

MATTHEW L.

Appellant,

v.

SOMERSET COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-33

OPINION

INTRODUCTION

Matthew L. (“Appellant”) appeals the decision of the Somerset County Board of Education (“local board”) finding that Policy 500-4 (Curriculum Development) is the appropriate Policy under which to review Appellant’s objections to certain instructional materials in the 9th grade Honors English curriculum, rather than Policy 500-19 (Selection of Educational Media Materials). The local board responded to the appeal maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant filed a response and the local board filed a surreply.

FACTUAL BACKGROUND

This appeal originates with Appellant’s concerns about books and texts used as part of the 9th grade Honors English curriculum. Appellant filed various complaints concerning the use of the instructional material. Within those complaints, Appellant requested removal of certain instructional material from the 9th grade Honors English curriculum and that his son be exempt from certain instruction. The local board made a preliminary decision regarding which local policy is applicable to the review of Appellant’s complaints. The only issue before the State Board is Appellant’s appeal of the local board’s decision that Policy 500-4 applies to instructional materials chosen specifically to be used in classroom instruction to implement the curriculum and not Policy 500-19 which the local board determined applies to enrichment and supplementary resources provided in school media centers.

The underlying facts of the appeal are as follows:

Appellant objects to certain course materials being included in the 9th grade syllabus for Honors English. (Appeal, p.1–2 and Ex. 4; Local Bd. Motion, Ex. 1, p.2).

In correspondence to the local board on October 20, 2020, Appellant demanded:

As of today, SCBOE/SCPS or any teacher, is not permitted to teach my son and or my daughters anything that even hints on social injustice, identity, activism, sexual orientation, sexuality, BLM (Black Liberation Movement), Antifa, anti-Semitism, categorization of people, discrimination, shaming, racism, anti-racism, quality, equity, socialism, Marxism, communism, anti-

capitalism, fascism, collective responsibility, wealth distribution, reparations, the 1619 Project, victimhood, or anything of the sort. Their education will not be compromised, and they will not be indoctrinated. They will not be excluded, nor will be asked to drop any classes, or be a subject of retribution. It is my hope you will see that a teacher's responsibility is to neutrally teach the basics of Math, English, Science, and unchanged History (period).

(Appeal, Ex. 6).

By email dated October 23, 2020, the Superintendent advised Appellant that he would be applying Policy 500-4 to his review of Appellant's request to remove instructional material from the school curriculum instead of Policy 500-19. (Appeal, Ex. 7). The Superintendent's letter outlined the essential difference between the two policies:

- Policy 500-4 provides a procedure whereby parents can seek reconsideration of instructional materials that are part of the curriculum taught in the classroom; and
- Policy 500-19 provides a procedure to address parental requests to select and/or weed out supplemental instructional materials found in the library/media center. *Id.*

Appellant continued to correspond with school personnel, the local superintendent and the local board regarding his request to remove materials that he found objectionable from the curriculum and to excuse his son from participating in instruction he found objectionable. (Appeal, Exs. 9, 10, 12, 15-16). The books to which Appellant objected included *All American Boys* and *To Kill a Mockingbird* and text selections from *Poet X*, *Stamped*, *Hope Nation*, *Fresh Ink*, *House on Mango Street*. On November 12, 2020, the local superintendent denied the Appellant's request that his son be excused from participating in and receiving instruction about the matters to which he objected. (Appeal, Ex. 11).

During a December 14, 2020 telephone call with counsel to the local board, Appellant agreed to hold in abeyance his appeal of the Superintendent's decision denying his request to exempt his son from instruction so that it could be consolidated with any future appeal of the Superintendent's determinations about books and texts, and to first resolve which policy applied to his request. (Appeal, Ex. 14).

On January 8, 2021, the Superintendent requested that the local board make a preliminary determination about which policy should apply to his review of Appellant's challenge to the material given that the Appellant had challenged several materials that were in the process of being reviewed. (Local Bd. Reply, Ex. 1). On January 19, 2021, the local board issued a decision finding that "Policy 500-4 applies to instructional materials chosen specifically to be used in classroom instruction to implement the curriculum and Policy 500-19 applies to enrichment and supplementary resources provided in school media centers." (Appeal, Ex. 1).

This appeal followed. It concerns only the preliminary decision by the local board concerning the appropriate policy to apply to the Appellant's various requests to remove instructional material from the 9th grade Honors English curriculum.

