

KEITH H.

Appellants,

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-29

## OPINION

### INTRODUCTION

The Appellant appeals the Montgomery County Board of Education's ("local board") decision denying his request to change two of his son's language arts assignment grades from the 2018-2019 school year. The local board filed a response maintaining that the State Board should not review the merits of the appeal because the Appellant did not allege that the local board failed to follow its procedures or violated his son's due process rights. Appellant filed a reply.

### FACTUAL BACKGROUND

Appellant's son (the "student") attended the 4<sup>th</sup> grade at the Center for Enriched Studies ("CES") at ██████████ Elementary School ("██████████") during the 2018-2019 school year. On July 21, 2019, Appellant filed a 27 page Complaint from the Public ("Complaint") with ██████████, principal of ██████████, raising various concerns related to his son's teacher with regard to assignments and grading. (Board Ex. 1). Appellant alleged that there were insufficient instructions provided for assignments, not enough time given to complete assignments, inadequate background information given for assignments, grading scales not in line with assignment difficulty level, and lack of parental notification of missing assignments or student achievement issues. (Board Ex. 1, p. 4).

The Complaint identified two specific reading and language arts assignments in which Appellant claims that his son's grades were improperly lowered by the teacher when they were recorded in the grade book. First, on a "Berlin Wall Assignment Graded and Measurement Topic Report," Appellant claims that the graded assignment returned to his son reflected a letter grade of A, but the teacher recorded a B. Second, on an "Autism and Therapy Horses Assignment Graded and Measurement Topic Report," Appellant claims that the graded assignment returned to his son reflected a letter grade of A, but the teacher recorded a D. (Appeal, Ex. 1). Appellant requested that the school complete a survey of all fourth and fifth grade parents to determine if other families experienced the same issues and, if so, re-examine the grades awarded to fourth grade students to determine if the "grades were properly assessed and applied." *Id.*

On August 22, 2019, Ms. ██████ responded to Appellant. She declined to conduct the requested survey because the school communicates regularly with parents during the school year, but she agreed to review Appellant's son's grades. After reviewing the grades, on September 6, 2019 Ms. ██████ advised Appellant that the grades were consistently and properly reported for Grade 4 students and no corrections were needed. (Board Ex. 4). Ms. ██████ addressed Appellant's concerns as follows:

- The teacher responsible for reporting progress and grades for the student sent home paper copies of interim grades at the mid-quarter and missing assignment reports every three weeks.
- The teacher added an omitted email address as soon as she discovered the omission and the teacher will send test emails to families in the future to avoid a repeat of such an occurrence.
- The teacher implemented the CES curriculum as written and used multiple methods to provide student directions.
- There is no indication that the teacher intentionally misplaced assignments and the teacher will manage assignments more carefully in the future.
- The parents were encouraged to request more time or to consult with the teacher if number or frequency of assignments presented a problem for the student and, if so, to confer with the teacher to develop an intervention plan in such cases.
- Students had the option to revise spelling homework assignments and the student was specifically give the option to change levels of spelling assignments.

Ms. ██████ also clarified that elementary grading marks of 1/4, 2/4, 3/4, and 4/4 that were shown on the back of report cards are not percentages. They indicate grades of D (1/4), C (2/4), B (3/4) and A (4/4). She also offered Appellant the opportunity to discuss his son's assignment grades in person. (Board Ex. 4).

On September 8, 2019, Appellant appealed Ms. ██████'s decision to the local superintendent, Dr. Jack Smith. (Board Ex. 3). Appellant objected to Ms. ██████'s determination that "fourth-grade assessments were consistently and properly reported" and no grade corrections were necessary. He requested that Dr. Smith "review and determine whether the response(s) provided by MCPS to date have adequately addressed the details and substantial elements of the Complaint," if policies and regulations have been followed and if proper corrective actions have been applied. (Board Ex. 3).

Dr. Smith delegated investigation of Appellant's appeal to Andrew M. Zuckerman, Chief Operating Officer and the Superintendent's designee. Dr. Zuckerman assigned hearing officer, Betsy Brown, to investigate and provide her conclusions and recommendations. Ms. Brown's investigation included interviewing Appellant; Ms. ██████; Kurshanna J. Dean, supervisor, Division of Accelerated and Enriched Instruction ("DAEI"); and Kathryn C. Williams, instructional specialist, DAEI. Ms. Brown also reviewed relevant local board policies and administrative regulations. (Board Ex. 3).

