

NIKOL E.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-18

OPINION

INTRODUCTION

Appellant challenges the decision of the Montgomery County Board of Education (“local board”) denying her request to award her son credit for courses in which he had numerous absences and to amend grades awarded to her son during the 2016-2017 school year. The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. The Appellant responded to the Motion and the local board replied to the response.

FACTUAL BACKGROUND

The Appellant’s son, N.E., began attending Paint Branch High School in August 2015. Despite attending Paint Branch for over three years, N.E. has only earned 6.5 credits and is currently in the 10th grade there. The local board claims that N.E.’s failure to earn credits or achieve certain grades at Paint Branch stems from his numerous unexcused absences combined with his failure to complete make-up and credit recovery assignments. The Appellant claims that the credit and grade issue is a result of the school system’s improper implementation of N.E.’s 504 Plan and failure to excuse many of his absences.

Similar issues concerning attendance, grades and implementation of a 504 Plan were at issue in a prior State Board appeal, when N.E. was in his final year at Briggs Chaney Middle School in late 2015. At that time, N.E. was experiencing attendance and grade issues despite various supports and interventions put in place by Montgomery County Public Schools (“MCPS”). The local board dismissed the appeal as untimely filed. The State Board found reasonable excuse for the late filing and remanded the case to the local board to utilize the MCPS 504 Plan review process to resolve the matter. *See Nikol E. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 16-06 (2016). MCPS maintains that after remand, it continued to work with the Appellant to create a 504 Plan that adequately addressed N.E.’s medical concerns and attendance issues. (Motion, p.2).

When N.E. began school at Paint Branch in the 2015-2016 school year, he continued to experience attendance issues. During his first year, the school discovered that Appellant submitted forged or unverifiable doctor’s notes in an attempt to excuse 19 days of absences in

the winter/spring of 2016. (Motion, Exs. 1 & 2). Thereafter, the Appellant maintained that N.E. hurt his foot and could no longer attend school. When the school offered accommodations, which included a student escort, elevator key and wheel chair, Appellant indicated that N.E. had to stay home and that they were moving to another state. Just prior to the end of the school year, Appellant enrolled N.E. in home schooling, but re-enrolled him at Paint Branch before the start of the next school year.

In August 2016, Appellant attended a parent conference with the assistant administrator, Dr. McClain; school counselor; and pupil personnel worker, during which they reviewed expectations for the coming school year and a plan for credit recovery. (Motion, Exs. 1 & 3). In addition, Dr. McClain advised the Appellant that Paint Branch would no longer accept handwritten excuse notes and would only accept doctor notes that could be verified. *Id.*

Throughout the 2016-2017 school year, N.E. was frequently absent and the Appellant continued to submit unverifiable excuse notes. (Motion, Ex. 1). During the first quarter (9 weeks), N.E. missed 9 Spanish classes, 10 Astronomy classes, 11 Honor's English classes, 12 National, State and Local Government classes ("NSL"), and 13 Geometry classes, despite phone calls and letters from school personnel. (Motion, Exs. 1 & 4). He received quarter grades of E's in English and Spanish, a C in NSL Government and B's in Geometry and Astronomy. (Motion, Ex. 4),

On October 25, 2016, the school team discussed N.E.'s grades and attendance with Appellant during a parent conference. The Appellant stated that N.E.'s absences were due to migraines. The school team reminded her that she needed to provide medical documentation from a doctor. (Motion, Ex. 5).

By the end of the second quarter, N.E. had E's in all of the classes, except Astronomy, and he had so many unexcused absences that he received no credit for his first semester. (Motion, Ex. 4).

Appellant submitted medical documentation from the Adolescent Clinic at Children's National Health System regarding N.E.'s migraines dated November 3, 2016. It stated:

[N.E.] has intermittent bouts of migraine headache exacerbations that may necessitate him being absent from school or may otherwise affect his timely attendance to school. While these are unpredictable at the time, his mother is in the process of making appointments for him to be seen in the Neurology clinic . . . I have attached a medication administration form for his . . . migraine headache medication for use in school to be taken at the onset of headache to help decrease his symptoms. He would most likely require a quiet room to rest if he were to have a migraine headache during school time after which he could return to classes if clinically able.

(Motion Ex. 6).

