

PARENTS AND FRIENDS OF
EX-GAYS AND GAYS,
Appellant
v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-40

OPINION

INTRODUCTION

Parents and Friends of Ex-Gays and Gays (PFOX) appeal a decision of the Montgomery County Board of Education (local board) concerning certain statements that Superintendent, Dr. Joshua Starr, made about PFOX. The local board filed a Motion to Dismiss or For Summary Affirmance. PFOX opposed the Motion. The local board filed a Reply.

FACTUAL BACKGROUND

On February 1, 2012, PFOX flyers, along with flyers from other organizations, were distributed to students at various Montgomery County public high schools. On February 7, 2012, Dr. Starr held one of several “Town Hall” meetings with students. A student asked the Superintendent to comment on the PFOX flyer distribution. In response, the Superintendent said:

I find the actions of PFOX to be reprehensible and deplorable. We are bound by law . . . to enable non-profits to distribute flyers, I think it’s 4 times a year, and we can’t really do that much about it unless we want to cut off all flyer distribution which is an option. *** This group has enabled – has figured out a way to use that law to spread what I find to be a really, you know, disgusting message, quite frankly. *** As superintendent I am beholden to the law; I have to follow the law and I always will. We are looking at ways that we might be able to communicate a much more important message that each and every one of our children – no matter what their background is, no matter what their orientation is, no matter what they like – don’t like – whatever it may be, whoever they are, have a place in our schools and deserve to be safe physically, emotionally, mentally whatever it may be and that every school must be a welcoming environment. So I’m quite upset by it in a lot of ways and I wish there were more I could do but I am bound by the law [and] as it currently stands – allows for this kind of action and it truly is reprehensible.

On April 27, 2012, Regina Griggs filed a “Complaint from the Public” on behalf of PFOX against School Superintendent Joshua Starr and charged him with discrimination in

violation of Montgomery County Public Schools (MCPS) Nondiscrimination Policy ACB. PFOX asked for the following relief:

1. PFOX teach an ex-gay tolerance training session to School Superintendent Starr and his staff.
2. Ex-gay tolerance and anti-bullying brochures provided by PFOX be made freely available to students and staff in each high school's counseling officer; and
3. Ex-gay books donated by PFOX be placed in each high school library to ensure diversity and inclusion as mandated by the Nondiscrimination Policy.

The local board considered the appeal in closed session on July 17, 2012 and issued a written decision on November 13, 2012. The local board concluded that "it need not address the particular merits of the superintendent's comments under Policy ACB" because it found that "at least some of the superintendent's comments [were] protected by the First Amendment, and thus, not subject to action even if the Board were to agree with PFOX regarding a violation of Policy ACB." In pertinent part, the local board said:

The superintendent was asked a question during the Town Hall meeting about the distribution of flyers at a particular high school. The superintendent responded to the question by describing the school system's policy for distribution of flyers, indicating the MCPS had no choice with respect to the flyer *content*. The superintendent also commented on the Board's policy (although not mentioning it by name) that all students, regardless of background or orientation, have a place at MCPS and that every school should be a welcoming environment for them.

However, the superintendent went further and expressed what was clearly personal opinion with respect to the use of flyers by PFOX in the way they were used, or PFOX itself, or the message of PFOX whether or not contained in the flyers. For these reasons, the Board finds the particular comments that are the subject of the Complaint were made by the superintendent as a citizen.

Six members of the local board signed the main Decision and Order and two members filed a Concurring Opinion agreeing with the decision of the majority, but also finding that "the Superintendent did not violate Board of Education Policy ACB, *Nondiscrimination*," noting that he did not verbally abuse or utter any slur "*against persons* because of their...sexual orientation," as stated in the Policy. (emphasis in original). *Id.* at 8.

In this appeal, PFOX asks the State Board to grant the same relief it requested from the local board and also requests that the Montgomery County Board of Education reprimand or censure Superintendent Starr. (Appeal, p. 14).

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.01.05.05A.

