matter. The local board found that:

1. It was premature to address Appellant's concerns about his student's future hypothetical survey participation. There was no active dispute to resolve, and the adoption of the pending policy, compliant with the PPRA, would provide Appellant with the appropriate notice and opt-out option.
2. The Superintendent's actions of halting use of Political Compass and directing the creation of PPRA compliant policies mooted out Appellant's complaint regarding Political Compass, as there was no longer an effective remedy the local board could provide.

¹ According to the [U.S. Department of Education](#), the PPRA (20 U.S.C. § 1232h, 34 CFR Part 98) affords parents of students certain rights regarding, among other things, participation in surveys, the collection and use of information for marketing purposes, and certain physical exams. The PPRA requires that consent be obtained prior to a student submitting a survey that covered any of eight (8) categories or protected information:

1. political affiliations or beliefs of the student or the student's parent;
2. mental or psychological problems of the student or the student's family;
3. sex behavior or attitudes;
4. illegal, anti-social, self-incriminating, or demeaning behavior;
5. critical appraisals of other individuals with whom respondents have close family relationships;
6. legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
7. religious practices, affiliations, or beliefs of the student or student's parent; or
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program). 20 U.S.C. § 1232h(b)

The PPRA also requires the local school system to develop policies which provide notice to parents, at least annually, and offer a parent the opportunity to opt their student out of participation. 20 U.S.C. § 1232h(c).

3. WCPS did not violate the PPRA by using the Fall Survey without prior notice, inspection, or a parental option to opt-out their child because the survey was not mandatory and it did not collect PPRA-covered information from the students.
4. The Fall Survey and Political Compass did not infringe upon the Appellant's right to make decisions about moral standards and religious beliefs for his student. The student was not required to accept or support certain moral principles or religious beliefs. Appellant remained free to place any problematic subject matter within the family's preferred context or supplement with preferred learning materials.
5. Neither the Fall Survey nor Political Compass violate the local board's Family Engagement Policy or Political Solicitation in Schools Policy. Appellant acknowledged that his son's teacher offered him the opportunity to exempt his son from the Fall Survey, and Appellant failed to provide any evidence that his son was in any way required to discuss his opinions regarding political candidates or ballot propositions by using the anonymous Political Compass.

(Local Bd., Ex. 5).

This appeal 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. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. Appellant bears the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

LEGAL ANALYSIS

In his appeal to this Board, Appellant argues that the use of the Fall Survey and Political Compass is a violation of the First and Fourteenth Amendments of the U.S. Constitution. He maintains that the local board is engaged in a systematic and invasive attempt to discover student beliefs, views, and values, while politically exploiting students. Appellant argues that the Fall Survey and Political Compass are tools for assimilative indoctrination, and that the offer of extra credit for student participation amounts to bribery and coercion of students – a reward for students willing to give up their First and Fourteenth Amendment rights. Appellant disagrees with the local board decision that the issues are moot, and he requests that this Board direct the local board to:

1. “immediately terminate their practice of surveying minor students regarding anything relating to politics, social issues, race, gender, sexuality, identity, religion, views, beliefs, opinions, feelings, or questions about others, even if such surveys are arranged to elude or exclude personally protected information (PPI) as defined under the Protection of Pupil Rights Act (PPRA)[:]” and

2. “[issue] a corrective action plan ...to immediately terminate the unconstitutional elements and conditions of policy BOE_GEN_PL_023 and [the local board’s] practices of unconstitutional surveying of minors.”

In response to the appeal, the local board submitted a motion for summary decision. The local board argues that, based on the Appellant’s requested relief, the appeal must be dismissed because: relief cannot be granted and is not ripe for review; the claims related to Political Compass are moot; the Appellant improperly raised a new issue in the State Board appeal; and the Appellant may not use the State Board appeal process to change local board policy.

