

BILL Z. AND JANELLE M.,

Appellant

v.

CARROLL COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-26

## OPINION

### INTRODUCTION

Appellants challenge the decision of the Carroll County Board of Education (local board) denying the Appellants' request to amend an oral exam grade received by their son in Spanish III. The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal and the Appellants responded. The local board replied.

### FACTUAL BACKGROUND

Appellants' son, BZ, is a student at Westminster High School. In the fall of 2014, BZ was enrolled in Catherine Crone's Honors Spanish III class. On Friday, October 3, 2014, and Monday October 6, 2014, Ms. Crone administered an oral assessment. Prior to administering the exam, Ms. Crone told the class that the students taking the exam on the 6<sup>th</sup> would have to "awe" her since they would have more time to prepare. Some of the students were assessed on Friday the 3<sup>rd</sup> and the others were assessed on Monday the 6<sup>th</sup>. There is nothing in the record to indicate how the students were chosen for either date.

Ms. Crone did not provide the students with a grading rubric, even though she had previously advised both students and parents that each assignment would be accompanied with a grading rubric. However, she followed the standard rubric used by Modern and Classical Languages teachers while grading each student. The rubric contained five categories and four levels of performance. The five categories are: (1) Language Function, (2) Text Type, (3) Communication Strategies, (4) Comprehensibility, and (5) Language Control. The four levels of performance are: (1) Exceeds expectations, (2) Meets Expectations STRONG, (3) Meets Expectations WEAK, and (4) Does not Meet Expectations. Students received 4-5 points for "Exceeds Expectations" and 3 points for the remaining levels. The highest number of possible points was 25. BZ scored 20 out of 25 of the possible points.

On October 28, 2014, the Appellants appealed BZ's grade on the exam to Principal Kenneth Gonez on the basis that Ms. Crone failed to provide a grading rubric and thus hindered BZ's ability to perform to his full potential. The Appellants further argued that Ms. Crone was "remiss" when she suggested that students taking the exam on Monday would be graded harder than the students taking the exam on Friday. (See Exhibit 2). Lastly, the Appellants noted that

BZ's final grade for the assignment was 20/25 even though the actual points that he received for each section added up to 17. As a result of this discrepancy, Appellants argue that Ms. Crone scored the students arbitrarily. Appellants requested that the grade for the oral exam be removed from BZ's record and not be included in the calculations for his final grade.

On October 31, 2014, Principal Gonez responded to the appeal. He stated the following:

Ms. Crone concedes that she was remiss for not providing students with the scoring rubric prior to the assignment. Arguably this would have enabled [BZ] to better prepare for his dialogue presentation. In addition, comments Ms. Crone made to the class may have confused the students and clearly would have given the impression that students who presented on Monday would be graded harder. Considering the rubric itself, although it is a standard rubric used by Modern and Classical Languages teachers throughout the county, I believe that assigning 3 out of 5 in a column entitled: "Meeting Standards Strong" is inconsistent with the county grading policy since it would correspond with a 60%, the minimum percentage for a D grade... While I do not find the additional points Ms. Crone awarded to [BZ] to be arbitrary, I do agree that they are subjective. Virtually all scoring rubrics contain a degree of subjectivity... In response to your appeal, my decision is to discount the score that [BZ] earned on the assignment, but not to eliminate the assignment itself from factoring into [BZ's] grade. The grading criteria and the expectations for completion of the presentation will be the same as the first time; however, Benjamin will be given a more specific rubric to assist him in preparing for the presentation. [Ms. Crone] will [also] help him prepare for the assignment.

Principal Gonez further advised Appellants that they could appeal to the local board if they did not agree with his decision.

On November 6, 2014, Appellants appealed Principal Gonez's decision to the local Superintendent, Stephen H. Guthrie. The appeal presented the following issues: (1) Due to failure of Ms. Crone to provide the testing rubric to the class in advance, the entire class was inadequately prepared for the oral assessment; and (2) Ms. Crone's statement that those students who completed the assessment on a subsequent day would be subject to a more stringent standard was inappropriate and created inequity affecting all students. The Appellants further argued that having BZ retake the test appeared to be punitive in nature because, not only would it create an additional burden on the student but it appeared to be retaliatory and sent a message to the student that he should not "challenge" the teacher even when it might be appropriate to do so.

On November 12, 2014, Mr. G. Thomas Hill, the Superintendent's designee, affirmed Principal Gonez's decision. Mr. Hill explained that allowing BZ to retake the exam was not punitive insofar as the assignment was consistent with the Carroll County curriculum. He further explained that if BZ retook the oral exam, his grade would replace the original grade; however if he chose not to retake the exam, then his original grade would stand.

On December 4, 2014, the Appellants appealed to the local board. The Appellants argued that the Superintendent's decision was "arbitrary, unreasonable, and probably illegal"

because the Superintendent incorrectly found that Principal Gonez gave BZ an option whether or not to retake the exam. The Appellants argued that Principal Gonez proposal did not have an option but instead would have forced BZ to retake the exam. The Appellants further argued that not providing the option to retake the exam would create a burden on BZ and send a message to the student body that they should not challenge a teacher even if it may be appropriate to do so.

Superintendent Guthrie responded to the appeal arguing too that the local board should (1) uphold the principal’s decision, and (2) dismiss the Appellants’ claim because the appeal was moot because “there is no longer an existing controversy and no remedy that the County Board can provide” given that BZ had received an “A” as his final grade in Spanish III. Appellants replied stating that “integrity to the grading process is essential at all levels, not just the final grade.” The Appellants further argued that it is “contrary to sound educational practices and not reasonable to consider a final grade valid if it is determined or partially determined using individual assignment grades the school has determined to be invalid.”

