

BARBARA P.,
Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 14-66

OPINION

INTRODUCTION

Appellant challenges the decision of the Anne Arundel County Board of Education (local board) denying the Appellant's request to amend the U.S. History grade of a student for whom she is an advocate.¹ The local board has submitted a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. The Appellant responded to the local board's Motion and the local board replied.

FACTUAL BACKGROUND

During the summer of 2012, the subject of this appeal, a 10th grade student, was taking a U.S. History course taught at South River High School. The student had an Individualized Education Program (IEP) based upon his second-grade, six-month reading skill level. (T. 24-25). He received certain accommodations for reading and writing, such as modified testing conditions, extra time on assignments and tests, and weekly progress reports. (T.41-43, 111).

During the summer school session, Ms. Ricarda Dudek, a special education teacher, acted as the student's special education resource teacher. She worked closely with the student, his teacher, and the Appellant, and provided the student additional help, either directly or through others in the special education department. Ms. Dudek arranged to have the teacher send daily progress reports to the Appellant for her to review, sign, and return to school with the student so that Appellant was apprised of the student's progress in the class.² (T. 111-115).

After the first three assignments, the student was at risk of failing the class. The resource teachers began working with him one on one. Throughout the course, however, the student missed assignments, failed to make up a quiz and did not take advantage of the opportunity to re-take tests. (Record, Sup't. Ex. 6). The student did not do well on the final class project. Based on the progress reports, Appellant was aware that the student had a low D throughout the course, and that he would fail the course if he did not pass the final exam. (T.64-65).

¹ Appellant advocates educational issues for the student pursuant to a Power of Attorney from the parent.

² During the hearing, the Appellant testified that she kept all of the progress reports but did not bring them with her. (T. 63). The school system was unable to produce the progress reports.

For the final exam, Ms. Dudek provided accommodations by administering the exam orally and reducing the multiple choice answer options from four to two, as allowed by the student's IEP. (T.31). Although Ms. Dudek did not have the test answer key, social studies was her content area and she was confident that she had left the correct choice as an option for each question. The student then filled out bubbles on a Scantron sheet to answer. (T. 32). The student did not pass the final exam.

In anticipation of the possibility that the student might not pass the final exam, the school counselor contacted the Appellant on August 4, 2012, to make arrangements for the student to remain at school after taking the final in order to complete some missing assignments that could boost his grade for the class. (Record, Sup't. Ex.9; T.149-151). The student, however, did not stay to complete the missing work. *Id.*

The student failed the class. The teacher testified that the student's final grade in the class was a 57. Twenty percent of this was comprised of the final exam grade.³ (T. 30, 135). The failing grade was recorded on the student's transcript. (Record, Sup't. Ex.8).

Appellant never received the student's report card for the summer class. She was under the impression that the student had passed the class because she was purportedly told so by the teacher and Ms. Rosario Jablonski, lead administrator for South River High School Summer School Center. (T.133). Appellant claims that she first learned of the failing grade at an IEP meeting in October of 2012. (T.51-53, 69). The teacher denied that he told Appellant the student had passed or that he spoke to Appellant after administration of the final exam. Ms. Jablonski was not a witness at the Hearing.

In January 2013, Appellant contacted Ms. Amanda Keller, secretary for the summer school, who confirmed for Appellant that the student had failed the U.S. History summer course and sent the Appellant the transcript showing the grade. (T.55, 69; Record, App. Ex.2, p.1).

By letter dated February 18, 2013, Appellant wrote to Sarah Pelham, Assistant Superintendent for Student Support Services, requesting that the student's failing grade be changed to a passing grade. (Record, Sup't. Ex.1). Ms. Pelham conducted an investigation into the matter and received information from the principal of the evening, twilight and summer school. He reported that the student's IEP had been followed; that the student was provided with extra resource assistance; that there was communication with the student and Appellant from Ms. Dudek, Ms. Jablonski, and the teacher throughout the course; and that the student chose not to take advantage of certain accommodations, such as re-taking failed tests and making up missed assignments. (Record, Sup't. Ex.6). Ms. Pelham declined to change the grade. (Record, Sup't. Exs.2 & 6; T.155-156).

³ Other than the transcript, the school system has no hard copy or electronic records of the student's assignments or grades for the U.S. History summer course. With regard to the electronic grade files, the school system lost data when it transitioned to a new student management system that summer and there was no back up of the summer course grade data. (T.103-105). No hard copies of the data were kept. (T.142).

On April 11, 2013, Appellant appealed Ms. Pelham's decision to Dr. Kevin M. Maxwell, then Superintendent of AACPS. (Record, Sup't. Ex. 3). Appellant claimed in the letter that she was not aware that the student was in danger of failing the class. *Id.* Dr. Maxwell denied the appeal. In response to Appellant's claim that she did not know how the student was doing in class, Dr. Maxwell pointed out that the teachers and staff were in communication with Appellant throughout the summer course, that she was made aware of the student's progress in class, and that she was apprised of what grade the student needed to achieve on the final to pass the class. (Record, Sup't. Ex.4).

Appellant appealed Dr. Maxwell's decision to the local board on May 22, 2013. (Local Bd. Mtn., Sup't. Ex.5). The local board referred the matter to a hearing examiner for review. (Local Bd. Mtn., Sup't. Ex.11). The hearing examiner convened a hearing on April 24, 2014.⁴ It was suspended, however, when Superintendent's counsel raised a question of standing because the Appellant is not the student's legal guardian. The hearing resumed on May 15, 2014, after Appellant produced a Power of Attorney allowing her to advocate for the student on educational matters. (Record, Hearing Examiner Report).

