

MR. & MRS. ROGER B.,

Appellant

v.

ST. MARY'S COUNTY BOARD  
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

Opinion No. 08-53

## OPINION

### INTRODUCTION

In this appeal, Appellants challenge the decision of the St. Mary's County Board of Education (local board) related to the teaching and grading practices of their daughter's Advanced Placement Chemistry teacher. The local board has filed a Motion to Dismiss or for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellants have submitted a reply to the local board's motion.

### FACTUAL BACKGROUND

During the 2007-2008 school year, Appellants' daughter, L.B., attended the eleventh grade at Leonardtown High School. During the first semester, L.B. took an Advanced Placement Chemistry course taught by Pauline Owen. In that course, L.B. received a semester grade of 87.65% (B). This grade was based upon a first marking period grade of 89.5% (A), a second marking period grade of 90.09% (A), and a midterm examination grade of 75% (C). Each marking period counted for 42.5% of the semester grade and the midterm counted for 15% of the semester grade. (Martirano Letter, 4/28/08).

Dissatisfied with L.B.'s grade on the midterm exam, the Appellants brought their concerns about the test to the principal of Leonardtown High School, Mr. David O'Neil. During Mr. O'Neil's investigation of the matter, he met with the Appellants, Mrs. Owen, the department chair, a community member with a chemistry background, and some students. (O'Neil E-mail, 2/21/08). Mr. O'Neil concluded that L.B.'s grade would stand. He found that the midterm exam was a fair exam aligned with the school curriculum. He also determined that, contrary to Appellants' claims, the material in the study guides provided to the students was aligned to the test. (*Id.*) Phil J. Tschirhart, a chemistry teacher at Leonardtown, provided an analysis of the midterm exam that supports Mr. O'Neil's decision. (Tschirhart E-mail, 2/11/08). Thus, despite the fact that L.B. had earned A's for each marking period, her grade of B for the first semester would stand due to her performance on the exam.

Mr. O'Neil also addressed an additional concern of Appellants. L.B. elected not to continue with the AP Chemistry course for the second semester. Instead, she enrolled in a General Chemistry II class at the College of Southern Maryland at her own expense. The General Chemistry II class had a lecture and a lab component for which L.B. could earn high school credit. L.B. had to miss some mandatory performances for chorus class as a result of her taking the chemistry class at the College of Southern Maryland on Tuesday and Thursday evenings. Mr. O'Neil advised that the chorus teacher would be providing L.B. with alternative assignments for L.B. to earn credit to make up for the missed activities that comprise a portion of her chorus grade. (O'Neil E-mail , 2/21/08).

Appellants appealed to the superintendent, Dr. Martirano. After conducting an investigation, the superintendent found the following: (1) there was no basis to question Mrs. Owen's teaching proficiency based on his review of her evaluations, classroom observations, and the student accomplishments and outcomes on the AP exams given by the teacher; (2) there were no grounds to change L.B.'s AP Chemistry grade for the first semester because Mrs. Owen had consistently followed and applied the grading policy; (3) that although L.B. would be missing four chorus performances that count as a graded component of the chorus course, the chorus teacher was offering L.B. the opportunity to complete alternative assignments to make up for the negative impact of the missed performances; and (4) that the school system would not be reimbursing Appellants for the tuition cost of the Chemistry II course at the College of Southern Maryland because the school principal had provided other viable alternatives such as moving L.B. to a different A.P. Chemistry class or to a Chemistry Certificate of Merit class, but that Appellants had refused these options. (Martirano Letter, 3/1/08).

Thereafter, the Appellants provided additional information to the superintendent which included a Harassment or Intimidation (Bullying) Reporting Form complaining about Mrs. Owen's classroom conduct. (Bullying Form). Appellants alleged the following:

- Mrs. Owen had graded a paper of L.B.'s and another student's on different scales for the same assignment. When L.B. turned her paper back in after noticing the grading error, Mrs. Owen gave her an even lower grade;
- On numerous occasions L.B. and her lab partner received different grades on their papers, even though the papers were essentially the same;
- Mrs. Owen would not answer questions during normal classroom hours. She told L.B. to go to tutoring offered by her and Mrs. Morrissey if she needed any questions answered.
- After reporting to tutoring, Mrs. Owen told L.B. that she

was not allowed to be there because tutoring was for students with lower grades that might be in danger of failing the class.

