

PHILIP P.,

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-39

OPINION

INTRODUCTION

Appellant has appealed the decision of the Montgomery County Board of Education (local board) not to place his son in the accelerated 4th grade math class, called “compacted 4/5 math”, at Sligo Creek Elementary School (“Sligo Creek ES”). The local board has filed a motion for summary affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant has responded to the local board’s motion, and the local board has replied.

FACTUAL BACKGROUND

Appellant’s son, D.P., is in the French Immersion Program at Sligo Creek Elementary School (“Sligo Creek”). During the 2011-2012 school year, when D.P. was in the 2nd grade, he received accelerated math instruction. During the 2012-2013 school year, when D.P. was in the 3rd grade, Montgomery County Public Schools (MCPS) began implementation of a new curriculum, known as Curriculum 2.0 (C2.0).¹ As a result, there was no accelerated math instruction for the 3rd grade.

In December 2012, in D.P.’s 3rd grade year, Appellant began raising concerns about the lack of opportunity for accelerated instruction in the new math curriculum, which he believed was causing his son to become bored and disinterested in class. He was concerned that his son’s boredom would be misconstrued as difficulty with the subject matter. (Appeal Attach. at A & B). Appellant received information that, even though there was no accelerated math class for the 3rd grade, enrichment was available to all students. He accepted this representation but emphasized his concern about the lack of information about an accelerated program in the future.² *Id.*

On February 1, 2013, elementary school principals met for a curriculum update. (BOE Ex.1). Although MCPS expected that most students would be best served by C2.0 4th grade math because it was more challenging than the previous curriculum, it recognized that some students

¹ C2.0 math is aligned to the Common Core State Standards and is designed to challenge all levels of instruction. (BOE Ex.2).

² Information about an accelerated math program for the following school year had not yet been rolled out to the school principals.

might need more challenging instruction. For these students, MCPS designed “compacted 4/5 math,” a course that combined all of C2.0 grade 4 math with part of C2.0 grade 5 math. Compacted 4/5 math instruction was scheduled to begin in the 2013-2014 school year. (BOE Ex.2). The principals received information about compacted 4/5 math and the process for identifying 3rd grade students for participation in the program for the 2013-14 school year. In a February 25, 2013 memorandum from the Associate Superintendent, the principals received updated information about compacted 4/5 math and the identification process. (BOE Ex.1).

The process for identifying 3rd grade students for participation in the compacted 4/5 math included the following, in pertinent part:³

- To be considered a candidate for eligibility for compacted 4/5 math, a student should be proficient in all grade level curriculum indicators and consistently proficient in all of the weekly enrichment and acceleration opportunities.
- To determine which of the candidate students will be best served in compacted 4/5 math, the student should satisfy the “best fit” criteria. The criteria are as follows:
 - Independently and consistently demonstrate proficiency as defined by the five strands of UCARE,⁴ earlier than the end of instruction for concepts and/or topics;
 - Meet the criteria for enriched and accelerated mathematics within the UCARE Assessment Portfolio...;
 - Have needs that would best be met through a much quicker pace of instruction, while maintaining the depth of understanding; and
 - Be among the highest performing students in that grade level or do not have a group of similarly situated peers in his or her grade level class.

(BOE Ex.1A & Ex.2). The Superintendent updated the local board in a memorandum dated June 14, 2013. (BOE Ex.2). He indicated that school principals were in the process of mailing letters to parents/guardians of students who were recommended for compacted 4/5 math instruction.

By memorandum dated August 23, 2013, the Associate Superintendent updated the elementary school principals on the fall process for identifying students for compacted 4/5 math who were in need of reevaluation based on Spring performance or who were new to MCPS. (BOE Ex.3). Candidates for reevaluation had to satisfy one of the following: (1) a student who was recommended for reevaluation by the student’s school or another MCPS school in the spring; (2) a student who was close to recommendation in the spring and the school wanted to collect additional data to make a final decision; or (3) a student new to MCPS and review of the student’s data and initial observations indicate that the student may be a candidate. (BOE Ex. 3A, p.12). Staff were required to complete the two fall UCARE assessment portfolio tasks to determine whether the candidate met all four of the “best fit” criteria. *Id.*

³ This two-step process was developed by staff in the Office of Curriculum and Instructional Programs (OCIP) and the Office of Shared Accountability (OSA) in collaboration with the schools. (BOE Ex.2). The criteria and assessment instruments were developed to align with the MCPS curriculum, the local grading policy, and standardized assessments that aligned with the Common Core State Standards. (BOE Ex.28).

