

NICK MYERS,

Appellant

v.

CALVERT COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-23

## OPINION

### INTRODUCTION

Mr. Nick Myers filed a Petition for Declaratory Ruling on five questions related to the local board's delegation of authority to the local superintendent. The Board of Education of Calvert County (local board) filed a Response to the Petition. Mr. Myers filed a Rebuttal and the local board filed a Reply.

### FACTUAL BACKGROUND.

This petition for declaratory ruling arose out of a re-districting issue. The local superintendent, in compliance with Board Policy 4400 and Administrative Procedure for Policy 4400 (Ex. 4, Tab 2 attached to Local Board's Response) formed a re-districting committee. Mr. Myers challenges the delegation of authority to form such a committee as well as all other delegations of authority to the superintendent contained in Board policies. In doing so, Mr. Myers requests a declaratory ruling on five questions:

1. Is the Calvert County Public Schools' (CCPS) Board of Education (BOE) Policy #1012 or its interpretation or action or any policy in any way violating Education Article Section 4-108(3) & (4). "*Each county board shall: (3) Subject to this article and to the applicable bylaws, rules, and regulations of the State Board, determine, with the advice of the county superintendent, the educational policies of the county school system; and (4) **Adopt, codify, and make available to the public bylaws, rules, and regulations not consistent with State law, for the conduct and management of the county public school system,***" by the BOE's refusal, both in writing and in action, to adopt public bylaws, rules, and regulations [administrative procedures]...for the management of the public school system?
2. Is the BOE's delegation of legislative authority, to the county superintendent, to write and approve procedures, legal and/or sound government?
3. If the BOE is permitted by law to delegate legislative authority to the Superintendent, is the BOE bound to abide by the administrative procedures?

4. Is the public required to follow procedures which have not been adopted by the elected body as stated in the Education Articles?
5. Do any laws require CCPS policy to encompass the administrative procedures and are the two separable?

### STANDARD OF REVIEW

On the issue presented here, we exercise our independent judgment in interpreting education law. COMAR 13A.01.05.05E.

### LEGAL ANALYSIS

The local board suggests that the five questions present a single issue - - whether the local board's delegation of authority to the superintendent to write and approve procedures is legal and/or sound government. Mr. Myers objects to that suggestion by arguing that the local board has delegated to the Superintendent all its authority to adopt bylaws, rules, and regulations. (*See* Rebuttal ¶ 4). He posits that the local board only adopts Policy statements which delegate authority to the superintendent to implement them and thus there are "no rules, regulations or bylaws" adopted by the local board. (Rebuttal ¶ 5 & 6).

It is our view that questions 2, 3 and 4 are related to the delegation of authority issues. Questions 1 and 5 present somewhat different issues. We address each question *seriatim*.

#### **Question 1**

Mr. Myers asks: Does the local board's Policy #1012 and Procedure #1012.1 or its interpretation or action or any policy violate Education Article §4-108 by the local board's refusal to adopt bylaws, rules and regulations for the management of the public school system? That question is based on the premise that the local board has refused to adopt rules governing education policy. We do not accept that premise.

Education Article §4-108 directs county boards to "adopt, codify, and make available to the public bylaws, rules, and regulations.... for the conduct and management of the county public schools." The local board has adopted numerous rules concerning the development of education policy and the policies themselves. Policy Statement #1012 is a prime example. It states:

One of the major roles of the Board of Education is to provide leadership and guidance for the school system through the adoption and review of policies. Since policies provide the framework under which the Calvert County Public Schools operate, and because the Board of Education values broad community input, it is important to establish a clear process for policy development, adoption, and review and to have a uniform policy format. Therefore, the Board of Education requires that all policies proposed for Board approval, regardless of source, shall be made available to the public for comment....

See Ex. 1 at Tab 2 attached to Local Board's Response.

Policy #1012 directs the superintendent to develop administrative procedures to implement that policy in conformance with all local polices and local, State and federal laws. Each of the many local board policies contains that same directive. (See, e.g.; Exhibits 1-4, Tab 2, attached to Local Board's Response). In our view, the adoption of such policies conforms to the requirements of Education Article §4-108 which calls for local boards to adopt "bylaws, rules, and regulations." In Calvert County, the board calls its bylaws, rules, and regulations "Policies." Those Policies are nonetheless the "bylaws, rules, and regulations" that establish the legal framework for governance of the school system and are enforceable by the local board.

### **Question 2**

Mr. Myers asks: Is the delegation of authority to the superintendent legal?

We find nothing illegal in delegating to the superintendent the task of developing procedures to implement the various Policies that the Board adopts. Indeed, State law defines one of the "general duties" of a local superintendent as carrying out the rules, regulations, and policies of the county board. Md. Educ. Art. §4-204 (b). To do so, the superintendent must have the authority to write and approve procedures that implement board governance policies. The local board has explicitly provided that authority to the superintendent.

### **Question 3**

Mr. Myers asks whether the local board "is bound to abide by" the administrative procedures developed by the superintendent? In our view, if those procedures comply with all laws and faithfully implement the particular board policy, we assume that the board would follow the procedure. The local board, of course, ultimately governs the school system and the superintendent takes direction from the board. The board is not "bound to abide by" any particular procedure developed by the superintendent if the board believes the procedure is wrong, unreasonable, illegal, or contrary to its policy.

### **Question 4**

Mr. Myers asks whether the public is required to follow the procedures developed by the superintendent even if they have not been officially adopted by the board. In our view, the public is required to follow those procedures because the board delegated to the superintendent the authority to adopt such procedures.

### **Question 5**

Mr. Myers asks whether any law requires board policies to encompass the administrative procedures or whether the two are "separable?" It is our view that the two are separable issues. The local board establishes its Policies and may delegate to the superintendent the authority to develop procedures to implement the Policies. Those are two separate processes.

## CONCLUSION

For the reasons stated herein, this Board issues the following declaratory rulings:

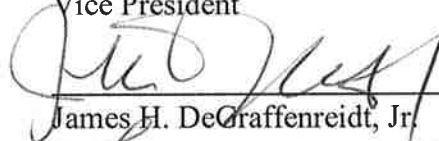
- (1) Local Board's Policy #1012 and Procedures #1012.1 do not violate education law.
- (2) The board's delegation of authority to the superintendent to develop procedures to implement board Policies is legal (and, we believe, sound government).
- (3) The local board is not "bound to abide by" the administrative procedures developed by the superintendent but it may choose to do so.
- (4) The public is required to follow the administrative procedures developed by the superintendent.
- (5) Board Policies are separate and distinct from administrative procedures developed to implement board Policies.



Charlene M. Dukes  
President

Absent

Mary Kay Finan  
Vice President



James H. DeGraffenreidt, Jr.



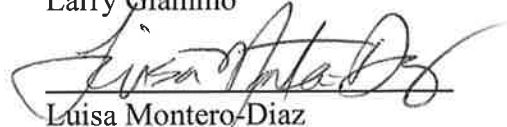
Linda Eberhart

Absent

S. James Gates, Jr.

Absent

Larry Giammo




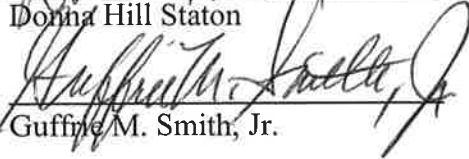
Luisa Montero-Diaz



Sayed M. Naved



Madhu Sidhu

  
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Donna Hill Staton  
  
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Guffin M. Smith, Jr.

May 20, 2014