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision is 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.01.05.06A.

LEGAL ANALYSIS

Applicable Policy

Appellant maintains that the local board erred in its determination that Policy 500-4 is applicable to his appeals requesting removal of instructional material from the 9th grade Honors English curriculum, and argues that Policy 500-19 should apply instead.

In reviewing Appellant's claim regarding the appropriate policy, we look to generally applicable principles of statutory construction. We consider (1) text, (2) purpose, and (3) consequences. Text is the plain language of the relevant provision, typically given its ordinary meaning, viewed in context, considered in light of the whole statute, and generally evaluated for ambiguity. Legislative purpose, either apparent from the text or gathered from external sources, often informs, if not controls, our reading of the statute. An examination of interpretive consequences, either as a comparison of the results of each proffered construction, avoidance of an absurd or unreasonable reading, grounds the court's interpretation in reality. *Town of Oxford v. Koste*, 204 Md. App. 578 (2012).

We will consider the two policies. Policy 500-4 states in the section "Requests for Reconsideration of Instructional Materials":

Parents, guardians, of Somerset students may request removal or restricted use of **core instructional materials** for their student. Formal requests must be made in writing to the building principal who will meet with the parent/guardian and teacher to reach a resolution. Decisions may be appealed to the Superintendent.

Formal written requests to remove items from the schools, or limit their use by all students, will be reviewed by a representative committee appointed by the Superintendent or designee. The committee will report its findings and will recommend action to the Superintendent. Decisions may be appealed to the Board for final determination. (emphasis added).

Policy 500-4(2)(F). Policy 500-4 specifically refers to the removal of "core instructional materials," focuses first on resolution with the principal and teacher, and does not remove curricular materials from student use during the review.

When read in its entirety, Policy 500-19 has a different purpose than Policy 500-4. Policy 500-19 applies to the library and media center instructional materials that support the

curriculum, but are not part of the curriculum. This distinction is evident in the highlighted role of the media specialist who is responsible for “weeding” the media collection each year to ensure materials are up to date, relevant, accurate, and useful, and which allows “media centers to effectively use limited space.” Under Policy 500-19, materials are removed from student use while a review is ongoing. Policy 500-19(A)(2).

We recognize that Policy 500-19 contains some language that creates some ambiguity. Policy 500-19 broadly defines “instructional materials.” It states:

Instructional materials will be defined as all print and non-print materials which are utilized as basic materials, supplemental material, and cursory material. Basic materials include those intended for use by every teacher of the subject or grade, with every student each year. Supplemental materials are used to support, enrich and/or individualize the curriculum or to meet specific needs. Cursory materials are those items which are of interest or value for a short period of time.

The Superintendent explained, however, that these instructional materials are not the materials that are part of the course curriculum. (Appeal, Ex. 7). They are not “core instructional materials.” Rather, the reference pertains to the various types of instructional materials that are available in a school and used in conjunction with the curricular materials, but that are not curricular materials themselves.

Policy 500-19 also states that individuals “who wish to make a complaint about material in a school library media center and/or classroom can arrange a conference with the building principal and the media specialist.” Policy 500-19(3)(A)(3)(a). As used in the overall context and scheme of the Policy the reference to supporting materials in the classroom refers to materials used by students and teachers that are not specifically curricular materials. Thus, on close inspection, we agree that Policy 500-19 applies to supporting curricular materials related to school libraries and media centers. Moreover, application of Policy 500-4 avoids an absurd result given that Policy 500-19 requires removal of materials during the period of review. Such an action would have the result of halting curricular instruction. There would be no basis for two different processes if the policies did not contemplate review of different types of materials.

The local board’s interpretation of the meaning and intent of its own policy is entitled to deference. *See Changing Point, Inc. v. Maryland Health Resources Planning Comm’n*, 87 Md. App. 150 (1991); *Sullivan v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-15 (2001). The reasoning contained in the local board’s decision finding Policy 500-4 applicable to a request to remove books and texts from the curriculum is consistent with principles of statutory construction. First, the local board determined that the primary objective of Policy 500-19 was to provide guidance regarding the selection of educational media for students and teachers. Second, it found that Policy 500-19 was directed and intended to apply to library books and materials, not to course curriculum materials. Third, the local board decided that the central role of the librarian and media specialist in the review process contemplated by Policy 500-19 is separate and distinct from the role of the teacher, building administrator and curriculum

specialists referenced in Policy 500-4. Fourth, the board decided that the library/media center materials described in Policy 500-19 are distinct from the primary instructional materials that deliver curricula content in the classrooms addressed by Policy 500-4. Finally, the board noted that the fact that Policy 500-19 contemplates the removal of materials from the library/media center during the complaint process, whereas Policy 500-4 does not call for the removal of curriculum texts from the classroom when a parent lodges a complaint, supports application of Policy 500-4 because removal of books and texts from the curriculum during the complaint process would lead to the result of crippling curricular instruction in those subjects until the complaint is resolved.

