

SANDRA A.,

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-60

OPINION

INTRODUCTION

Appellant appealed the Prince George's County Board of Education's decision denying her daughter certificates of completion for the Science and Technology and the Academy of Finance programs at Flowers High School. The Prince George's County Board of Education (local board) filed a motion for summary affirmance maintaining that its decision was not arbitrary, unreasonable or illegal. Appellant replied to the motion and the local board responded.

FACTUAL BACKGROUND

Appellant's daughter, the student, was enrolled in the 12th grade at Flowers High School (Flowers) during the 2011-2012 school year in the Science and Technology Program (STP) and the Academy of Finance (AF).

The STP and the AF are intensive programs. The STP is a rigorous 4 year program of study that provides "broad and intensive college-level academic experiences, with content and application focused on science, mathematics, pre-engineering and technology." (Administrative Regulation 6150, p.66). A certificate of completion is awarded to students who complete the minimum 13 Science and Technology credits, meet the minimum requirements for high school graduation, and maintain a 4 year cumulative grade point average of 2.0. *Id.* The AF Program is a course of study that "covers the financial management of industrial and commercial enterprises; of commercial, savings, and mortgage banking; and of investment analysis and portfolio selection." The Academy of Finance requires a summer internship in finance-related work and various course requirements, including concurrent college enrollment in Finance. *Id.* Students who complete the Academy of Finance requirements may receive up to 9 college tech prep credits at the Prince George's Community College. *Id.*

As part of her STP course requirements, the student was required to take a Biology Research Practicum course. Ms. Liza Morton-Wilson, Science and Technology Coordinator at Flowers, was the student's Research Practicum teacher (RP Teacher). In addition to other assignments, she required the student's in her class to write a five chapter thesis and make a PowerPoint presentation summarizing their research and the 5 chapters. T.17, 30.

Due to various mental health issues, the student received home and hospital teaching services for most of the school year. The student also had a Section 504 Plan that included

accommodations to extend time to complete assignments. It also specified that the student would be exempt from the AP Biology requirement, that she was required to complete the Research Practicum, and that she would take AP Calculus online. T.29.

The Appellant, the student, and the RP Teacher communicated with one another about assignments through email. At the beginning of the school year, the Appellant requested work for her daughter and stated that it would be returned. (Appellant Email, 9/12/11). The RP Teacher provided Appellant with a list of all of the assignments with their due dates. T.24. The student utilized extra time for completing work and on November 15, 2011 submitted several summer assignments which were due the first day of school. T.42-43. Upon receipt of those assignments, which included the Research Practicum proposal, the RP Teacher advised the student to begin her work on Chapter 2 of the thesis.¹ (Morton-Wilson Email, 11/15/11).

In January, the student emailed the RP Teacher to tell her that she had been unable to complete the Chapter 2 assignment because she had been hospitalized in January and was still recovering. She stated she would have it completed by the end of the quarter. (Student Email, 1/6/12). On January 11, the student's home and hospital teacher emailed the RP Teacher to request an extension on the assignment, and the RP Teacher responded by explaining the assignments the student should be working on and providing 13 documents that included rubrics, explanations and timelines.² Appellant followed up with an email dated January 18 requesting a 2 week extension on the Chapter 2 assignment. She also stated that she would work with her daughter to make sure that the assignment would be submitted before that time period had passed. The student did not turn in the assignment.

The school convened a Section 504 meeting on February 8, 2012. The Section 504 team initially suggested that the student not complete any specialty programs and focus instead on completing State requirements for graduation. T.17. Appellant disagreed and assured the team that the student could complete all of the requirements. T.18. No changes were made to the student's courses at that time.

Sometime prior to the next Section 504 meeting, the RP Teacher advised the school principal that she had not received any work from the student aside from the summer assignments. She also explained that because some of the work was hands-on, the student would not be able to complete it while out of school. They agreed that the student would not be responsible for the hands-on work, but that she would remain responsible for completing the chapters for her thesis which would be returned to her with revisions so that she could prepare her final thesis. The RP Teacher communicated this fact to the Appellant. (T.19; Morton-Wilson Email, 5/7/12).