⁴ UCARE stands for Understanding, Computation, Application, Reasoning, and Engagement. These are the five strands by which MCPS measures proficiency in the identification process. (BOE Ex.1A, p.2).

D.P. began the 4th grade at the start of the 2013-2014 school year. D.P. was not selected for the compacted 4/5 math instruction. The screening tool used to identify candidates for the compacted 4/5 math assessment class included review of data from the quantitative reasoning section of the CTB InView. The InView benchmark was set as the 90th percentile, but D.P. scored only in the 41st percentile. (BOE Ex.24).

Once Appellant became aware that D.P. was not in the accelerated math class, he contacted the school. Beginning September 9, 2013 through December 2013, Appellant and MCPS staff had nearly daily contact through emails, phone calls, and six parent/staff conferences about compacted 4/5 math and Appellant's desire to have D.P. placed in that course. (BOE Exs.4 – 7).⁵

On September 16, 2013, Ms. Diantha Swift, principal of Sligo Creek, advised the Appellant that extensive testing had been done the prior school year to determine eligibility for compacted 4/5 math, that D.P. did not meet the criteria for inclusion in the class, and that many of the students who performed at an accelerated level in the past were not performing at those same levels with the new curriculum. (Appeal Attach. at D). Appellant asked school staff to perform another review of D.P.'s eligibility for the compacted 4/5 math and requested a staff meeting. (Appeal Attach. at E – H).

At the parent conference on September 20, 2013, MCPS staff discussed with Appellant the reasons for D.P.'s placement in math 4, the data supporting the placement, and the eligibility criteria for compacted 4/5 math. (BOE Exs.4 & 24). The screening tool used to assess eligibility included data from multiple performance indicators, including the quantitative reasoning section of the CTB InView test. The benchmark for the InView was at the 90th percentile, and D.P. scored at the 41st percentile. (BOE Ex.24). Appellant disagreed with the placement decision and sought further review.

The next parent conference was on October 2, 2013.⁶ This conference focused on the criteria for placement, review of the math placement articulation tool, and the reasons why D.P. was not selected for the compacted 4/5 math. (BOE Ex.24). School staff agreed to provide Appellant with D.P.'s math assessment scores, create an action plan to help support D.P. in class, and conduct an observation of D.P. during math. (BOE Exs.4, 5, & 24).

At the next parent conference on October 15, 2013, Ms. Casper reported on her classroom observation of D.P. during math class.⁷ She stated that D.P. did not participate in the whole group instruction; needed prompting to work with his assigned peer partner; and had difficulty with math reasoning in the small group discussion of a problem. (BOE Ex. 24). The action plan was shared. Ms. Casper agreed to do a full UCARE reassessment of D.P. for compacted 4/5 math, using outside evaluators to administer the assessments to avoid any

⁵ Appellant asserts that there were some students who were accepted into the program in the fall who were not tested. Appellant has provided no evidence to support this claim.

⁶ Ms. Swift; Bronda Mills, Associate Superintendent; Meredith Casper, Director of the Division of Accelerated and Enriched Instruction; and Michael Bayewitz, Director of Elementary Schools, attended the conference. (BOE Ex.5).

⁷ Ms. Swift; Dr. Bayewitz; Ms. Casper; and Andrew Goldberger, Sligo Creek staff development teacher, attended the conference. (BOE Ex.5)

appearance of bias. The group also agreed to move D.P. to the highest math group for C2.0 grade 4 math, to provide Appellant with an analysis of D.P.'s report card grades, and to provide Appellant an analysis of D.P.'s learning strengths and needs based on his classroom performance. (BOE Exs.10 & 11). Appellant expressed support for the plan. (BOE. Ex.12).

