

DENNIS S.,

Appellant

v.

CECIL COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-16

## OPINION

### INTRODUCTION

In this appeal, the Appellant challenges the Cecil County Board of Education's (local board) decision not to change its policy on student academic eligibility for interscholastic athletics. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellant has responded to the Motion.

### FACTUAL BACKGROUND

Cecil County Public Schools (CCPS) is a member of the Maryland Public Secondary Schools Athletic Association (MPSSAA). COMAR 13A.06.03.01 *et. seq.* sets forth the State regulations that govern athletic programs for high school students in Maryland public secondary schools that are members of the MPSSAA. Those regulations require each "local school system to establish standards of participation which assure that students involved in interscholastic athletics are making satisfactory progress toward graduation." COMAR 13A.06.03.02B. Those regulations also provide that school systems may adopt rules governing their athletic programs that are more restrictive than those of the MPSSAA. COMAR 13A.06.03.01B.

Consistent with those regulations, CCPS's Policy IGDJAA – Interscholastic Athletics Student Eligibility, sets forth the school system's requirements for student participation in interscholastic sports.<sup>1</sup> The portion of the policy relevant to this appeal concerns academic eligibility at the beginning of the school year. Policy IGDJAA states, in pertinent part:

At the beginning of each school year, all students entering grades 10, 11, and 12 shall have the status of eligibility determined by the final grades received at the end of the previous year. Any student who receives one (1) or more failing grade(s) (final grades) at the end of the previous year shall be ineligible for participation until grades are issued at the end of the first marking period of the following year

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<sup>1</sup>CCPS's local eligibility policy is more restrictive than the MPSSAA.

(i.e., final 1999-2000 school year grades determine fall 2000 eligibility).

NOTE: If a student participates in an approved or alternate education program (i.e., summer school, or Cecil County High School) and receives a passing grade in the same subject(s) failed, the status of eligibility will be reinstated.

The policy does not make any special exceptions for students on 504 plans or those with IEP's.

As explained by the local board,

The purpose of Cecil County's policy is to make sure that students involved in interscholastic athletics are making satisfactory progress toward graduation. Students who fail a course may not participate in interscholastic athletics for one marking period. This serves dual sound education purposes, to wit: First, students who are failing may need additional time to study, and participation in interscholastic athletics takes time out of their day which could otherwise be spent on improving their academic performance. Second, students are forced to take their academic performance more seriously and are not rewarded for failing classes. Rather, they must obtain a passing mark to obtain credit(s) for graduation before being afforded the privilege of participating in interscholastic athletics.

(Local Board Memorandum at 3).

Students who withdraw from classes during a marking period may also have their eligibility for sports effected by this policy. A student who withdraws from class after the first ten days receives a "WE" if the student was failing the class at the time it was dropped. (Policy IKC – Class Rankings and Dropping Courses). A "WE" is treated the same as a failing grade for purposes of academic eligibility. (Policy IGDJAA, Special Notes #2, p.3).

The provisions referenced above impacted Appellant's son's eligibility to participate in interscholastic sports at the beginning of the 2009-2010 school year. Appellant's son, Z.S., received a failing grade in Spanish III, an elective course, at the end of the 2008-2009 school

year.<sup>2</sup> As a result, he was not eligible to participate on the cross-country team at the start of the school year.

While Policy IGDJAA contains an exception to academic ineligibility if the student participates in an approved or alternate education program and receives a passing grade in the failed subject, Z.S. did not take any such program. The Appellant has explained that Z.S. did not take an alternate Spanish III course because none was offered at summer school through Cecil County Public Schools or by neighboring Harford County Public Schools. (Response to Motion).

The Appellant appealed the eligibility determination to the principal, the executive director, and the superintendent. Each time, the administration denied the Appellant's request to allow his son to participate on the cross country team.<sup>3</sup> (Motion, p.4; Response to Motion). Although the school system provided the Appellant with a copy of the procedures for appeals to the local board, the Appellant did not pursue a formal appeal of the superintendent's decision to the local board. (Devine Letter, 9/1/09). Rather, he addressed the local board during the public comment portion of its September 14, 2009 board meeting and requested that the local board amend Policy IGDJAA. **Specifically, he asked that the policy be amended to allow a student to maintain sports eligibility if the student fails a class that is not needed for graduation in the last quarter of the school year, and the student is not afforded the opportunity to rectify that grade during the summer break.** The local board declined to alter the policy on athletic eligibility. (Shaffer Letter 9/16/09).

This appeal to the State Board followed.

#### 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.01.05.03E(1).

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<sup>2</sup>Z.S.'s failing grade did not come as a surprise to the Appellant. He had exchanged e-mails with Z.S.'s Spanish teacher on this very issue during the semester. Z.S. did not do well in either Spanish I or Spanish II, and struggled in Spanish III from the outset. (E-mail stream between Appellant and Moore, March 2009). Z.S. did not drop the class because he would have received a "WE". (Response to Motion). In addition, the Appellant mentions that his son had ADHD and a 504 plan. While it seems clear that Z.S. struggled with his school work, there is no evidence that the school system violated Z.S.'s 504 plan.