- Mrs. Owen told L.B. that she could make up an assignment at tutoring. L.B. reported to tutoring and Mrs. Owen laughed at her and said she could not make up the assignment. L.B. was ultimately permitted to make up the assignment because the guidance counselor had been present and heard Mrs. Owen tell L.B. she could make up the assignment at tutoring;
- Mrs. Owen provided instruction and due dates to the students who were allowed to attend tutoring. L.B. and some other students were not privy to the information provided at those times.
- Mrs. Owen changed her directions and grading practices on a regular basis without notice to the students;
- Mrs. Owen told students that there would be no double jeopardy on assignments – that in grading the answers to chemistry questions she would only deduct points for the specific errors in the chemistry formulation and not deduct points for portions of the problem that used the correct formulation but contained errors due to the earlier mistake. Thus, the student could still get points for the portions of the formula that were correct, even if the final answer was wrong. When this happened to L.B. on a quiz, Mrs. Owen told her that it did not apply to the assignment;
- Mrs. Owen docked L.B. five points on a lab because L.B. did not put her name on a grade sheet that Mrs. Owen had in her possession. Mrs. Owen normally wrote the students names on the sheet, but did not do so for L.B. in this instance;
- Mrs. Owen and Mrs. Morrissey regularly talked about students in their classes and ridiculed them openly during class; and
- Mrs. Owen made an inappropriate sexual innuendo during class.

(*Id.*; Memorandum of Appeal, 6/13/08). Around the same time that they filed the Bullying Form, Appellants appealed Dr. Martirano's March 1, 2008 decision to the local board. (Appellants' Letter, 3/27/08).

The superintendent sent the Appellants a letter noting that the Executive Director of Student Services, Kathleen Lyon, would be conducting an investigation into the allegations in the Bullying Form. (Martirano Letter, 3/28/08). He recommended, and the Appellants agreed, to withdraw their appeal so that he could address the newly raised issues. (Martirano Letter, 3/31/08).

Ms. Lyon completed her investigation of the allegations contained in the Bullying Form. She concluded that nine of the allegations were related to classroom practices and grading and did not constitute bullying. With regard to the remaining two allegations, that Mrs. Owen regularly ridicules students in the presence of her class and that Mrs. Owen made an inappropriate sexual innuendo during class, Ms. Lyon found the allegations to be either unsubstantiated or insufficient to rise to the level of bullying, harassment or intimidation. (Lyon Report).

On April 17, 2008, the Appellants and L.B. attended a meeting with James Scott Smith, Director of Secondary Instruction, Administration, and School Improvement, to review L.B.'s AP Chemistry midterm exam. Claudia Wortman, Supervisor of Instruction for Science, and Deborah Corey, the parent of a student in Mrs. Morrissey's class and the host of a chemistry study group, were also present at the meeting. Mr. Smith gave Appellants an overview of the exam which was comprised of two parts, a free response section and a selected response section. The free response section was comprised of five questions taken from former Educational Testing Services AP Chemistry exams and was used by all AP Chemistry teachers in St. Mary's County. The selected response section was an honors level high school chemistry test created by the American Chemical Society and was purchased by Leonardtown High School. (Smith Memorandum, 4/17/08).

L.B. answered 63 of the 80 selected response questions correctly resulting in a score of 78.75%. Appellants took issue with this portion of the exam, maintaining that its content was not aligned to the first semester of AP Chemistry. In response to this contention, Mrs. Wortman explained "that the content of the selected response portion of the test was fundamental knowledge all AP Chemistry students must know and have learned by the end of Honors Chemistry."<sup>1</sup> She thought that the selected response portion of the test was "more than generous" and should have helped most students given that the "free response" portion was far more challenging. Mrs. Corey agreed that the selected response portion of the test was of a lower level and that content was foundational to the study of chemistry. (*Id.*).

As for the free response section of the examination, Mrs. Owen had given four out of the

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<sup>1</sup>L.B. had previously taken Honors Chemistry in the 10<sup>th</sup> grade.

five questions to the students prior to the exam. L.B. claimed that even though four of the questions were given ahead of time, Mrs. Owen had not adequately taught or reviewed the answers. L.B. received the following scores in that section:

Question #1 - 9/9  
Question #2 - 13/15  
Question #3 - 7/10  
Question #4 - 6/9  
Question #5 - 1/9  
Total 36/52 = 69.2%

L.B. admitted that she had received question #5 in advance, but that she “blanked” on the test. (*Id.*). L.B.’s total midterm score was 99/132 or 75%. This counted for 15% of her semester grade.