During the week of October 24 and October 28, Catherine Priser, D.P.'s classroom teacher, and Dr. Sandra Duval, an elementary instructional specialist, conducted classroom observations as part of the reassessment for D.P.'s possible placement in compacted 4/5 math. (BOE Exs.14 & 15). The Pine Crest Elementary School math content coach, Elizabeth Sadqi, administered the assessment tasks. (BOE Ex.16). Meanwhile, Appellant sent additional emails in October reiterating his view that D.P. belongs in the compacted 4/5 math class and that D.P.'s failure to perform in school was due to boredom. (BOE Exs.4, 5, 6, & 12).

At the November 5, 2013 parent conference,⁸ staff reviewed the two UCARE observation reports, the reassessment tasks, and current classroom performance. They advised Appellant that D.P. was not eligible for placement in the compacted 4/5 math class. (BOE Ex.17). With regard to classroom performance, Ms. Swift reported that D.P. was moved to the highest level group for C2.0 grade 4 math where his performance was considered inconsistent and incomplete. In addition, he had difficulty with peer and teacher interactions. (BOE Ex.25). With regard to the UCARE observations, Dr. Duval rated D.P.'s performance as "Emergent" while Ms. Priser rated D.P.'s math performance as "Proficient." For D.P.'s task assessment, he scored 0 out of 4 on Reasoning and 0 out of 4 on Applying on Task One. On Task Two, he scored 0 out of 4 on Understanding and 1 out of 4 on Computing. Ms. Sadqi concluded that D.P. was an "on-level Math 4 student" who did not demonstrate the necessary understanding, application, reasoning, or engagement for the compacted 4/5 math placement. (BOE Ex.17). It was agreed that D.P. and Appellant would meet with the principal and classroom teacher to discuss D.P.'s math performance and get D.P.'s perspective. They also agreed to provide current work samples, and to work together to set goals and implement a plan for D.P.'s success. In addition, Ms. Priser would send home copies of class assignments for one week. (BOE Ex.17).

Shortly after the conference, Appellant sent an email highlighting some concerns to the staff who had attended the meeting. Specifically, Appellant found problems with the directions provided for the assessment tasks, finding the questions as worded to be "tricky" and "problematic" and suggested rewording them. He also questioned the rubric used to determine the qualifying score for compacted 4/5 math, stating that he had not seen "any mapping of tasks to common core constructs" and that he could not determine that the assessment was measuring what was intended without release of the assessment items.⁹ (BOE Ex.18). Appellant also sent a link to a YouTube video he had made of D.P. working on math problems on a white board at home. (BOE Ex.20).

On November 8, 2013, Appellant wrote two letters. The first was to Ms. Mills formally

⁸ Ms. Swift, Mr. Bayewitz, Ms. Casper, and Ed Nolan, Director of the Math Implementation and Development team were present at the conference. (BOE Ex.17).

⁹ MCPS did not release the assessment items to Appellant in response to a Public Information Act request claiming that they were exempt from disclosure under §10-618(c) of the State Govt Art. in order to protect the integrity of the assessment. (Motion, p.7 n.8).

asking for the process available to a parent who suspects that the compacted 4/5 math assessment was “erroneous or had its validity compromised.” (Appeal Attach. at M). The second was to Mr. Geoffrey Sanderson, Associate Superintendent for Shared Accountability, seeking information about the assessments used to screen students for compacted 4/5 math, including studies to account for the use of teacher grades, the design principles used in the development of the assessments, and any field testing. (Appeal Attach. at N).

On November 11, 2013, Appellant again wrote two letters. The first was to Ms. Swift reiterating that D.P. was capable of more advanced math instruction. He stated:

I continue to see a child that is fully capable of more advanced mathematical instruction without frustration or difficulty in comprehension. I also see him responding very poorly to a rigid and behaviorist instructional environment where content and tasks are sequenced with little instructional purpose. I continue to see a response from the school that seems intent on defining him in a way that limits ability and where potential for growth is defined by the school staff according to an evaluation process that is not open to inspection or discussion.