¹ The student could not proceed with the other assignments, which consisted of additional chapters, without first completing the Chapter 2 assignment.

² Other than one phone call and this email, there is no other evidence of communication between the home and hospital teacher and the RP Teacher. The home and hospital teacher did not assist the student in the Research Practicum course.

The school convened another Section 504 meeting on May 3, 2012. The team again suggested modifications to the student's schedule. The team recommended that the student discontinue courses for the FA and that she focus on the Research Practicum required for the STP. Although Appellant disagreed with discontinuation of the finance class, the student was removed from the course. At that meeting, it was also agreed that the PowerPoint presentation deadline would be extended to May 7 because the student had not completed it by the May 3 deadline that had been set for her.

On May 7, the student was scheduled to present the PowerPoint presentation to the RP Teacher. Appellant contacted the teacher around mid-day stating that she could not bring the student to the meeting because of Appellant's work schedule. The RP Teacher asked to speak to the Appellant later that afternoon, at which point she told Appellant that there would be no more extensions and that the student would receive a zero for the PowerPoint assignment. Appellant immediately wrote to the principal of Flowers asking that her daughter be given an extension on the PowerPoint. Appellant claimed that they had first learned of the PowerPoint at the Section 504 meeting the week before it was due which gave little time for her daughter to prepare. Although she had agreed to a time for the presentation, despite being told that her daughter should first be cleared by a psychologist before being on school grounds, she learned that she could not bring her daughter on that day due to her work schedule. (Appellant Email, 5/8/12).

On May 7, the RP Teacher also reminded Appellant that the thesis edits were due by May 9 and that the student must be present the thesis between 2:30-3:00pm in order to receive a grade and to complete the STP. (Morton-Wilson Email, 5/7/12, Appellant Email, 5/8/12). Appellant and the student did not appear for the May 9 meeting with the RP Teacher. In a May 10 email, Appellant explained that she did not have the teacher's number with her to contact her about missing the appointment. She stated that after the student's AP Calculus exam, the student was ready to present the paper and went to the counselor's office and asked to see the RP Teacher. Appellant stated that the counselor told the student that she was not allowed to be in the building after the exam and made her leave. The student became agitated and left the building without handing in the paper. T.37-38. The student made no other attempts to hand in the paper.

In a May 11, 2012 email to the administration at Flowers, the RP Teacher detailed the 24 assignments that were required for the student to receive the STP certificate, except for the PowerPoint presentation. The listed assignments had already been modified to address the fact that the student could not do the hands-on assignments. There were only 4 completed assignments and the RP Teacher had received nothing from the student since November, 2011.

The student graduated from Charles Herbert Flowers High School with a high school diploma in June 2012. The student did not receive Certificates of Completion for the STP or the FA.³

On June 2, 2012, counsel for Appellant wrote to the then principal at Flowers, requesting an appeal of the denial of the STP and FA certificates. (Utter Letter, 6/2/12). On July 10, 2012, counsel for Appellant wrote another letter to the new principal at Flowers. (Utter Letter,

³ Based on the record, it is not even clear that a Certificate of Completion can be awarded for the FA Program.

7/10/12). Counsel argued on behalf of Appellant that the student had completed the necessary program requirements for the STP, but was not permitted to turn in her final assignment when she attempted to do so. *Id.* At some point Appellant's attorney communicated with legal counsel for the school system who advised him to submit any additional documentation the parent wanted considered. (Price Letter, 11/13/12). Appellant submitted an appeal to the local board which was forwarded to the Superintendent's Office of Appeals. (Utter Letter, 8/31/12; Viens Email, 9/6/12).