The Hearing Examiner issued her decision on July 27, 2014, recommending that the local board uphold the decision of the Superintendent not to change the failing grade. *Id.* The Hearing Examiner concluded that there was no evidence to support the Appellant's testimony that Ms. Jablonski and the teacher told her that the student passed the exam. Additionally, the Hearing Examiner concluded that there was no basis to question the final failing grade that was recorded on the student's transcript. (*Id.* at p. 9-10).

On August 20, 2014, the local board voted to adopt the Report and Recommendation of the Hearing Examiner and uphold the decision of the Superintendent not to change the student's grade. (Record, Local Bd. Opinion and Order).

On September 4, 2014, the Appellant appealed the local board's decision to the Maryland State Board of Education.

STANDARD OF REVIEW

We have long held that, except in limited circumstances, the State Board will not review the merits of student grade decisions. It is essentially a local school decision influenced by many factors. As stated in *Crawford v. Washington County Bd. of Educ.*, 4 Op. 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 Op. MSBE 915 (1997); *Mai v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 752 (1997); *Tompkins v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 475 (1996). The State Board will only hear appeals challenging academic grades if there are specific allegations that the local board failed to follow proper procedure or violated a student's due process rights.

⁴ There is no explanation in the record for the delay in convening the hearing.

LEGAL ANALYSIS

Failure to Follow Proper Procedure

Appellant maintains that the student's grade should be changed to a passing one because the student was denied the opportunity to retake tests. The school system's grading policy allows high school students the opportunity to improve their grades by retaking tests other than final exams. (T.132-133; AACPS Regulation II-RA-Grading B.3.c.4). The evidence shows that during the course the student was given the opportunity to retake or make-up tests, but he declined to do so. The teacher testified that all of the students in the summer school class were given the opportunity to retake tests, including this student, but that none of the students in the class opted to do so. (T.133; Record, Sup't. Ex.7). In addition, the special education teachers worked with the student throughout the summer to try to help him succeed and the student was permitted to make up missed assignments, even up until the last day of summer school.

Due Process

We do not find a due process violation here. The Appellant was apprised of the student's progress throughout the summer school class. She acknowledges that she received the progress reports and that she was aware that the student had a low D average going into the final exam and was in danger of failing the course. Appellant's request to change the failing grade was reviewed at several levels, including by an assistant superintendent, the local Superintendent, a hearing examiner who conducted a full evidentiary hearing during which the Appellant was represented by counsel, and the local board. Testimony and documentary evidence was presented at the hearing providing information about the grade and the process followed by the school system. Based on that evidence, the local board reasonably found that the student failed the test and the course.

Americans with Disabilities Act Claim

In her appeal to the State Board, Appellant argues that local board violated the Americans with Disabilities Act (ADA) by not providing necessary accommodations to the student. The Appellant did not present her argument before the local board in terms of an ADA claim. Neither the hearing examiner nor local board analyzed the case as such.⁵ It is a long held position of this board that it will not review matters that are not initially raised before the local board. *Regan v. Frederick County Bd. of Educ.*, MSBE Op. No. 02-21 (2002); *Kemp v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-14 (2001); *Stewart v. Bd. of Educ. of Prince George's County*, 7 Op. MSBE 1358 (1998); *Jackson-Nesmith v. Bd. of Educ. of Charles County*, 7 Op. MSBE 1320 (1998).

⁵Because the student is a special education student with an IEP, Appellant could have pursued her claims about implementation of the IEP through the due process procedures set forth in the Individuals with Disabilities Education Act (IDEA).

Maryland Personal Information Protection Act

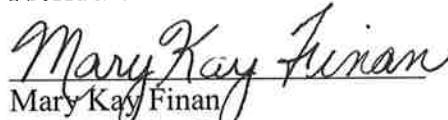
The Appellant claims that the local board violated the Maryland Personal Information Protection Act (MPIPA), Md. Code Ann. Comm. Law §14-3501 *et seq.*, by failing to have secure procedures in place to safeguard student grades and test scores, and by failing to notify that student's parent when his U.S. History summer school grades and test scores were deleted from the school system database. The MPIPA was enacted to protect the personally identifiable information of Maryland consumers, and requires that businesses notify consumers of the unauthorized acquisition of data. *See* Md. Code Ann. Comm. Law §14-3504. MPIPA does not apply to public school systems; rather, it applies to businesses as defined in the law. *See* Md. Code Ann. Comm. Law §14-3501.

CONCLUSION

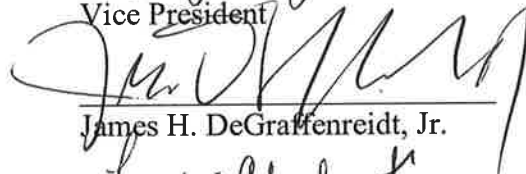
For the reasons stated above, we do not find the local board's decision to be arbitrary, unreasonable or illegal. We therefore affirm the local board's decision not to change the student's grade.



Charlene M. Dukes
President



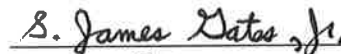
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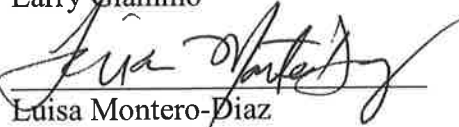
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December 16, 2014