LEGAL ANALYSIS

The sole issue presented on appeal, in our view, is whether Dr. Starr violated MCPS Nondiscrimination Policy ACB, when he said "I find the actions of PFOX to be reprehensible and deplorable This group ... figured out a way to use [the] law to spread what I find to be a really...disgusting message.... So I am quite upset by it in a lot of ways and I wish there were more I could do but I am bound by the law [and] as it currently stands – allows for this kind of action and it is truly reprehensible."

The nondiscrimination policy at issue includes an aspirational goal of mutual respect for all. It also sets forth a specific goal:

To affirm the Board of Education's position that it regard all acts of hate/violence and illegal discrimination to be unacceptable and intolerable and in particular those based on race, color, national origin, religion, gender, age, marital status, socio-economic status, sexual orientation, physical characteristics, or disability.

Policy ACB, Ex. E attached to local board's Motion.

PFOX points to the part of the *Policy ACB* which defines acts of hate/violence as including "verbal abuse, slurs, threats, physical violence or conduct...directed against persons because of their...sexual orientation..." They believe that Dr. Starr's statements constitute such verbal abuse and slurs and thus are "acts of hate." In our view, calling the actions of any group of persons reprehensible, deplorable, or disgusting cannot in any reasonable way be viewed as an act of hate. Those types of statements represent a viewpoint, a disagreement with PFOX's position, but they in no way demonstrate hatred toward ex-gays or PFOX.

Nor, in our view, do Dr. Starr's statements reach the level of illegal discrimination. Specifically, *Policy ACB* is based on "the intent of MCPS to fully and lawfully comply with all federal, state, and local non-discrimination laws." We know of no law when applied that would deem calling the actions of any organized group reprehensible, deplorable, or disgusting illegal discrimination.

MCPS establishes in its Nondiscrimination Policy that the desired outcome of its policy is that its schools and units "will be free of incidents involving disrespectful behavior, prejudicial action, hate/violence and/or illegal discrimination..." PFOX asserts that Dr. Starr's statements represent "disrespectable behavior, prejudicial action, hate." Appeal at 2. We do not consider those statements disrespectful, prejudicial, or hateful. *Policy ACB* focuses on actions or speech

that reaches the level of hate/violence. That interpretation coincides with the Implementation Strategies set forth in the Policy. The strategies focus on preventing acts of hate/violence. Specifically:

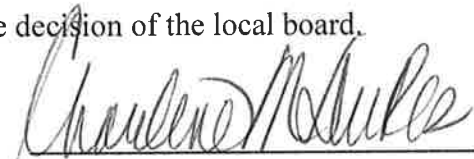
- Strategies will be used to prevent acts of hate/violence and procedures will be followed to resolve, monitor, and analyze incidents of hate/violence.
- MCPS will work cooperatively with the County Executive, the County Council, local law enforcement agencies, other county officials, community groups, and business organizations to improve the climate in the county, and reduce the incidence of hate/violence.


Thus, on the facts and the Policy before us, we conclude that Dr. Starr's words did not rise to the level of any action precluded by *Policy ACB*.

The local board, in its ruling, did not interpret its own policy but rather relied on the First Amendment to find that, when Dr. Starr spoke he was speaking as a private citizen, expressing his own personal view of PFOX. Because we find that Dr. Starr did not violate *Policy ACB*, we need not reach the First Amendment issue.

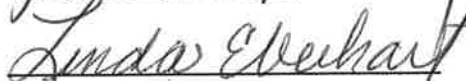
CONCLUSION

For the reasons stated herein, we affirm the decision of the local board.

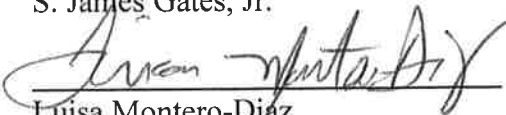

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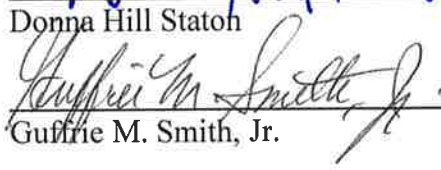
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July 23, 2013