New Constitutional Claims

First, we address Appellant’s argument that the use of the surveys and the practices of the WCPS violated his student’s First and Fourteenth Amendment rights. Our review of the record, including Appellant’s November 18, 2020, December 14, 2020, and January 15, 2021 letters to the local board, demonstrates that Appellant failed to bring these claims before the WCPS Superintendent and local board. As we addressed in *Darren L. v. Wicomico County Bd. of Educ.*, MSBE Op. No. 21-43 (2021), this Board has long held that the local board of education must first decide a matter before it is submitted to the State Board on appeal. *See* Md. Code Ann., Educ. § 4-205(c). Appellants must exhaust statutorily prescribed administrative remedies in the appropriate matter. *See Alice M. v. Cecil County Bd. of Educ.*, MSBE Op. No. 10-01 (2010); *Kemp v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-14 (2001); *Stewart v. Prince George’s County Bd. of Educ.*, 7 Op. MSBE 1358 (1998).

In his November 18, 2020 complaint letter, Appellant makes general allegations regarding the Fall Survey, including the argument that the use of extra credit for completing the Fall Survey was coercive and the questions designed to politically and racially profile students. The December 14, 2020 supplemental letter regarding the use of Political Compass focused on Appellant’s concerns that the survey served to politically profile, and it alleged violation of Board Policy BOE_GEN_PL_023. Appellant’s January 15, 2021 letter to appeal the Superintendent’s decision relied on violations of the PPRA. The Appellant made general references to violations of civil rights, but Appellant failed to identify these civil rights. Not only does the Appellant not reference the First and Fourteenth Amendments in these letters, we find no mention of the U.S. Constitution generally. Vague assertions of civil rights violations are not actionable. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)(A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not suffice if it tenders naked assertions).

As such, we find the local board did not have an opportunity to address these claims, and the Appellant failed to exhaust his administrative remedies. Therefore, we decline to review these new claims.

Similarly, Appellant also now asserts that the portion of the local board’s Board Policy BOE_GEN_PL_023 that states “instructional activities where issues or political events are discussed as part of a broad-based instructional format are permitted” is *per se* unconstitutional.

Appellant did not raise this issue before either the Superintendent or the local board. Accordingly, he has not exhausted the statutorily prescribed administrative remedy in the appropriate manner with respect to this issue. As such, we decline to address this claim.

PPRA and Jurisdiction

As we are dismissing the appeal for failure to exhaust administrative remedies, we need not address the local board’s arguments of mootness and lack of an available remedy. However, given the uniqueness of the PPRA claim made in Appellant’s January 15, 2021 appeal to the local board,² we take this opportunity to clarify that the PPRA, a federal educational privacy statute, has its own enforcement mechanism.³ See 34 C.F.R. § 98.7. Where a separate forum exists to address grievances raised under federal law, the State Board has declined to exercise jurisdiction. *Richard C. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 19-271 (2019); *Phil N. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 18-42 (2018).

Furthermore, we note that since filing of this appeal, the WCPS drafted policies and procedures to comply with the PPRA. On July 13, 2021, the local board voted to approve Board Policy BOE-GEN-PL-032: *Protection of Student Privacy Rights Policy*.

CONCLUSION

For the foregoing reasons, we dismiss the appeal as Appellant failed to exhaust statutorily prescribed administrative remedies.

Signatures on File:

Clarence C. Crawford
President

Shawn D. Bartley
(Affirm on the New Constitutional Claims);

Gail H. Bates

Chuen-Chin Bianca Chang

² In his appeal to the local board, Appellant alleges that use of the Fall Survey and Political Compass are a violation of the PPRA. In the appeal before this Board, Appellant does not renew this argument. It appears that Appellant concedes that the wording of the questions in the surveys place them outside of the PPRA: “This is an intrusive violation of civil rights and personal information, even if survey questions are not classified as Personally Protected Information (PPI) under the Protection of Pupil Rights Act (PPRA).” (Appeal, p. 1).

³ Instructions on how to file a complaint with the U.S. Department of Education regarding violations of the PPRA are available on the Privacy Technical Assistance Center’s website: <https://studentprivacy.ed.gov/file-a-complaint>.

Charles R. Dashiell, Jr.

Susan J. Getty

Vermelle Greene

Jean C. Halle

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

DISSENT

I dissent to the extent that the local board should have acknowledged that the Political Compass survey violated the PPRA.

Shawn Bartley

September 28, 2021