The superintendent advised Appellants of his decision by letter dated April 28, 2008. With regard to Appellants’ allegation of bullying and harassment, the superintendent stated that nine of the allegations related to grading practices and procedures in the class and did not rise to the level of harassment and bullying, and the remaining two allegations could not be substantiated by the corroborating witness identified by the Appellants.<sup>2</sup> The superintendent upheld his prior decision with regard to L.B.’s grade, denying Appellants’ request that it be changed. He noted that through multiple meetings with the school principal, school counselor, and Mrs. Owen during the first semester of the school year, Mrs. Owen had rectified some of the problems, adding additional points to one of L.B.’s assessments in the first marking period, and accepting a homework assignment late in the second marking period. (Martirano Letter, 4/28/08).

Appellants appealed the superintendent’s decision to the local board. In a written decision dated July 21, 2008, the local board denied the Appellants appeal.

This appeal followed

#### STANDARD OF REVIEW

The general standard of review in a State Board appeal is that local board decisions involving a local policy or a controversy and dispute regarding the rules and regulations of the local board must 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. COMAR 13A.01.05.05A.

As for student grade decisions, it is well settled that the State Board will not review the

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<sup>2</sup>Appellants maintain that Ms. Lyon never spoke to the witness whom they identified. (Memorandum of Appeal at p.12, 6/13/08).

merits of student grade decisions. As stated in *Crawford v. Washington County Bd. of Educ.*, 4 Ops, MSBE 890 (1997), “the merits of students’ grades ‘should be kept within the school building,’ and are to be made by the persons most able to evaluate the situation from personal knowledge.” See also *Fisher v. Montgomery County Bd. of Educ.*, MSBE Op. No. 99-43 (1999); *Chase v. Carroll County Bd. of Educ.*, 7 Ops. MSBE 915 (1997); *Mai v. Montgomery County Bd. of Educ.*, 7 Ops. MSBE 752 (1997); *Tompkins v. Montgomery County Bd. of Educ.*, 7 Ops. MSBE 475 (1996). The State Board will only accept appeals regarding academic grades if there are specific allegations that the local board failed to follow proper procedure or violated a student’s due process rights. In such cases, 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 found to be arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

## ANALYSIS

In their appeal, Appellants seek the following:

1. That Mrs. Owen be removed from her teaching position at Leonardtown High School,
2. Alternatively, that Mrs. Owen receive a negative assessment in her personnel records for her actions in the 2007-2008 AP Chemistry class and that she be required to complete remedial training in teaching skills and interpersonal relations skills and that she be supervised by a class administrator to monitor her classroom activity for five years;
3. That L.B.’s midterm exam grade be stricken as a factor in determining L.B.’s overall grade in the AP Chemistry class;
4. That L.B. be given credit for her Chemistry II Lab at the College of Southern Maryland in which she received an A; and
5. That L.B. be reimbursed for the costs that were incurred as a result of her enrollment at the College of Southern Maryland in the amount of \$310.60 for course tuition and \$81.97 for course text books.

### *Disciplinary Action Against Teacher*

Appellants seek disciplinary action against Mrs. Owen based on what they perceive as “unprofessional and unethical practices” some of which they identified in the Bullying Form. They ask this Board to order the removal of Mrs. Owen from her teaching position or, alternatively, to order that negative assessments be placed in her personnel record and that she undergo training. We understand that the Appellants are unhappy with Mrs. Owen’s teaching practices. Both of these requests, however, are requests for the imposition of personnel action against a school system employee. The State Board has previously held that parents lack standing in an appeal before the State Board to request disciplinary action against school system personnel. See *Rafael Y. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-40 (2007); *Schlamp v. Howard County Bd. of Educ.*, MSBE Op. No. 04-04 (2004); *Schlamp v. Howard County Bd. of Educ.*, 7 Ops. MSBE 27 (1995). Thus, the State Board must deny the relief requested by the Appellants.

### *Midterm Exam Grade*

Appellants also ask that L.B.'s grade on the AP Chemistry midterm exam be eliminated as a component in calculating her first semester grade. Appellants maintain that the questions on the exam do not correlate with the study guide materials provided by Mrs. Owen, that Mrs. Owen required too much independent studying from the students, and that she failed to teach the material that was tested. As support for this notion, Appellants note that Mrs. Owen's students performed poorly on the exam, with five students earning a B, seven students earning a C, three students earning a D, and nine students earning an F. (Smith Memorandum, 4/17/08).

As stated above, the State Board will not review the merits of a student grade unless there are specific allegations of failure to follow proper procedure or that the student's due process rights have been violated. Appellants primarily disagree with the way school system personnel conducted the investigations and the conclusions reached by the local board.

