

JON N.,

Appellant

v.

CHARLES COUNTY  
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-19

## OPINION

### INTRODUCTION

Jon N. (“Appellant”) appeals the decision of the Charles County Board of Education (“Local Board”) denying his son the opportunity to participate in extracurricular activities in the fall of 2016 because of a prior failing grade. The local board submitted a Motion to Dismiss, or, in the alternative, a Motion for Summary Decision. Appellant did not respond to the motion.

### FACTUAL BACKGROUND

Appellant’s son J.N. attends La Plata High School, part of Charles County Public Schools (“CCPS”). During the fourth quarter of the 2015-16 school year, while Appellant’s son was in tenth grade, he received an “F” in his “Architecture & Interior Design” class. J.N.’s architecture teacher allowed him to complete make-up work so that he could raise his grade for the quarter. Other teachers and a school counselor also discussed with Appellant how J.N. could raise his grades for the year. J.N. did not complete enough work to raise his quarter grade for the architecture class, but he did turn in additional work so that he could raise his overall grade for that course to a “C.” The remainder of his grades for the quarter were one “A”, three “B”s, and two “C”s. (Motion, Ex. 1, 4).

CCPS Policy 6431 states that a student may participate in extracurricular activities<sup>1</sup> if he or she has met local promotion standards, earned at least a 2.25 grade point average for the previous quarter, with no “F” grades, and missed no more than 4.5 days of school in the previous quarter. Because J.N. earned an “F” during the fourth quarter, CCPS informed him he was ineligible to participate in extracurricular activities during the fall of 2016. (Motion, Ex. 1).

On September 16, 2016, Appellant appealed the decision. J.N. explained that “[d]uring the 2016-2016 school year I was absent from school due to a medical condition, and missed several weeks of school.” La Plata Principal Douglass Dolan denied the appeal without explanation. (Motion, Ex. 5). Appellant further appealed the decision to Steve Lee, the CCPS Coordinator of Student Activities, who also denied the appeal. (Motion, Ex. 8).

On October 12, 2016, Appellant appealed to Marvin Jones, executive director of schools for CCPS. Appellant explained that his son was diagnosed with reversible cerebral

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<sup>1</sup> CCPS defines extracurricular activities as “any school activity that is non-credit bearing, including athletics.” CCPS Policy 6431.

vasoconstriction syndrome during his tenth grade year, which caused debilitating headaches and led J.N. to miss numerous school days. Additionally, Appellant stated that J.N. suffered from depression and anxiety. Appellant argued that J.N.'s medical condition should have been considered when determining the appeal. He maintained that the family worked with CCPS so that J.N. could complete his school work and they believed that J.N. had completed all of the work that was required of him for the architecture course. Appellant argued that the school system was violating the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.<sup>2</sup> (Motion, Ex. 6, 7).

On November 11, 2016, Mr. Jones, acting as the superintendent's designee, denied the appeal. He explained that J.N.'s "F" grade in the fourth quarter made him ineligible for extracurricular activities during the fall. He found no evidence to justify a change in extracurricular eligibility and encouraged Appellant to remain in contact with J.N.'s teachers so J.N. could achieve eligibility status after fall 2016. (Motion, Ex. 8).

While the appeal was pending, J.N. received his grades for the first quarter of the 2016-17 school year. He received one "A", two "B"s, two "C"s, and two "F"s. (Motion, Ex. 9). The two "F" grades rendered him ineligible for the winter 2016 season.

On December 5, 2016, Appellant appealed to the local board. He reiterated his concerns about J.N.'s medical condition and also alleged that the school system violated the Individuals with Disabilities Education Act (IDEA), in addition to Section 504 of the Rehabilitation Act. Appellant informed CCPS that he had filed a complaint with the U.S. Department of Education Civil Rights Division.<sup>3</sup> (Motion, Ex. 10).

On January 10, 2017, the local board issued its decision upholding the denial of Appellant's appeal. The board observed that participation in extracurricular activities is a privilege, not an absolute right, citing to the State Board's decision in *Lawler v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 01-20 (2001). The local board concluded that it had the right to develop policies regarding participation in extracurricular activities and that such policies had previously been upheld by the State Board. The board found that J.N. had a failing grade in the fourth quarter and concluded that there was no discrimination or violation of federal laws by denying J.N.'s participation in fall extracurricular activities because of the failing grade. The board stated that all students, regardless of ability, are expected to pass each course they take and that there should be reasonable consequences for failing to meet that expectation. The board observed that Appellant had never previously requested accommodations or other services. Finally, the board stated that the appeal was moot because the board could not provide a remedy given that the fall 2016 season had already ended. (Motion, Ex. 1).