On March 11, 2015, the board issued a decision finding that the Appellants’ appeal was moot because BZ received an “A” in the course and there is no available remedy that the board could provide. The Appellants do not dispute that an “A” is the highest possible grade a student can receive in this course. The local board also concluded that it was not contrary to sound educational policy to require BZ to retake the assessment. The board explained that not requiring him to retake it would only prevent him from demonstrating his skills and make his final grade less reflective of his actual achievement.

On April 10, 2015, Appellants filed this appeal to the State Board.

### 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. A decision may be arbitrary or unreasonable if it is (1) contrary to sound educational policy or (2) a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached. A decision is illegal if it is one or more of the following: (1) Unconstitutional; (2) Exceeds the statutory authority or jurisdiction of the local board; (3) Misconstrues the law; (4) Results from an unlawful procedure; (5) Is an abuse of discretionary powers; or (6) Is affected by any other error of law. COMAR 13A.01.05.05B.

### LEGAL ANALYSIS

#### A. Grade Removal

Appellants maintain that Ms. Crone’s failure to provide a rubric resulted in BZ not scoring to his potential. Therefore, the Appellants are requesting that his grade for the oral exam be removed from his record and that it not be included in the calculations for his final grade. The State Board has continuously held that it “will not review the merits of a student’s grade” unless

there are specific allegations of failure to follow proper procedure or that the student's due process rights have been violated. *Crawford v. Washington County Board of Education*, 4 Op. MSBE 890 (1997) (*See also Fisher v. Montgomery County board of Education*, 7 Op. MSBE 915 (1997)). Here the Appellants argue that Ms. Crone failed to follow her regular procedure of providing the students a grading rubric, and that this failure negatively impacted BZ's grade. Principal Gonez recognized that there may have been some irregularities in Ms. Crone's grading process and gave BZ an opportunity to retake the exam with a proper rubric and have that grade replace the prior exam grade. The Appellants declined this offer. The Principal would not eliminate the grade altogether because the exam was consistent with the curriculum. In our view, this was a reasonable decision.

B. Mootness

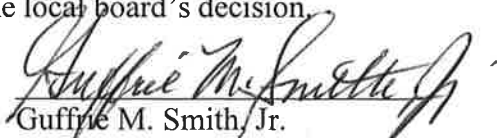
The Appellants argue that the oral exam grade should be removed from BZ's record. In our view, this issue is moot. A case is moot when there is no longer an existing controversy between parties, thus no longer any effective remedy that the courts or agency can provide. *In Re Michael B.*, Md. 232, 234 (1997). Here, BZ received a final class grade of an "A", which is the highest grade possible in the course (*See Exhibit 13*). The local board has explained that discounting the exam grade would have no effect in terms of bettering BZ's final grade. (*See Exhibit 8*). Moreover, the school system does not retain individual exam grades in the official student record. (*See Exhibit 8; See also Exhibit 10*). Thus, there is no longer an existing controversy or an effective remedy and the appeal is moot.


C. Retaliation

Finally, Appellants maintain that BZ was retaliated against through intimidation by school staff after challenging the grade that he received on the exam. Appellants argue that BZ has "the right to question his teacher and receive his education [free] from intimidation by school staff." Allegations of retaliation must be supported by evidence. Allegations alone are insufficient to support a claim of retaliation. *Keene v. Washington County Bd. Of Educ.*, Op. No. 04-02 (2004) (*See also Ewing v. Cecil County Bd. Of Educ.*, 6 Op. MSBE 818 (1995)). Here, the Appellants make a general allegation of retaliation against BZ by school staff, the Appellants, however, have not provided any specific factual information to support this claim.

CONCLUSION

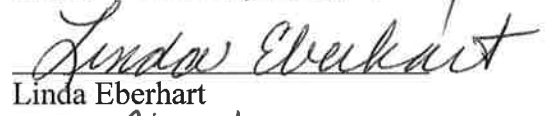
For the reasons stated above, we do not find the local board's decision to be arbitrary, unreasonable, or illegal. Accordingly, we affirm the local board's decision.

  
Guffie M. Smith, Jr.  
President

  
S. James Gates, Jr.  
Vice-President

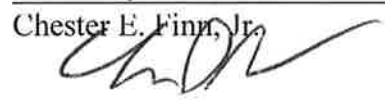


James H. DeGraffenreid, Jr.



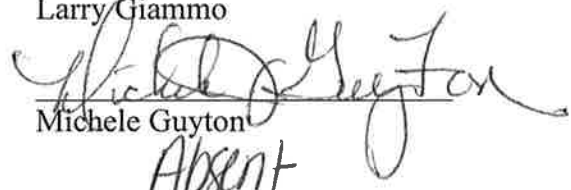
Linda Eberhart

Absent



Chester E. Finn, Jr.

Larry Giammo



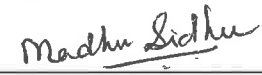
Michele Guyton

Absent

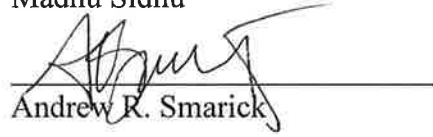
Luisa Montero-Diaz

Absent

Sayed M. Naved



Madhu Sidhu



Andrew R. Smarick

July 28, 2015