On December 21, 2016, the 504 team convened a meeting with the Appellant to review N.E.'s 504 Plan and to discuss attendance and grades. The team recognized that teacher comments were positive and complimentary in terms of N.E.'s learning ability and participation when in class, but that his poor attendance was the issue. (Motion, Ex. 5). Appellant explained that N.E. suffers from migraines once or twice a month with a duration of 1 or 2 days. She also stated that N.E. has depression, for which he sees a psychiatric nurse every 30 days, but that he was not undergoing therapy at the time and that his last emotional episode was June 2016. *Id.* Because the information provided by Appellant regarding the duration and frequency of N.E.'s migraines did not make sense in light of his number of absences, the 504 team requested additional medical documentation. The team also reminded the Appellant to check EDLINE and to contact the counselor to request from teachers any missed work that N.E. could complete in the short term for credit. *Id.*

Appellant met with school administrators in January 2017. School personnel put additional supports in place and created a plan to help with attendance. (Motion, Ex. 1). They placed N.E. in a daily Connections class which is designed to help students with their assignments, with reviewing grade sheets, with organization and with goal setting. *Id.* By February, N.E. had accrued more absences. School personnel put a plan in place to help N.E. make up missed work assignments, but there was no follow through. *Id.*

On February 8, 2017, Appellant requested Interim Instructional Services ("IIS") to allow N.E. to receive home and hospital instruction. *Id.* The school system initially denied the request based on the opinion of N.E.'s treating physician that N.E. should remain in school. *Id.* In addition, Kasey Vanderpool, a certified pediatric nurse practitioner involved with N.E.'s care, explicitly stated that home instruction was not recommended for N.E. because children with migraines who are completely removed from their school environment may experience a significant worsening of symptoms. (Motion, Ex. 6). Ultimately, because the Appellant persisted with her IIS request, on March 22, 2017, the school system assigned an IIS teacher with the expectation that N.E. would attend school as much as possible and receive IIS support as needed. School personnel advised the Appellant that N.E.'s IIS grades would be combined with the grades he earned while physically at school to determine his final course grade. (Motion, Ex. 1).

During the third quarter of the 2016-2017 school year, which was mostly prior to the IIS approval, N.E. missed 27 Spanish classes, 29 Connections classes, 35 Honor's English classes, 36 NSL Government, and 37 Geometry classes. (Motion, Ex. 4). Several weeks of absences were due to the Appellant's refusal to send N.E. to school while the IIS application was pending. Appellant told Paint Branch administration that the IIS office told her the dates would count as excused absences, but upon investigation school officials determined that was not the case. (Motion, Ex. 1).

Meanwhile, at a parent meeting on March 28, 2017, Appellant expressed her dissatisfaction with the grading policy. (Motion, Ex. 5). School personnel offered to look again at days the Appellant identified as excused and agreed to provide make-up work by March 31, 2017 for any days that checked out. N.E. was to complete the work by April 7. At the meeting, the Appellant also advised that she was withdrawing N.E. from the English 10A night class because it was not an honors course. *Id.*

During the final quarter of the 2016-2017 school year, N.E. had his highest number of absences, missing each of his classes 43 times. Despite the Appellant's insistence on IIS, N.E. failed to utilize the service, missing 6 of 8 scheduled lessons with his Astronomy and NSL Government instructor. (Motion, Ex. 7). Because of his continued failure to attend classes at Paint Branch and his failure to show up for IIS or to complete make-up assignments, N.E. received no credit for any of his second semester courses. (Motion, Ex. 4).

N.E. signed up to take Biology during the 2017 summer session. He attended only 2 of the 6 classes and completed 4 of the 21 assignments. All assignments were available on Google Classroom and could be accessed and completed at home. (Motion, Ex. 8) N.E. failed the summer Biology course and received no credit for it.

Principal Yarbrough summarized N.E.'s 2016-2017 school year as follows:

Our staff extended a myriad of supports above and beyond 504 accommodations to [Appellant] including Connections class, weekly meetings with the counselor, and teacher direct access for additional help in the morning, during lunch and after school. We also provided counseling resources and contacted YMCA for additional services if needed. The only response we continue to receive is [Appellant's] sporadic appearance without an appointment where she blames every staff member and demands to receive new grades. She repeated this exact behavior again to the registrar two weeks ago.