(BOE Ex.21). The second was to Ms. Mills stating the concerns he raised in the letter to Ms. Swift. He pointed out that there is a disparity between D.P.'s math work at home versus in school. When working with D.P. on math at home, Appellant maintains that D.P. is able to complete grade 4, grade 5 and some grade 6 math tasks with no difficulty or frustration. Appellant also requested to appeal the decision to retain D.P. in C2.0 grade 4 math. *Id.* Ms. Mills referred the letter to the Appeals and Transfer Team in the Office of the Chief Operating Officer (COO) where it was assigned to Hearing Officer Janice N. Faden for review. (BOE Ex.24).

Meanwhile, the next parent conference took place on November 15, 2013. The purpose of the meeting was to explore why there might be a discrepancy between D.P.'s performance in math at home and his performance at school. (BOE Ex.22). Staff shared some observations about D.P.'s lack of engagement, task completion, and interaction with peers at school. D.P. stated that sometimes math is not interesting to him, that sometimes it is too challenging and other times it is not challenging, that he does not like to ask for help when he does not understand a task, and that it is scary to answer questions in a group. They discussed with D.P. the importance of showing what he can do in math at school. The group also discussed strategies to support D.P. in class and set some goals for him. *Id.* In an email sent that same day, the Appellant agreed with these strategies and goals, but reiterated his belief that D.P. needed to be in the compacted 4/5 math. He indicated his intent to continue with his appeal. (BOE Ex. 23).

While this was happening, Ms. Faden was gathering information on the appeal of D.P.'s math placement. She exchanged emails and phone calls with Appellant. Appellant shared his view that D.P. belonged in the compacted 4/5 math class. He stated that D.P. has been able to perform well on math tasks at home even though he has been unable to achieve the same results in school because he is bored in school and shutting down, which has thereby affected how he

was viewed during the selection process. (Appeal Attachs. at R – U). Ms. Faden also spoke with numerous MCPS representatives and educators who were involved in this matter. (BOE Ex.24).

In a memorandum to Larry Bowers, COO, Ms. Faden summarized her findings and conclusions. She concluded that the extensive assessments and observational data done by Sligo Creek and MCPS central office staff support D.P.'s placement in the C2.0 grade 4 math class. She noted that school staff had followed the process for placement consideration, and that the school system had been responsive to Appellant's concerns and requests through numerous communications, explanations, and reconsiderations by school and outside staff. She stated that while D.P.'s at home math performance appeared to be better than his performance in school, his programming in school needed to be based on how he performs in the school setting. She further noted that the teacher had placed D.P. into the highest math class for grade 3, and D.P. had difficulty. She recommended that D.P. remain in the C2.0 grade 4 math class. (BOE Ex.24). Mr. Bowers adopted Ms. Faden's recommendation on December 4, 2013. (BOE Ex.25).

On December 9, 2013, Appellant wrote to Dr. Joshua P. Starr, MCPS Superintendent of Schools. Appellant included a copy of his November 8 letter to Ms. Sanderson and asked Dr. Starr to intervene to provide information he had requested. He argued that without disclosure of the requested materials, including the actual task assessments used to evaluate the candidates for compacted 4/5 math, that there was no way to evaluate the instruments, the program, or how it is aligned with the Common Core. (BOE Ex.26). That same day, Appellant also wrote to Mr. Bowers to notify him that he believed there were errors in Ms. Faden's report, and that the report only related to D.P.'s math placement but failed to address his other concerns about math instruction at Sligo Creek. (Appeal Attach. at X). Appellant stated he would submit a separate complaint on the instructional issue. *Id.* Appellant followed this up with another letter to Mr. Bowers the next day. (BOE Ex.27).

On December 13, 2013, Appellant submitted a complaint to Dr. Erik Lang, Associate Superintendent for Curriculum and Instructional Programs, regarding the method and implementation for selecting students for compacted 4/5 math. He challenged the assessments as not being reflective of D.P.'s math ability. He also challenged the selection process on the basis that (1) he was not provided with student results in order to determine what would constitute performance levels on different tasks; (2) he was not provided information on how the instrument was developed to align with Common Core or how it compares to other instruments in order to determine if it is well designed. (Appeal Attach. at Y).