We find the local board's rationale compelling. We also find it compelling that both Policy 500-4 and Policy 500-19 contain their own, slightly different, processes applicable to reviewing objections to materials. Accordingly, we find the local board's interpretation of its own policies to be reasonable in light of the purposes of the two policies, and the policy schemes and the absurd consequences of applying Policy 500-19.

Due Process – No Right to Hearing or Oral Argument

Appellant maintains that his due process rights were violated because he had no opportunity for oral argument or an evidentiary hearing before the local board. Due process does not require a hearing on issues that do not involve a genuine dispute of material fact. *See Lessie B. v Caroline County Bd. of Educ.* MSBE Op. No. 11-16 (2011), citing, *Hethman v. Prince George's County Bd. of Educ.*, 6 Ops. MSBE 646, 648-49 (1993). The State Board has held there also is no right to an evidentiary hearing when there is no constitutional or statutory basis to provide one. *Id.* The record in this case does not support a constitutional or statutory basis for a hearing. In addition, there are no relevant material facts in dispute. The sole issue on appeal is a purely legal argument concerning which policy is applicable to the review of curricular material. We find no due process violation.

Involvement of Local Board Attorney

Appellant claims that his rights were violated by the local board's decision to involve its attorney in the local appeal process. (Response, pp. 7-10). We find no violation as there is no legal requirement precluding the involvement of legal counsel for the local board in the appeals.

Appellant also claims misconduct on the part of legal counsel "by not abiding by the agreement that was made on December 14, 2020 of combining [his] appeals to a single appeal." (Appeal, p.4). The Appellant filed separate local appeals regarding three issues: (1) Exemption from instruction; (2) Challenge to *All American Boys*; and (3) Applicable policy for review of material. There is no evidence to support the claim that the local board or its counsel agreed to merge the three appeals into a single proceeding. Rather, the record demonstrates the Appellant agreed to hold his appeals regarding the instructional materials in abeyance until the Superintendent had reviewed each item so that they could be consolidated into one case. The local board has held those appeals in abeyance pending final decisions by the Superintendent. However, the procedural issue regarding which policy is applicable to the Superintendent's

review of the materials proceeded as a preliminary matter given that various challenges are still pending before the Superintendent. We find nothing improper about this.

Conspiracy Claim

Appellant alleges that the local board Chairperson conspired with the Superintendent to ensure that Appellant’s request to remove certain books and texts from the 9th grade Honors English curriculum was reviewed under Policy 500-4 in order deny the appeal and to avoid suspending the use of all of the contested curriculum materials during the appeal process. (Appellant’s Response). The Appellant’s allegation is unsubstantiated and lacks merit. The Superintendent’s October 23, 2020 letter to the Appellant regarding his change of position about the application of the policy refers only to consulting about the policies on instruction “with some staff,” not members of the local board. (Appeal, Ex. 7). Appellant has provided no evidence to support this claim.¹

CONCLUSION

For the reasons stated above, we do not find the local board’s decision to be arbitrary, unreasonable, or illegal. We affirm the local board’s decision finding that Policy 500-4 applies to instructional materials chosen specifically to be used in classroom instruction to implement the curriculum.

Signatures on File:

Clarence C. Crawford
President

Jean C. Halle
Vice-President

Gail H. Bates

Charles R. Dashiell, Jr.

Susan J. Getty

¹ Appellant raises the fact that the local board is considering amending the two policies at issue in this case and that the local board considered a first reader of the amendments at its December 15, 2020 meeting. The amendments make changes clarifying the types of materials that are the subject of each policy. This action has no bearing on the appeal before us. We believe it is good practice, however, for local boards to review policies that come into question and amend them as needed.

Vermelle Greene

Rose Maria Li

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Holly C. Wilcox

Abstain:
Shawn D. Bartley
General Warner I. Sumpter

May 25, 2021