(Motion, Ex. 1).

Prior to the start of the 2017-2018 school year, Appellant and MCPS engaged in a mediation regarding the accommodations needed for N.E. to continue his education. The parties agreed to convene both an IEP and a 504 meeting regarding N.E.'s eligibility for accommodations. The parties also agreed to the specific accommodations the school would consider if either team determined that N.E. was eligible. (Motion, Ex. 9). IIS, online classes and a partial day schedule were strategies identified to deal with the chronic absenteeism.

Appellant and N.E. also signed an attendance contract for the 2017-2018 school year. (Motion, Ex. 10). The contract stated that N.E. would consistently attend classes, and would present typed medical documentation within 3 days of illness to excuse an absence. The contract also stated that N.E. would not be allowed more than 5 unexcused absences for the rest of the semester, otherwise he would lose credit. Finally, the contract stated that in the event N.E. and the Appellant did not adhere to the contract terms, the school team would reconvene to discuss alternate methods for N.E. to obtain his high school credentials. *Id.*

N.E.'s absences continued during the 2017-2018 school year, and Appellant continued to submit either unverifiable or forged medical documentation. In one instance, school personnel determined, after confirming with the physician, that additional dates were handwritten on the note. (Motion, Exs. 11 & 12).

On May 8, 2018, the Appellant filed a Complaint from the Public (“Complaint”) maintaining that N.E. did not receive credit for classes in which his absences should have been excused, and that “grade fixing” occurred with regard to the IIS courses. (Motion, Ex. 16). Dr. Yarbrough, Principal of Paint Branch, denied the Complaint. She noted that N.E. did not complete work to earn credit in his classes. *Id.*

Appellant submitted a Level II appeal. Michelle E. Schultze, Director of School Support and Improvement, considered report card grades, information from IIS, strategies implemented by the school to address N.E.’s chronic absenteeism, attendance records, the attendance contract, emails between administration and staff, and medical documentation. (Motion, Ex. 19). On May 18, 2018, Ms. Schultze issued her decision denying the appeal. (Motion, Ex. 17).

By letter dated May 25, 2018, Appellant responded to Ms. Schultze’s decision maintaining that her investigation was deficient because she was never contacted to discuss the case. (Motion, Ex. 18). Appellant claimed that N.E.’s absences should have been excused and that the teachers did not provide N.E. the opportunity to make up missed work. *Id.* Appellant blamed Paint Branch for failing to assist N.E. and accused school personnel of being disrespectful to her and her son. She also requested a full investigation into the handling of N.E.’s grades. *Id.* School personnel treated the letter as an appeal and forwarded it to Andrew M. Zuckerman, the Chief Operating Officer and Superintendent’s Designee. (Motion, Ex. 19).

Dr. Zuckerman assigned the appeal to Hearing Officer Robin Confino for investigation and review. (Motion, Ex. 19). Ms. Confino found no problem with Ms. Schultze’s investigation. Nor did she find any problem with the manner in which N.E.’s grades were determined.¹ Although Appellant claimed that the school never provided N.E. with the necessary makeup work for his missed classes, Ms. Confino stated that there was extensive documentation, including numerous entries in the communications log and in emails, to dispel that allegation. (Motion, Ex. 20). Ms. Confino denied the appeal but recommended that N.E. continue to receive IIS and online coursework for the first semester of the 2018-2019 school year. She stated that “[g]iven that [N.E.] has earned only 6.5 credits in three years and will be turning 18 years old in five months, it appears to be unrealistic that he will earn the remaining credits needed for a high school diploma.” *Id.* Dr. Zuckerman agreed with Ms. Confino’s recommendations and findings. (Motion, Ex. 19).

Appellant appealed to the local board. In her appeal, she stated that she was only seeking credit for the classes in which her son received a passing grade, and credit for IIS classes in spring 2017 for which she claims the school neglected to provide him with makeup work. (Motion, Ex. 20). Appellant also raised two new issues in the appeal: (1) she claimed that Pupil Personnel Worker, Ramona Washington was irresponsible in her duties, which affected N.E. getting make-up work; and (2) she requested a transfer to another school for the second semester of the 2018-2019 school year. *Id.*

¹ In her September 27, 2018 memorandum, Ms. Confino noted that N.E. received passing grades in Algebra, Environmental Science, English, and Modern World History for the 2017-2018 school year. Nevertheless, he failed to earn credit due to his excessive absences. For the 2018-2019 school year, N.E. has been enrolled in Grade 10 at Paint Branch, but was receiving his educational services entirely through IIS and online coursework.