On December 20, 2013, the Appellant again wrote to Mr. Bowers with a similar version of the previous complaint he sent to Ms. Mills on November 11, 2013 upon which Mr. Bowers had already rendered a decision on December 4th. The Appellant requested that D.P. be placed in compacted 4/5 math, be permitted to complete the math curriculum 2.0 as a home independent study, and have the option at the end of the 2013-14 school year to test into 6th grade math for the next school year. (Appeal Attach. at CC). This letter from the Appellant was treated as an appeal of Mr. Bowers' decision to the local board.

By memorandum to the local board dated January 13, 2014, Dr. Starr, responded to the appeal. He noted that no new evidence was provided with the appeal to justify D.P.'s placement

in the compacted 4/5 math class. As to the process followed by MCPS staff, Mr. Starr stated the following:

With regard to [Appellant's] concern about the selection and communication process for inclusion in the compacted mathematics class, the Sligo Creek Elementary School principal reported that the school followed the guidelines and training clearly and consistently outlined countywide. As for the issue of fairness for all students, the selection process is clearly defined and appropriate. MCPS staff receives training on its implementation, resulting in consistency throughout the system and supporting equal opportunity for all students. In his aforementioned correspondence, [Appellant] also questions the validity of the screening instruments used and the criteria for inclusion in the compacted mathematics class. The criteria and assessment instruments are aligned with the MCPS curriculum, grading and reporting policy, and standardized assessments that are aligned with the Common Core State Standards. A consistent identification process was developed to ensure a standard that is applied fairly to all students.

Dr. Starr supported D.P.'s continued placement in C2.0 grade 4 math, but recommended that D.P.'s progress in math be reviewed at the end of the school year. (BOE Ex. 28). Appellant continued to write to Dr. Starr (Appeal Attach. at EE) and also to the local board. (BOE Ex.29).

On February 11, 2014, the local board unanimously voted to uphold the decision of the local Superintendent. It issued its written decision on February 24, 2014. (BOE Ex.30). The local board stated that many of Appellant's concerns "relate to broad programmatic matters which are not properly addressed in a discrete appeal." The local board focused on those matters that it felt most closely related to S.P.'s placement. The board recognized an apparent difference in D.P.'s math performance in school versus at home, but found that in-school performance was controlling for purposes of the eligibility determinations. It found the inclusion of the class observations appropriate and consistent with the assessments that were performed. The board also noted that MCPS staff met with Appellant and considered his input. Ultimately, the local board declined to substitute its judgment for that of the professional educators involved with D.P.'s placement and affirmed the decision that D.P. remain in his assigned math class, which was the most advanced group within the C2.0 grade 4 math class. The local board agreed, however, that D.P. should be reevaluated at the end of the school year for future math placement. *Id.*

This appeal to the State Board followed.

STANDARD OF REVIEW

This appeal concerns a local board's decision of its local policy and thus, it is considered *prima facie* correct. COMAR 13A.01.05.05A. The State board may not substitute its judgment

for that of the local board unless the decision is arbitrary, unreasonable, or illegal. *Id.* A decision may be arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the conclusion of the local board. COMAR 13A.01.05.05B. A decision may be illegal if it is unconstitutional; exceeds the statutory authority or jurisdiction of the local board; misconstrues the law; results from an unlawful procedure; is an abuse of discretionary powers; or is affected by any other error of law. COMAR 13A.01.05.05C.

LEGAL ANALYSIS

Appellant raises several issues in his appeal to the State Board. He charges MCPS with using a selection process that excluded D.P. from a math program for which Appellant maintains he was eligible, thereby denying D.P. of the opportunity to learn. He also charges MCPS with “misuse” of the local board’s “fiduciary responsibility” by using a “secret” selection process prone to errors and bias, but which could not be publicly reviewed or challenged because parents do not have access to the testing information. He further charges the school system with “insensitive implementation” of the appeal process by failing to answer all of his questions and failing to address all of the issues he raised. (Appeal).

