

SONYA B.,

Appellant

v.

MONTGOMERY COUNTY BOARD OF
EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-09

OPINION

INTRODUCTION

The Appellant, the mother of an 8th grade student in Montgomery County Public Schools (MCPS) has appealed a decision of the Montgomery County Board of Education (local board) relating to mistakes that were made by the school which resulted in her son's attendance in the 8th grade human sexuality classes. The local board has filed a Motion to Dismiss or for Summary Affirmance (Motion).

FACTUAL BACKGROUND

Last year, while attending Shady Grove Middle School as an 8th grade student, Appellant's son remained in class during a health education unit, Family Life and Human Sexuality and HIV/Aids Prevention, for which students were required to have parental permission. The Appellant had not given her son permission to participate in this part of the health education curriculum. The school principal recognized that a serious mistake had occurred. He apologized for the error. (Motion, Ex. 2). The principal instituted procedural changes at the school designed to prevent this type of mistake from happening again. Specifically:

- (1) Having the health education teacher check attendance *daily* so that a student could not return to the class after being assigned to the alternative class; and
- (2) Having students whose parents did not give permission for their children to receive the instruction, sign in at the media center, maintain that record, and have the teacher held accountable for the whereabouts of those students.

The Appellant filed a formal "Complaint from the Public" in which she asked for (1) "an acceptable written apology;" (2) a signed, written assurance that her parental rights would not

again be violated as long as her son attended the Montgomery County Public Schools (“MCPS”); and (3) distribution by mail of several handouts from the unit “to all parents.” (Motion, Exhibit 3). A Hearing Officer, Mr. Wayne Whigham, was assigned to investigate the complaint. Mr. Whigham spoke to the school principal and met with Appellant. According to Mr. Whigham, the Appellant was satisfied that the principal had issued an appropriate written apology. (Motion, Exhibit 5 at 2).

She was not satisfied, however, with the principal’s response to her second request for relief, namely, that she receive a written guarantee that her parental rights would never again be violated while her son attended MCPS. The principal’s letter said: “I assure you this violation of your rights will not happen again.” (Motion, Exhibit 2). Mr. Whigham discussed the impossibility of giving guarantees against future human error, but told the Appellant that he would contact the principal of Magruder High School, where her son would attend high school, to alert him of her concerns. (Motion, Exhibit 5 at 2).

Her last request for relief, mailing certain handouts to parents of students at Shady Grove Middle School, was based on her view that these handouts were inappropriate for 8th grade students and because she did not see these materials at the parent information meeting when parents had the opportunity to preview the materials to be used in the health education classes. She concluded that the materials were not there. She did tell Mr. Whigham that she may just have missed them.¹ (Motion, Exhibit 2).

After investigating the complaint, Mr. Whigham issued a report in which he concluded that the incident involving her son should not have happened. He explained that he believed the principal had taken “appropriate corrective actions with the teacher,” had apologized, and had provided reasonable assurance that the error would not recur. In addition, to address the Appellant’s concern about parents having the opportunity to review the course materials, he noted that the principal had instituted two changes: (1) having the parent information and material preview meeting on separate evenings, rather than prior to Back-to-School-Night, to allow more time to review the materials and ask questions; and (2) providing periodic opportunities for parents to see the materials their children are working on during the instruction. Mr. Whigham did not recommend that the materials in question be mailed to all parents of the 8th grade students. (Motion, Exhibit 5 at 4).

The Chief Operating Officer, Lawrence Bowers, adopted Mr. Whigham’s recommendations. (Motion, Exhibit 6). Appellant appealed that decision to the local board. (Motion, Exhibit 7). The local board affirmed the decision of the Chief Operating Officer,

¹ The principal contacted a number of parents who attended the parent information meeting and they confirmed that the materials in question were there for parent review at the informational meeting. *Id.*

finding that the principal had handled the situation appropriately, that “no one can guarantee that future mistakes or miscommunications will never occur,” and that the illustrations Appellant found to be inappropriate for middle school students were an approved part of the curriculum developed by the school system with input from staff and from the community. Therefore, it found no basis for reversing the decision made by the Superintendent and school staff. (Motion, Exhibit 9). This appeal ensued.

STANDARD OF REVIEW

In controversies and disputes that arise in local school systems, the decision of the local board is presumed to be correct. This Board will not substitute its judgment for the local board unless the local board’s decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05(A). In addition, this Board will dismiss an appeal that attempts to use the quasi-judicial process to modify the curriculum or the teaching of the curriculum, unless the Appellant can show that the curriculum violates the law. See *Richard Regan v. Montgomery County Board of Education*, MSBE Op. No. 02-29.

LEGAL ANALYSIS

The Appellant asserts that the local board has “ineffectively addressed her concerns.” Appeal at 6. Her first concern focuses on the local board’s statement that it cannot guarantee that no mistakes concerning attendance in the health education classes will be made in the future. The Appellant understands that such an assurance is impossible to give, but believes that MCPS has not made “every effort” to avoid future mistakes.

We note that the middle school in question has instituted two measures to avoid such mistakes in the future:

- (1) Having the health education teacher check attendance *daily* so that a student could not return to the class after being assigned to the alternative class; and
- (2) Having students whose parents did not give permission for their children to receive the instruction, sign in at the media center, maintain that record, and have the teacher held accountable for the whereabouts of those students.

There is no indication in the local board’s decision, however, that like measures have been put in place throughout the school system.