The Superintendent responded by Memorandum to the local board. He stated, in part:

[Appellant] continues to assert her belief that Paint Branch High School falsified final grades in courses in the two previous school years by not accepting the grades from the IIS teacher and by the school classifying his absences as unexcused. It has been explained to [Appellant] that the IIS teacher grades individual assignments; however, it is the teacher of record who determines that marking period and final grades. In [N.E.'s] case, he lost credit for several courses even though he passed the courses for the marking period. In these cases, credit recovery work was communicated to [N.E.] and/or to [Appellant], but the make-up work was not completed.

As part of her Board appeal, [Appellant] includes email exchanges between herself and school staff. Many attempts were made to work with [N.E. and Appellant.] The hearing officer's report provides detail that school system staff, including the supervisor, Resolution and Compliance Unit, and Staff in the Office of School Support and Improvement, attempted appropriate strategies over a period of time. The 15-page *myMCPS* Communication Log contains documentation including strategies that support [N.E.] regarding make-up work, accommodation, attendance plans, adjustments to the student's schedule, check-ins with a staff member, contracts and meeting notes.

(Motion, Ex. 21). As for Appellant's claims regarding Ms. Washington, the Superintendent stated that there insufficient details, thus the issue could not be addressed. With regard to the transfer, the Superintendent requested that school system staff help facilitate the Appellant's request once she contacted them to initiate the transfer request. *Id.*

In response to the Superintendent's Memorandum, the Appellant submitted emails attempting to explain why some of the medical documentation she submitted could not be verified, but should still have been accepted by Paint Branch to excuse her son from school. (Motion, Ex. 22). She reiterated that she was only seeking credit for courses N.E. took during the 2016-2017 school year. She also elaborated on her interactions with Ms. Washington, who was apparently involved in initially denying IIS to N.E. because the medical documentation did not support it. *Id.*

On December 4, 2018, the local board issued its Decision and Order in the appeal affirming the decision of the Superintendent's Designee. (Motion, Ex. 23). The local board determined that N.E. had long-standing attendance issues that resulted in his lack of advancement, that Paint Branch properly supported N.W. and offered many options to allow N.E. to successfully earn credits or recover the credits lost as a result of excessive absences, and that his grades were properly computed. The local board found no basis to support Appellant's claim that Ms. Washington acted improperly. In addition, the local board determined that the Superintendent had appropriately handled Appellant's transfer request by directing school system staff to help facilitate the request. *Id.*

This appeal to the State Board followed.

STANDARD OF REVIEW

With regard to appeals involving a decision of the local board involving a local policy, the local board's decision is considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

With regard to appeals involving student grades, 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

Credit Request

The Appellant requests that N.E. receive credit for classes that he took during the 2016-2017 school year in which he earned a grade, but where loss of credit occurred due to his excessive absences. She claims that the loss of credit resulted from Paint Branch improperly refusing to excuse absences for which Appellant provided doctor's notes or other documentation to justify the absence. Appellant also maintains that N.E.'s teachers contributed to the loss of credit by failing to provide him the opportunity to make up work for the classes that he missed.

The Appellant has not provided any evidence to contradict the local board's determination that Paint Branch properly calculated N.E.'s absences based on the documentation submitted by the Appellant. The record supports the determination that Appellant submitted unverifiable and falsified medical documentation in an attempt to excuse some of N.E.'s absences. Despite the admonishment by school personnel that the school would only accept verifiable medical documentation to excuse N.E.'s absences, Appellant continued to submit documentation that was insufficient. This resulted in N.E. accumulating excessive unexcused absences. Although teachers provided N.E. with make-up work and credit recovery options, N.E. did not complete the work. All of this ultimately led to N.E.'s loss of credit.

Grade Change Request

The Appellant requests that the school system change N.E.'s grades to reflect the assignment grades that his IIS teachers awarded.