<sup>3</sup>There are no written appeals by the Appellant or decisions by the administration in the record.

## LEGAL ANALYSIS

The Appellant challenges Policy IGDJAA, seeking a change in the policy.

This Board has previously held that an appeal under § 4-205(c) of the Education Article is not the appropriate vehicle by which to alter or modify a policy of the local board, which is a quasi-legislative matter. See *Montgomery v. Howard Cty. Bd. of Educ.*, MSBE Opinion No. 04-35 (2004) (appeal of local board's decision not to adopt age of entry waiver policy is attempt to force policy change which is not appealable to State Board); *Regan v. Montgomery Cty. Bd. of Educ.*, MSBE Op. 02-48 (2002) (appeal of the presence of a Washington Redskins' marching band member as a guest reader at school seeks to establish or modify curriculum, policies, or procedures used by MCPS and is not appealable under §4-205); *Regan v. Montgomery Cty. Bd. of Educ.*, MSBE Op. 02-29 (2002) (appeal challenging an instructional activity is not appropriate vehicle for modifying the existing curriculum or adopting a new policy governing the teaching of the curriculum); *Astrove v. Montgomery Cty. Bd. of Educ.*, MSBE Op. 02-14 (2002) (appeal challenging the format of CTBS test result reporting is an attempt to force a policy change and is not appealable under §4-205).

Consistent with this precedent, the Appellant here may not use the quasi-judicial process by appealing to the State Board to force a change in Policy IGDJAA, a quasi-legislative decision. The local board considered the Appellant's arguments in support of the policy change but declined to amend it.

If, however, the Appellant could show that the policy is illegal, we would consider that claim. In his appeal, the Appellant alleges that the policy discriminates against students like his son, who has ADHD, because it does not provide a special exception for students with a 504 plan or an IEP. He asserts also that the policy discriminates because some students will be able to make up a failed course at summer school in order to gain academic eligibility, while other students will not be able to do so if the class they failed is not offered at summer school.

With regard to the Appellant's claims of discrimination, the Appellant has not explained why or set forth any evidence to show that the policy is discriminatory against students with 504 plans or IEP's. Under the policy, all students are given the same opportunity to make up a failed class and achieve a passing grade in order to be academically eligible to play on sports teams. The Appellant has not pointed to anything that would require the school system to give special treatment to students with 504 plans or IEP's in this regard.

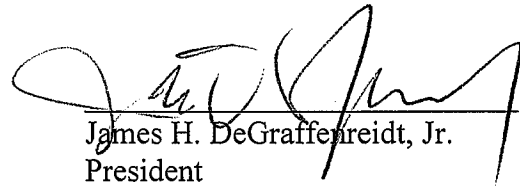
In addition, the Appellant misunderstands the policy with regard to the types of courses that can be used to rectify a failing grade. Policy IGDJAA does not limit make up classes to those courses that are offered at summer school. Rather, the courses can be from any "alternative or approved program." While summer school is one option, there are many other course options available, such as community college courses and online courses. For example, Spanish III is

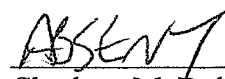
one of the online courses available through the Maryland Virtual School. Maryland Virtual School courses are online courses approved by the Maryland State Department of Education that may be taken for high school credit with the permission of the local school system and school principal, depending on the local school system policy. (<http://mdk12online.org>). The Appellant could have sought CCPS's approval for his son to take this online course to try to attain a passing grade. It was up to the Appellant, and not the school system, to seek out and pursue the opportunities available to his son.

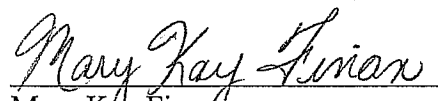
In Appellant's case, he sought out the summer school option but Spanish III was not offered. Cecil County Public Schools does not offer all of its school year courses at summer school. The local board has explained that due to fiscal and staffing limitations, it offers only those core subjects that are necessary for graduation over the summer. The school system is unable to repeat elective courses over the summer unless there is sufficient demand (at least 10 students) and a teacher is available to teach the class. (Local Board Memorandum at 4). We note that there is no legal obligation for a school system to provide such courses.

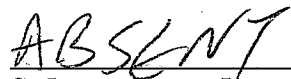
CONCLUSION

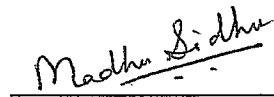
For these reasons, we dismiss the appeal.

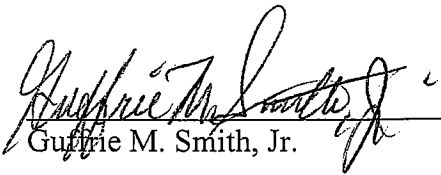
  
James H. DeGraffenreidt, Jr.  
President

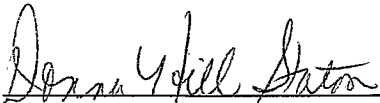
  
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March 23, 2010