Appellant asks the State Board to place D.P. in the compacted 4/5 math class for the 2013-14 school year and place him in advanced math for the 2014-15 school year. If there is not sufficient time to implement placement in the 2013-14 school year, Appellant asks the State Board to place D.P. in the accelerated math class next year with MCPS providing the materials and support for that transition. Appellant also asks that the State Board grant the relief he requested in his December 13, 2013 letter to Dr. Lang. In that letter he requested the use of a new screening instrument based on Common Core performance in lieu of the current instrument until the validity of the current instrument could be measured with confidence. He also requested that D.P.’s results be invalidated and removed from his record. (Appeal Attach. at Y).

Preliminary Issue

One of the remedies requested by the Appellant is that D.P. be placed in the compacted 4/5 math class for the 2013-14 school year. The 2013-14 school year is now over and that remedy can no longer be provided. Another remedy requested is that D.P. be placed in the accelerated math class for next school year (5th grade). That is also a remedy that the State Board cannot provide because D.P. was not assessed for the 5th grade accelerated math class. He was assessed only for eligibility for the 4th grade accelerated math class – compacted 4/5 math. Nonetheless, Appellant has requested that D.P.’s math assessment scores from the compacted 4/5 math selection process be removed from his record. We will proceed, therefore, to address the issues raised in this appeal.

Denial of Placement in Compacted 4/5 Math Class

The Appellant claims that D.P. was denied the opportunity to learn because he was placed in the C2.0 grade 4 math class in error when he should have been placed in the compacted 4/5 class. He believes that his son was bored in math class which was causing him to become disinterested and not perform to his potential, which in turn Appellant believes was mistakenly

viewed as poor performance. The local board maintains that D.P. was properly placed.

At the outset we point out that there is no right for a student to be placed in a particular school program. See e.g. *Matthew W. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-07 (2008); *Hoogerwerf v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-05 (2006). A decision about class or program placement, such as this one, is based on the policies and criteria established by the school system.

MCPS developed a process for selection of students to participate in the compacted 4/5 math program to be used for selection of MCPS 3rd grade students in the spring, and also a process for selection in the fall of the 4th grade year. The process involved review of a wide range of student data. See BOE Exs.1A, 1B, 3A & 3B. According to that process, the first step is to identify if the student is a candidate for assessment. To be a candidate, the student must be proficient in all grade level curriculum indicators and consistently proficient in all of the weekly enrichment and acceleration opportunities. If the student is a candidate, the second step is to determine if the student meets the “best fit” criteria for placement in the class. Those criteria are (1) independently and consistently demonstrating UCARE (understanding, computation, application, reasoning, and engagement) mathematics proficiency, earlier than the end of instruction for concepts and/or topics (through performance on UCARE tasks); (2) meeting the established UCARE Assessment Portfolio benchmark for enriched or accelerated math; (3) having needs that would best be met through a much quicker pace or instruction while maintaining depth of understanding; and (4) being among the highest performing students in the grade level or have no other similarly situated peers in the student’s grade level class. (BOE Exs.1A, 1B, & 2).

MCPS evaluated D.P. according to the selection process in the spring of his 3rd grade year measuring him using the same criteria used for other students. School staff determined that D.P. did not meet the established criteria based on his performance in class and on the assessment. MCPS reassessed D.P. in the fall of 4th grade and had numerous meetings and exchanges with Appellant regarding D.P.’s math placement throughout the first part of the school year. In addition to the formal classroom observation performed by D.P.’s teacher, an outside instructional specialist formally observed him as part of the evaluation. D.P.’s classroom performance was inconsistent. He received a rating of “proficient” in one observation and “emerging” in the other. In addition, a math content coach from a different elementary school conducted the assessment tasks to avoid any potential bias. He scored a 0 out of 4 on one task and a 1 out of 4 on the other. The reassessment confirmed the original decision not to place D.P. in the class because he failed to meet the established criteria.