In an October 1, 2019 report, Ms. Brown concluded that Ms. ██████'s response to Appellant's Complaint was appropriate. She found that the school's instruction, assessments and grading practices complied with local board policies and administrative regulations, and that corrective actions taken by the school were appropriate. Ms. Brown recommended that

Appellant contact Ms. ████████ to request a meeting to discuss his concerns and develop a plan for his son's 5<sup>th</sup> grade year. (Board Ex. 4). On October 4, 2019, Dr. Zuckerman informed Appellant that he concurred with Ms. Brown's findings and adopted her recommendations. Dr. Zuckerman advised Appellant of his right to appeal the decision to the local board. (Board Ex. 5).

On October 4, 2019, Appellant met with Ms. ████████ and Sean McGee, director of learning, achievement, administration, Office of School Support and Improvement. Mr. McGee reported the meeting was positive, and Appellant withdrew several issues from his Complaint. (Board Ex. 7).

On October 30, 2019, Appellant appealed the following two concerns to the local board:

1. Why grading is “consistently and properly” performed and “appropriate” to return graded homework to a child then lower the grade in official records; or not grade finished the student’s finished work; not inform the family if grades were lowered; and why not correct mistakes identified by the parent.
2. Why is it difficult for MCPS to correct the student’s assignment grades that Appellant identified as in error?

(Board Ex. 6).<sup>1</sup>

On December 18, 2019, Dr. Smith responded to the appeal in a memorandum to the local board. The memorandum reviewed the history of Appellant’s Complaint, summarized Ms. Brown’s investigation, and reviewed relevant local board policies and regulations. Dr. Smith noted the following related to Appellant’s concerns on appeal:

- Both the principal and the AEI supervisor have reached out numerous times to Appellant offering to meet and provide the explanations he seeks;
- The principal offered to meet with the parent and teachers involved to review potential corrections to assignment grades;
- The principal conducted a review with her teachers of grading and communication and found no grounds for changing grades;
- The principal took steps to improve managing assignments and communicating with parents;
- The AEI supervisor and instructional specialist reviewed documentation provided by Appellant and found that the CES curriculum and assessments were implemented as designed, and there was no need for grade corrections;

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<sup>1</sup> Appellant notes in his appeal that his son did not have an academic issue during the 4<sup>th</sup> grade year. He states “[m]y child has, and continues to, love the program and school. Last year, in my personal opinion, the issues were isolated to 4<sup>th</sup> grade CES RLA only and not academic in nature.”

- The AEI supervisor and instructional specialist commended the teacher on her instructional and assessment practice; and
- A review of all files provided, as well as district resources, indicated instructional and grading practices were consistent with district policy and regulation.

Dr. Smith found that staff and administrators at [REDACTED] and in the central office did not find a basis to change assignment or report card grades. (Board Ex. 7). He also found that Appellant had been informed of actions the school principal took to improve practices at the school. He recommended that the local board uphold Dr. Zuckerman's decision and deny the appeal. *Id.*

Appellant submitted a reply to the local board on December 25, 2019, restating the reasons for his appeal. (Board Ex. 8). On January 8, 2020, Dr. Smith submitted a sur-reply noting that Appellant provided no new information that would alter his earlier recommendation that the local board deny the appeal. (Board Ex. 9).

In a Decision and Order issued on February 24, 2020, the local board affirmed Dr. Zuckerman's decision and denied Appellant's appeal. The local board determined that Ms. Brown conducted a thorough investigation and a detailed report addressing Appellant's claims, and that Dr. Smith's reports were comprehensive. The local board found that the staff at [REDACTED] Elementary School were responsive to Appellant's Complaints, handled them reasonably and responded to them adequately. The local board noted that Ms. [REDACTED] and the school teachers conducted a thorough review of the student's assignments and grades and found that there was no basis to change his grades. Throughout the year, school staff communicated with Appellant and responded to most of his 241 emails. Staff also attempted to meet with Appellant, but he declined. The program curriculum and assignments were implemented as designed and consistent with board policy and regulation. (Board Ex. 10).

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, 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.01.05.06(A).