The school system conducted several levels of review of L.B.'s midterm exam grade. The principal of Leonardtown determined that the study guides were aligned with the exam. The superintendent found no basis to change L.B.'s grade, concluding that Mrs. Owen's teaching was adequate and that she had consistently followed and applied the grading policy. Mr. Smith reported that the selected response portion of the test contained content that was foundational to the study of chemistry, and that L.B. acknowledged that she had received question #5 of the free response section in advance of the test and had "blanked" while she was taking the exam. School system staff also noted that the AP Chemistry class was to be taught on a college level, which included an emphasis on a student's responsibility for learning outside of the classroom. The superintendent reviewed the grade issue a second time and upheld his earlier conclusions. Finally, the local board independently reviewed the materials presented and affirmed the superintendent's decision. Given the record in this case, there is no basis to change L.B.'s midterm exam grade.

### *Credit for Chemistry II Lab at College of Southern Maryland*

In its decision, the local board denied Appellant's "request to substitute [L.B.'s] Advanced Placement Chemistry grade with the grade she earned in her Chemistry II class." In their appeal to the State Board, Appellants clarify that they were not seeking to substitute the grade for the A.P. Chemistry grade, rather they were seeking additional credit for the class. In response to this, the local board has explained that the school system has awarded L.B. all of the credit for the course to which she was entitled. St. Mary's County Public Schools awards credits for semester science courses completed by students at the community college level with one half credit awarded for the lecture portion of the course and one half credit awarded for the laboratory portion. (Smith Affidavit). Thus, L.B. earned a total of one weighted credit for her completion of the Chemistry II class (lecture and lab) at the community college. She had also earned one weighted credit for her completion of the first semester of AP Chemistry at Leonardtown High School. (*Id.*). Appellants have not shown that L.B. is entitled to any more credit than she has been given by the school system.

*Reimbursement of Costs Associated with Chemistry II Course at the College of Southern Maryland*

Appellants seek reimbursement of the costs associated with L.B.'s enrollment in the Chemistry II class at the College of Southern Maryland. They claim that Mrs. Owen's teaching and grading practices, along with her unprofessional and inappropriate behavior in class, made it impossible for L.B. to stay in the class. The local board addressed this claim in its decision stating as follows:

In light of our decision not to disturb [L.B.'s] Advanced Placement Chemistry grade, we deny the request to reimburse the [Appellants] for the costs associated with the Chemistry II class taken by [L.B.] at the College of Southern Maryland. Further, as noted by the superintendent in his letter of March 1, 2008, the [Appellants] had declined Mr. O'Neil's offer to move [L.B.] to either another Advanced Placement Chemistry class or to a Chemistry Certificate of Merit class for the second semester of the 2007-2008 school year. Accordingly, there is no basis on which to provide the requested reimbursement as [L.B.] was offered an appropriate course of study at Leonardtown High School.

(Local Board Decision, pp. 11-12). We concur.

*Right to Hearing Before Local Board*

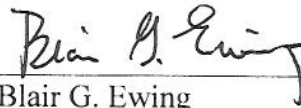
Finally, Appellants maintain that they were not afforded the opportunity to be heard in person by the local board. However, there is no right to an evidentiary hearing when there is no constitutional or statutory basis to provide one. See *Teegardin v. Carroll County Bd. of Educ.*, MSBE Op. No. 02-52 (2002). Nor does due process require an evidentiary hearing on issues that do not involve a genuine dispute of material fact. See *Hethman v. Prince George's County Board of Education*, 6 Op. MSBE 646, 648-649 (1993). There is no constitutional or statutory basis for a hearing in this case. Moreover, given the well established record in this case, we do not believe that there is a genuine dispute of material fact that would trigger an evidentiary hearing.

CONCLUSION

Because we do not find the local board's decision to be arbitrary, unreasonable or illegal, we affirm the local board.

  
James H. DeGraffenreidt, Jr.  
President





Blair G. Ewing  
Vice President



Dunbar Brooks



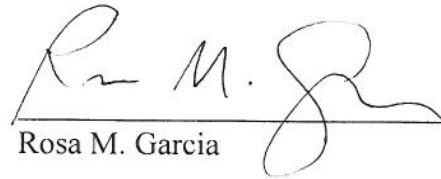
Lelia T. Allen



Charlene M. Dukes



Mary Kay Finan



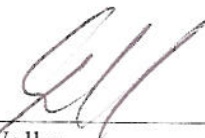
Rosa M. Garcia



Richard L. Goodall



Karabelle Pizzigati



Ivan C.A. Walks



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Kate Walsh

December 17, 2008