The State Board has repeatedly held that a school system is free to rely on its own assessments and that placement decisions based on a child’s failure to attain required assessment scores is a reasonable basis for the decision. See e.g., *Angela A. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 13-45 (2013); *Shariah M. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 13-17 (2013); *Robert and Robin C. v. Wicomico County Bd. of Educ.*, MSBE Op. No. 13-02 (2013); *Theresa C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-54 (2008); *Tonya L. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-54 (2008). There is nothing arbitrary, unreasonable or illegal about a local board following its established criteria and

denying a student entry to a program on that basis.

Appellant disagrees with the results based on D.P.'s performance on math tasks that he works on at home and on his performance in prior school years. The fact that D.P. performed well in class in prior years is not dispositive of how he performed in the 3rd grade after implementation of a new math curriculum. Appellant was advised that the new curriculum had posed a challenge to some students who had previously performed at an accelerated pace. In addition, MCPS explained to Appellant that it is D.P.'s in-school performance that is controlling and must dictate his school math placement. While Appellant would like the in-school performance to be discounted, we believe that it is appropriate and reasonable for the school system to consider the observation of experienced educators in the assessment process.

Unfairness in Selection Process

Appellant argues, however, that MCPS's process for selecting students for placement in compacted 4/5 math is unfair because it is not transparent and it is not scientifically based.

Appellant has consistently maintained that the school system has not been forthcoming with information about the process for identifying student eligibility for the compacted 4/5 math class and how the assessment proficiency decisions are made. We note that elementary school principals were not made aware of compacted 4/5 math or the process for selecting candidates until a February 1, 2013 meeting. (Appeal Attach. at AA; BOE Ex.1). Any inquires made by the Appellant to the school principal or D.P.'s teacher prior to that time would not have revealed the accelerated option for the 4th grade. While Appellant is bothered by the fact that MCPS informed parents of students placed in the compacted 4/5 math about it over the summer and told parents of students who were not placed nothing about it, we cannot conclude that such action was arbitrary, unreasonable or illegal.

MCPS did not provide the Appellant with samples of the UCARE assessment tasks to protect the integrity of the testing instruments. It provided Appellant with quite a bit of information however. It shared detailed notes of D.P.'s classroom observations and notes that formed the basis for D.P.'s ratings on each task. (BOE Exs.13, 14, 15, & 16). MCPS staff met with Appellant on numerous occasions and reviewed the UCARE observations, the task reassessments, and D.P.'s classroom performance. In addition, Appellant had access to several documents explaining the selection process and criteria which are exhibits to the local board's motion. In particular, the 2013 UCARE Assessment Portfolio explains UCARE with specificity, setting forth the qualifying process and criteria, the scoring guide, and the rubric of characteristics to consider in evaluating student proficiency in each of the 5 UCARE strands. Appellant had this information at least by December 2013, which was prior to his appeal to the local board. (Appeal Attach. at AA).

Appellant disagrees with MCPS's decision to use the UCARE framework because it is not a "formal or industry accepted assessment" and he cannot assess its validity or compare it to other assessments because he does not have access to the full test protocol. First, it is up to a local board to determine how to evaluate students for class placement, including what type of assessment is used by the school system. This is a matter left to the expertise of the educational

professionals of the school system. There is simply no legal mandate that one type of assessment be used over another. *See, e.g. Angela A. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 13-45 (2013). In addition, Appellant himself acknowledges that MCPS is not the only entity utilizing the UCARE approach.

Second, as explained by the local board, divulging the test protocol would compromise the integrity of the test and risk invalidating the tool used by the school system to assess eligibility. We have previously recognized that it is within the discretion of a school system to conceal details regarding eligibility tests on this basis. *See Angela A. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 13-45 (2013); *Shariah M. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 13-17 (2013). Moreover, the State Board lacks subpoena power to require a school system to disclose such information.