Avoiding mistakes such as the one that happened here is critical because having parental permission to attend the classes at issue is one of the linchpins of this program. It demonstrates respect for those who do not believe that the classes are appropriate for their children. It is critical, therefore, to establish fail-safe measures to be sure that only those students with parental

permission attend the classes. We believe it would be unreasonable not to institute such measures for all schools in which the classes at issue are taught. Thus, we direct the local board to institute measures throughout the system, like those adopted by the middle school here, and to alert 8th and 10th grade teachers of the critical importance of checking for parental permission and of accurate record-keeping. We agree with the Appellant that this kind of mistake should not happen again and that the local board has a responsibility to minimize the likelihood of such a mistake.

Appellant's second concern focuses on the appropriateness of the materials used in the class. She believes that three of the illustrations used are inappropriate for the age group. They are handouts describing how to do a testicular self-examination for cancer, how to do a breast self-examination and a drawing of the external female reproduction organs. (Motion, Exhibit 5, Attachments). Her objections to those documents are two-fold - - first, the failure of the school system to disseminate them to all parents of 8th graders; and second, the content of the illustrations and other lessons.

As to the dissemination issue, we agree with the local board that a mailing of the three illustrations to all 8th grade parents would not be necessary or appropriate. The curriculum creates the context for the lesson taught using the illustrations. Parents have opportunities to review the curriculum as a whole. We note that the middle school in question has initiated measures to assure parents have adequate time and opportunity for such a review. We encourage the local board to institute such measures throughout the school system.

As to the content of the illustrations, the Appellant explained her objection to the Hearing Officer, Mr. Whigham. One of the illustrations in question (Motion, Exhibit 5, Attachment A) is a drawing of a male performing a self-examination of the testicles in order to detect the symptoms of testicular cancer. The Appellant is of the opinion that such an examination encourages self-stimulation. Also, she feels that this illustration is not necessary. According to her doctor, testicular cancer in adolescent males is less than 1 percent. Therefore, she feels that there is no need to present this information as a part of the unit because adolescent boys are not really at-risk.

She feels that the illustration of the breast self-examination (Motion, Exhibit 5, Attachment B) has informational literature associated with it that is contradictory. She pointed out that in the lesson, the breasts are described as fatty tissue and mammary gland tissues that serve two functions: a) provide milk for newborns; and b) provide sensation during sexual arousal. She feels that the information about "sexual arousal" changes the perception of the illustration on the breast self-examination from an informational image to one that is erotic in nature.

The Appellant believes that the illustration of the frontal view of the female reproduction organ (Motion, Exhibit 5, Attachment C) is too graphic and shows more than a similar

illustration that she saw in a women's health magazine.²

The State Board is acutely aware that the appropriateness of the content of the lessons at issue here is a hotly debated topic. It was hotly debated during the development process, the pilot implementation program, and hotly debated in a previous appeal. *See Citizens for a Responsible Curriculum v. Montgomery County Board of Education*, MSBE, Op. No. 07-30. That case presented a comprehensive legal challenge to the Human Sexuality lessons added to the 8th and 10th grades health education program. There we reiterated a long-standing position of this Board that, unless a policy adopted by a local board is illegal, we will dismiss an appeal that attempts to use the quasi-judicial process to force a change in local board policy which was adopted in a quasi legislative process. *Id* at 4. We particularly cited *Richard Regan v. Montgomery County Board of Education*, MSBE Op. No. 02-29, for the proposition that the appeal process is not the appropriate vehicle for modifying the curriculum or adopting a new policy governing the teaching of the curriculum.

Those propositions are equally applicable here. The local board made a policy decision to adopt the curriculum at issue and its content. It did so through a lengthy quasi-legislative process. The Appellants cannot use this adjudicatory process to ask this Board to second guess the appropriateness of some of the content of the curriculum, unless the curriculum violates the law. We found in *Citizens for a Responsible Curriculum v. Montgomery County Board of Education* that the curriculum did not violate the law.


CONCLUSION

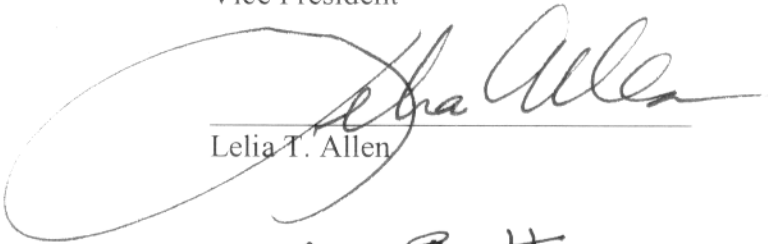
For all these reasons, we dismiss that part of the appeal that challenges the content of the curriculum, affirm the decision of the local board not to disseminate the illustrations and order that fail-safe measures be put in place to prevent the attendance mistake that occurred here.

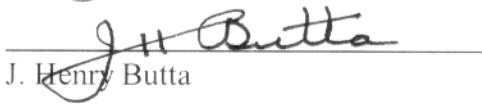


Dunbar Brooks
President

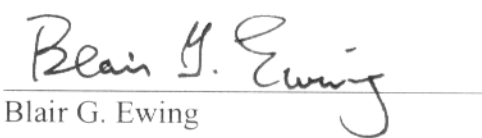
² The Appellant also asserts in her appeal that the vocabulary in the lessons is too difficult (Appeal at 5) and that certain topics covered are more appropriate for high schoolers than for 8th graders. (Appeal at 3). These specific assertions were not part of her appeal to the local board and thus, will not be heard here. *See, e.g., K.W. v. Montgomery County Board of Education*, MSBE Op. No. 07-20.


Beverly A. Cooper
Vice President


Lelia T. Allen

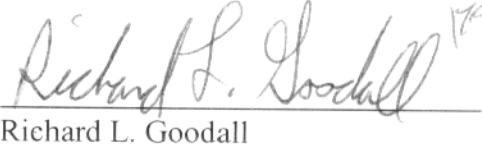

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February 27, 2008