The State Board has long held that, except in limited circumstances, it will not review the merits of student grade decisions. It is essentially a local school decision influenced by many factors. As stated in *Crawford v. Washington County Bd. of Educ.*, 4 Op. MSBE 890 (1997), "the merits of students' grades 'should be kept within the school building,' and are to be made by the persons most able to evaluate the situation from personal knowledge." See also *Nikol E v. Board of Educ. of Montgomery County*, MSBE 19-18 (2019); *Sherrie H v. Carroll County Bd. of Educ.*, MSBE Op. No. 17-35 (2017); *Fisher v. Montgomery County Bd. of Educ.*, MSBE Op. No. 99-43 (1999); *Chase v. Carroll County Bd. of Educ.*, 7 Op. MSBE 915 (1997); *Mai v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 752 (1997); *Tompkins v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 475 (1996). The State Board will only hear appeals challenging

academic grades if there are specific allegations that the local board failed to follow proper procedure or violated a student's due process rights. *Janocha v. Carroll County Bd. of Educ.*, MSBE Op. No. 02-51 (2002). Absent these type of illegalities, the State Board will not review the merits of student grade appeals.

## LEGAL ANALYSIS

In his appeal to the State Board, Appellant asks whether the local board erroneously affirmed the decision of the local superintendent.

### BOARD REGULATION AND POLCY

Appellant alleges that the local board failed to follow proper procedure and violated local board policies IKA-RA III.B.2 (Grades for elementary content areas are based on evidence of the attainment of assigned grade level or course expectations), and IKA C.1.d. (Teachers will maintain accurate and precise records that support informally and formally reported achievement). (Appeal). Although Appellant submits hundreds of pages of documents and grade sheets, in support of his argument, the documents support the local board's conclusion that it did not violate the local grade policy or procedure.

The review by school system personnel of all files provided indicated instructional and grading practices were consistent with district policy and regulation. The school staff performed a grade review and found that the discrepancies in work recorded and work returned did not warrant a change in the student's overall grade. (Board Ex. 4 at 3). To the extent the reading and language arts teacher did not maintain accurate and precise records, Ms. [REDACTED] addressed the issue with the teacher. The principal found no grounds for changing grades, and took steps to improve managing assignments and communicating with parents. The CES curriculum and assessments were implemented as designed. The review of all files provided indicated instructional and grading practices were consistent with district policy and regulation. The record shows that there may have been minor discrepancies in two class assignment grades, but a review of the records supports the local board's conclusion that the student's final grades were based on evidence of the attainment of assigned grade level or course expectations. Accordingly, we do not find that the local board used inconsistent and ambiguous grading standards or acted arbitrarily, unreasonably, or illegally.

### DUE PROCESS

In his appeal, Appellant does not contend that local board denied him or his son due process, so we do not review the merits of the student's grades. *See Janocha v. Carroll County Bd. of Educ.*, MSBE Op. No. 02-51. We point out, however, that Appellant availed himself of each level of appeal provided by MCPS policy beginning with filing his Complaint with the school principal, Ms. [REDACTED]. Ms. [REDACTED] reviewed the student's grades and addressed Appellant's concerns. Appellant appealed Ms. [REDACTED]'s decision to the local superintendent who referred the matter to his designee, Dr. Zuckerman. Dr. Zuckerman assigned a hearing officer, Ms. Brown to conduct an investigation. The investigation disclosed that Ms. [REDACTED] had reviewed the student's assignment grades with his teacher and determined that any recording errors did not impact his final grade and that adjustments in the recorded assignment grades were unnecessary. Dr. Zuckerman adopted Ms. Brown's report and recommendation and upheld Ms. [REDACTED]'s decision. Appellant then appealed that decision to the local board, which affirmed

Dr. Zuckerman's decision. Each reviewing level determined that there was no basis for changing the grades that Appellant's son received on his assignments.

CONCLUSION

For the reasons stated above, we find that the local board has not acted arbitrarily, unreasonably, or illegally in this matter. We therefore affirm the local board's decision.

Signatures on File:

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Clarence C. Crawford  
President

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Jean C. Halle  
Vice-President

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Shawn D. Bartley

\_\_\_\_\_  
Gail H. Bates

\_\_\_\_\_  
Charles R. Dashiell, Jr.

\_\_\_\_\_  
Susan J. Getty

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Vermelle D. Greene

\_\_\_\_\_  
Rose Maria Li

\_\_\_\_\_  
Rachel McCusker

\_\_\_\_\_  
Joan Mele-McCarthy

\_\_\_\_\_  
Lori Morrow

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Warner I. Sumpter

July 28, 2020

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Holly C. Wilcox