We understand the Appellant's dilemma given that the burden of proof lies with him. The information can be sought out in other ways, however, such as through a Public Information Act (PIA) request under Md. Code Ann., State Gov't §§10-611 *et seq.* The Appellant here did just that. The local board denied the request of the test protocol as being exempt from disclosure under the PIA and referred him to the mathematics director for information about test development. (Appeal Attach. at AA). If Appellant was dissatisfied with the response, his avenue of redress was to follow the procedure set out in the PIA for those aggrieved by a public body's failure to comply with the provisions of the Act. Section 10-623 provides that an individual who is adversely affected by a public body's failure to comply with the PIA may file a petition in the circuit court. The State Board of Education is not the appropriate forum for redress of issues arising under the PIA. *See James v. Talbot County Bd. of Educ.*, MSBE Op. No. 02-40 (2002).

Implementation of Appeal Process

The Appellant is unhappy with the responsiveness of MCPS to his questions and requests throughout the appeal process. The record discloses that MCPS and its representatives were responsive to the Appellant via email, phone calls, and parent conferences, attempting to address his concerns and questions in regards to what ultimately led to D.P.'s math placement and the process followed by the school system. (*See* BOE Exs.4, 5, 6, 7, 8, 17, 22). The method and results of D.P.'s assessments and observations were explained and shared with the Appellant. (BOE Ex. 8). The Principal of Sligo Creek ES established a schedule of action items that would help D.P. in his math studies. (BOE Ex.11). This included moving D.P. into an accelerated group in his Grade 4 math class, conducting two UCARE observations in class, and analyzing D.P.'s skills to provide projects in his areas of strength. *Id.* There was a series of conferences with the Appellant from October 2013 until his appeal was filed with the local board. (BOE Ex.4). It is clear that MCPS representatives were responsive to the Appellant regarding D.P.'s math placement, although it is possible there was some confusion along the way given the sheer amount of correspondence the Appellant directed to MCPS staff. Once the Appellant formally initiated the appeals process, everything occurred in a timely manner.

Appellant states in the appeal that the school system has not appropriately responded to his Public Information Act request and has violated FERPA by failing to produce certain

requested information. The State Board is not the appropriate forum to redress such claims. Rather, the remedies are spelled out in the laws themselves. As mentioned above, for redress of PIA claims, Appellant's option is to seek review in the Circuit Court. Md. Code Ann., State Gov't §10-623. For redress of FERPA claims, Appellant's option is to file a complaint with the Family Policy Compliance Office of the United States Department of Education. 34 C.F.R. §99.63.

With regard to Appellant's request that the local board implement an entirely different evaluation process, the local board has refused to entertain such a request as part of the appeal process. As the State Board has stated, unless a local board policy is illegal, individuals may not use the administrative appeal process to force a change in local board policy. *See Regan v. Montgomery County Bd. of Educ.*, MSBE Op. No. 02-48 (2002)(refusal to consider appeal seeking to establish or modify curriculum, policies or procedures). This applies as well to a request to change the manner in which the school system conducts class placement assessments.

Future Math Placement

The 2013-2014 school year is now over. In Dr. Starr's memorandum to the local board, he suggested that school staff evaluate D.P.'s progress in math at the end of the school year for appropriate placement in the 2014-2015 school year. (BOE Ex.28). We believe that school staff should follow through with this recommendation to determine if D.P. should be placed in an advanced mathematics course for the 5th grade.

CONCLUSION

For the reasons stated above, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

Absent

Charlene M. Dukes
President

Mary Kay Finan

Mary Kay Finan
Vice President

James H. DeGraffenreidt, Jr.

James H. DeGraffenreidt, Jr.

Linda Eberhart

Linda Eberhart

S. James Gates, Jr.

S. James Gates, Jr.



Larry Giammo



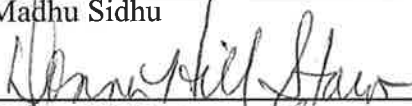
Luisa Montero-Diaz



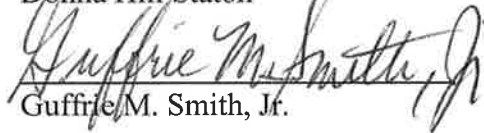
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffrie M. Smith, Jr.

July 22, 2014