This appeal followed.

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<sup>2</sup> Section 504 of the Rehabilitation Act requires public schools to provide each qualified person with a disability a free appropriate public education through the provision of regular or special education and related aids and services. 29 U.S.C. § 794(a); 34 C.F.R. § 104.33.

<sup>3</sup> According to CCPS, at some point in this process it offered special education or Section 504 services for J.N., but Appellant declined them. In March 2017, J.N.'s parents requested that he be assessed for special education services and CCPS has begun that process. We address this issue in our legal analysis. (Motion).

## 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.01.05.05A.

## LEGAL ANALYSIS

The local board filed a Motion to Dismiss, arguing that Appellant's appeal is moot because the fall and winter 2016 seasons are over. The board maintains that Appellant's appeal covered participation in extracurricular activities during a particular time frame. Because the time frame has passed (and the school year is nearly complete), the appeal could be dismissed as moot. Appellant failed to respond to the motion. Although we recognize that Appellant's son cannot retroactively participate in school extracurricular activities, some of the issues raised by Appellant could re-occur during the 2017-18 school year. As a result, we decline to dismiss the appeal as moot.

### *Section 504, IDEA, and special education*

Before the local board, Appellant raised the issue of whether CCPS violated IDEA, the ADA, or Section 504 of the Rehabilitation Act in rejecting the appeal. Appellant has not raised these issues in his appeal to the State Board. He does mention, however, that his son recently underwent an evaluation that suggested J.N. may have several learning disabilities. CCPS has indicated it is in the process of evaluating Appellant's son for special education services.

We have long declined to extend our jurisdiction to resolve special education disputes because there are other existing forums available. *See Semere D. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 17-09 (citing cases). For example, this issue is currently the subject of a U.S. Department of Education complaint brought by Appellant. Even were the State Board to address the issue, there is no indication in the record that CCPS does not apply its policy equally to all students. Accordingly, we decline to address issues regarding Section 504, the ADA, or IDEA as part of this appeal.

### *CCPS extracurricular policy*

Appellant argues that the school system's decision to prohibit his son from participating in extracurricular activities and athletics was unreasonable given J.N.'s medical condition. Because school system policy describes extracurricular programs as "valuable experiences," Appellant argues that other factors, such as a student's medical background, should be taken into consideration as part of the school policy. (Appeal).

CCPS Policy 6431 describes the extracurricular eligibility requirements for high school students. They must: (1) meet local promotion standards; (2) have earned a 2.25 GPA from the previous quarter with no failing "F" grades; and (3) not have more than 4.5 days absent in the previous quarter. CCPS Policy 6431. For students who wish to participate in fall extracurricular activities, CCPS reviews their fourth quarter grades and grade point average. *Id.* Winter

participation is based on first quarter grades and grade point average. *Id.* “If a student received a failing grade in any quarter, she/he is ineligible for the remainder of the season, for post-season play, and for the following quarter.” *Id.*

The State Board has long held that participation in extracurricular activities is “a privilege, not a right.” *Lawler v. Anne Arundel County Bd. of Educ.*, MSBE Op. 01-20 (2001) (citing cases). “It is well settled that student participation in interscholastic athletics or other extracurricular activities is not a constitutionally protected liberty or property interest.” *Id.* (citing cases). Accordingly, school systems may create policies and procedures governing participation in extracurricular activities, including conditioning participation on academic performance.

There is no dispute that J.N. received an “F” grade in the final quarter of the school year, disqualifying him from participating in fall extracurricular activities under the CCPS policy. The record also shows that CCPS worked with Appellant and J.N. to offer make-up work and explain expectations regarding his fourth quarter grades. Appellant has failed to offer an argument that the board’s application of this policy was arbitrary, unreasonable, or illegal. Rather, his argument appears to focus more on his desire that the policy grant an exception based on his son’s circumstances. We have long held that the appeals process is not the appropriate mechanism for seeking such a policy change, and that such discussions belong, instead, with the local board. *See Jared H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 16-37 (2016).

## CONCLUSION

For all of these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

Signatures on File:

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Andrew R. Smarick  
President

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Chester E. Finn, Jr.  
Vice-President

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Michele Jenkins Guyton

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Stephanie R. Iszard

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Rose Maria Li

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Madhu Sidhu

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Guffrie M. Smith, Jr.

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David Steiner

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Laura Weeldreyer

May 23, 2017