The State Board has long held that it 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. *See Sherrie H. v. Carroll County Bd. of Educ.*, MSBE Op. No. 17-35 (2017). The local board has established a grading procedure, as set forth in Regulation IOE-RB, to be used for awarding grades while a student is on IIS. Regulation IOE-RB states that the school of enrollment is responsible for awarding grades while IIS is used. The process for determining the grade is as follows:

IIS provides grades for assignments and assessments during the period in which the student is enrolled in IIS. IIS teachers will follow Board of Education grading and reporting policies, and MCPS regulations, and guidelines. The school of enrollment averages the student's grades with their IIS grades, when applicable, to determine the student's report card grades. The student's school of enrollment makes the final determination regarding report card grades.

(Motion, Ex. 24, IOE-RB(D)(5)).

Paint Branch calculated N.E.'s IIS course grades pursuant to this policy. Changing N.E.'s grades to reflect only those grades that he received from the IIS teachers runs counter to the established policy and ignores the grades that N.E. received on other work that he completed, or failed to complete, during the semester. Appellant has not alleged a procedural or due process violation here. She has not provided any basis to change N.E.'s grades.

School Transfer Issue

Appellant maintains that school personnel somehow failed to assist her with regard to the transfer request. In his November 13, 2018 Memorandum, the superintendent stated that "if [the Appellant] would like to pursue a transfer for the second semester of the 2018-2019 school year, she may contact staff in the Appeals/Transfer Team. I have asked staff to facilitate this request." Yet in her opposition to the local board's motion, the Appellant stated that the transfer team had advised her that the request had been denied. (Response, p.8). Contrary to the Appellant's assertion, however, Ms. Confino contacted the Appellant on January 7, 2019 to see if she still wanted to pursue the transfer for the second semester. (Local Bd. Reply, Ex. A). The Appellant responded that she was researching schools to see what would be a good match. *Id.* Ms. Confino asked the Appellant to stay in touch with her given that the semester was ending on January 24. *Id.* There is simply no evidence to support the Appellant's rendition of events.

Bullying and Harassment Claims

The Appellant alleges general acts of bullying and harassment by school employees that she claims have resulted "in a hostile environment where there is a subtle conspiracy to prevent [N.E.] from graduating." (Appellant's Response to Motion). While this may be the Appellant's view of what transpired, she has not provided any evidence to support her allegations by way of affidavit. Moreover, the Appellant did not previously raise this issue before the local board, thus it is not properly on appeal before the State Board. *See, e.g., Nicole B. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-57 (2013) and cases cited therein (State Board will not review matters that were not initially reviewed by the local board).

Allegations Regarding Current IIS

The Appellant claims that N.E.'s current IIS "does not meet the requirements afforded him by the Board of Education for what is a free public education." (Appellant's Response to Motion). While the current instructional program is not the subject of the appeal, it bears mentioning that IIS is the MCPS version of home and hospital instruction under COMAR 13A.03.05. COMAR 13A.03.05.03D sets forth the minimum number of hours of instruction that a child on this type of instruction should be receiving. For a child in a full-day program, the

length of instruction is 6 hours a week. The local board maintains that N.E. is receiving the required number of hours of instruction.

Concerns Regarding Implementation of 504 Plan

The Appellant makes various complaints regarding the implementation of N.E.'s 504 Plan. To the extent that the Appellant takes issue with implementation of N.E.'s 504 Plan, such matters must be raised through that existing process as set forth in MCPS Regulation ACG-RB(V)(D). The regulation states that a dissatisfied parent may: (1) contact the MCPS 504 coordinator to seek review by the MCPS Department of Student Services; (2) access mediation through the Maryland Office of Administrative Hearings; (3) request a Section 504 hearing through the Maryland Office of Administrative Hearings by contacting the MCPS Section 504 coordinator; or (4) file a complaint with the U.S. Department of Education Office for Civil Rights. *Id.*

CONCLUSION

It is the Appellant's burden to prove that the local board's decision was arbitrary, unreasonable or illegal. She has not met this burden. For all of the reasons stated above, we affirm the decision of the local board.

Signatures on File:

Gail H. Bates

Clarence C. Crawford

Vermelle D. Greene

Jean C. Halle

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

Absent:
Justin M. Hartings
President

Rose Marie Li

Abstain:
Stephanie R. Iszard
Vice-President

April 23, 2019