

NALDA ROZON, et al.,

Appellant

v.

PRINCE GEORGE'S  
COUNTY BOARD OF  
EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-01

## OPINION

### INTRODUCTION

The Petitioners, students who are required to pay tuition for summer school courses, seek a Declaration that the Prince George's County Public Schools (PGCPS) may not charge tuition for core academic courses taken in summer school. The PGCPS has responded to the Petition. The Petitioners have replied and PGCPS has responded to the Reply.

### FACTUAL BACKGROUND

PGCPS adopted Policy No. 5118.4 that requires, among other things, students who take academic courses in summer school to pay tuition ranging from \$100 to \$455 per course. PGCPS waived twenty-five percent of the tuition, but there was no full tuition waiver no matter the financial circumstances of the student. In the summer of 2019, however, PGCPS changed that tuition policy reducing the cost to \$100 for half a credit and \$200 for a full credit. In addition, the maximum tuition waiver increased to 50% of the tuition cost. All students, however, must pay a \$25 non-refundable registration fee. (Appeal at 3-4).

Interestingly, PGCPS provides some free courses in summer school. They include: the STEM Middle School Project Summer Program, the 3D Scholars Orientation, the Pathways in Technology Early College High School (P-Tech) Summer Bridge, the First Steps to Success Program for NEW Science and Technology Students, the International Baccalaureate (IB) Summer Bridge, the CTE Career Explorers Summer Camp, and Project Lead the Way (PLTW) Engineering Summer Mathematics Mastery Academy. (Appeal. Ex. 13).

The Petitioners seek a declaration that charging tuition for academic summer school courses violates the laws of Maryland.

### STANDARD OF REVIEW

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.06E.

## LEGAL ANALYSIS

The issue in this case is what courses must be offered for free to all students because of the constitutional requirement that public schools must be “Free,” Md. Constitution, Article VIII, Section 1; and because of the statutory requirements that “[t]here shall be throughout this State a general system of free public schools, Ed. Art. §1-201; and that all students between 5 and 21 years old be admitted free of charge to the public schools in this State, Ed. Art. §7-101(a).

The Petitioners focus on the core academic courses of English, math, science and history because a student must pass those courses to matriculate and ultimately graduate. That, however, is true of all the other courses required for graduation, including: fine arts, physical education, health education, technology education, world languages. COMAR 13A.03.03(B). It appears that most of those other courses are also offered in summer school. (Appeal, Ex. 12). While the Petitioners’ argument often refers to the English, math, science, and history courses, we read it to include all courses required for graduation whether taken for credit recovery or original credit. Thus, reference to core academic courses herein means courses required for graduation.

The Petitioners argue that courses required for graduation offered in summer school must be free because they are an “integral part of the school curriculum.” (Appeal at 8). PGCPS, on the other hand, argues it is at the discretion of the school system to offer courses in summer school. Thus, PGCPS asserts that it can charge tuition because there is no constitutional provision, regulation, or statute that precludes local school systems from doing so. In the school system’s view, the only courses that must be offered for free are those offered in the 180-day school year.

No Maryland court has ruled on any issue involving school fees. There are, however, two Attorney General’s Opinions and several letters of advice that provide some guidance on what must be offered free of charge in Maryland schools and what may be subject to fees.

The Attorney General has opined, in the context of whether a public library could charge a fee for access to its informational services versus access to its ancillary services, (*i.e.*, copiers and computers), that public library resources are “essential components of the educational system...part of the system of free public education.” 72 Op. Atty. Gen. 262, 263 (1987). The Attorney General noted that the term “free” meant “without charge,” but he also stated that the Constitution did not prohibit free public schools, in some circumstances, from charging fees of various kinds. He pointed out that in some “free-education” states, the types of activities or courses for which a fee could be charged might include after-hours supplemental programs, but in other “free-education” states all educational activities whether curricular or extracurricular were to be free of charge. *Id.* at 266. The Attorney General concluded, “...we cannot say whether Maryland courts would go so far as courts in other states in categorizing the activities that must be offered without charge. But, whatever the outer limits of Maryland’s ‘free public schools’ guarantee, we are safe in saying that anything directly related to a school’s curriculum must be available without charge...[w]hatever is an ‘integral part of the education system must be free’.” *Id.* at 267.

That Opinion presents the constitutional parameters of what must be free in Maryland public schools, *i.e.*, anything *directly related* to the school’s curriculum, anything that is an *integral part* of the education system. Drawing the line that separates “integral” from non-integral or “directly related” from not directly related can be done in several ways. The school

system offers a bright-line approach asserting that the line is essentially a temporal one. If the course is offered outside the regular 180-day school year, the school system may charge tuition.

We concur with the school system's approach, finding support for it in the views of the Attorney General's Office. In 1995, in a letter of advice, the Attorney General's Office advised that it would be unconstitutional for a school system to charge a fee for a driver's education course offered during the regular school day, even though offering a course was discretionary under the then existing statute. *See* Letter of Richard Israel, Asst. Attorney General, to Senator Barbara Hoffman, (March 7, 1995) (attached to hereto) citing 57 Op. of Atty. Gen. 176 (1972). The letter went on to say, however, that a fee for a driver's education course offered "after the regular school day" would be permitted. That conclusion rests on a footnote in the 1987 Opinion of the Attorney General discussed above stating that "fees for instruction outside the school's courses would not necessarily be forbidden." 72 Op. of Atty. Gen. at 267 n.5.

In our view, the system of free public education created by the General Assembly and set forth in the Education Article only encompasses a 180-day school year. Students have the opportunity to complete the requirements for grade advancement and graduation during that time. Summer school is peripheral to the education system and is simply one of the discretionary ways that local boards may offer students the option to earn credit beyond the "regular school day and year" as provided in COMAR 13A.03.02.04B. Unlike the mandate for the 180-day school year in §7-103 of the Education Article, there is no mandate for summer school. Nor is there anything that indicates that summer school is "integral," regardless of whether the credits potentially earned may lead to grade advancement and graduation. It is an optional program offered outside of the regular school year.

Finding that a course is "integral" or "directly related" to the curriculum only if it is offered during the 180-day school year draws a definitive constitutional line separating those courses for which tuition may be charged and those that may be free of charge. There are advantages to bright-line demarcations. They are easy to spot, easy to apply, and crystal clear in their certainty. Deciding on a bright-line/180-day approach in this case is legally supportable.

## CONCLUSION

For the reasons stated above, we declare that Prince George's County Public Schools (PGCPS) may charge tuition for core academic courses taken in summer school.

Signatures on File:

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Jean C. Halle  
Vice-President

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Gail H. Bates

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Clarence C. Crawford

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Charles R. Dashiell, Jr.

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Vermelle D. Greene

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Justin M. Hartings

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Rose Maria Li

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Joan Mele-McCarthy

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Michael Phillips

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David Steiner

Absent:  
Warner I. Sumpter  
President

January 28, 2020