The Superintendent's designee scheduled an appeal conference on the matter for October 5, 2012, but it was postponed by the Office of Appeals until October 9, 2012. (Newton Letters, 10/1/12, 10/3/12). On October 9, counsel for Appellant sent an email to the Superintendent's designee cancelling the conference based on his belief that the Appellant had already had an appeal before the Superintendent. He stated that the appeal should be at the local board level, despite having been advised by counsel for the school system that the matter was at the Office of Appeals. (Utter Letter 10/9/12). Appellant was not aware that her attorney had cancelled and she appeared for the conference. (Price Letter. 11/13/12). Because Appellant was represented by legal counsel and counsel had chosen not to appear for the conference, and because Appellant's case had not been reviewed at the Superintendent's level, the Superintendent's designee proceeded to determine the case on the record before him. *Id.*

On November 13, 2012, the Superintendent's designee issued a final determination letter upholding the decision of Flowers High School principal to deny issuance of the certificates. The designee noted that the parent met with school staff on several occasions to develop a plan to enable the student to complete her coursework during her convalescence, that assignments were given to Appellant for her daughter to complete, that the student was given extensions of time to complete the work, and that the student had only turned in the 4 summer assignments out of a total of 24 assignments for the year despite communications between Appellant and the RP Teacher. The designee noted that there appeared to be some confusion about scheduling a PowerPoint presentation based on emails between Appellant and the RP Teacher, but that the assignment was only one of many that were required for completion of the Research Practicum. As for the FA program, counsel for Appellant provided no information on that claim. School records show that the student was removed from a finance class in spring 2012 to focus of the Research Practicum requirements. *Id.*

Appellant appealed the decision of the Superintendent's designee to the local board. (Hoover Letter, 11/15/12).

The local board assigned the matter to Hearing Officer, Linda M. Smalls, for review. On February 5, 2013, Ms. Smalls conducted a hearing. She advised the parties that they each had 10 minutes to present their cases. Appellant's counsel argued that the ten minute time frame was insufficient for him to present his client's case. He did not call Appellant as a witness in the case in chief, stating that there was insufficient time for her to testify. T.12. He also stated that the student would have testified if there was more time, but the student was not present due to her condition and he did not request a postponement. *Id.* He further stated that Appellant was at the hearing "to make a record and to preserve [Appellant's] right to appeal." *Id.* It was only after the Hearing Officer asked counsel whether he intended to state the basis for the appeal that

counsel stated that the Superintendent's decision was incorrect given the facts of the case and that a *de novo* hearing was required to bring the facts to light. T.13. Ms. Smalls advised counsel that he was free to present his case in any way he chose. *Id.* Appellant's counsel simply rested his case in chief without calling any witnesses or submitting any documentary evidence. *Id.* The local board went on to present its case through a witness which Appellant's counsel cross-examined. Appellant's counsel called Appellant as a rebuttal witness, asking her only one question. T.37. The Hearing Officer also asked the witnesses questions. The hearing lasted approximately 1 hour.

On February 12, 2013, Ms. Smalls issued her report and recommendation that the local board uphold the denial of the certificates of completion. She found that the school failed to follow the procedures for remedial assistance, as set forth by the STP requirements in Administrative Procedure 6142.3(III)(A),⁴ and that communication between the teacher and the parent was scarce. Nevertheless, Ms. Smalls determined that the student was not harmed as a result because there was no guarantee that she would have met the program requirements even if academic assistance had been provided given that her issue was not a failure to comprehend the assignments but rather a failure to complete the assignments as a result of her condition. She also noted that failure to receive a certificate of completion had no impact on the student receiving a high school diploma or the student's current enrollment in online college courses. Ms. Smalls further found that Appellant had presented no evidence regarding her claim that the student should have received a certificate of completion for the FA program.

The local board accepted Ms. Smalls' recommendation. By letter dated February 26, 2013, counsel to the local board conveyed to Appellant the local board's decision denying the certificate.

STANDARD OF REVIEW

Because this appeal involves a decision of a local board concerning 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

Due Process

Appellant maintains that the Appellant's due process rights were violated because the local board failed to provide a full evidentiary hearing before the Superintendent's designee, and

⁴ Administrative Procedure 6142.3(III)(A) requires the school system to initiate academic assistance at the end of any marking period in which the student experiences academic difficulty in the STP. This includes communication with the home, remedial assistance from teachers, counselors, and the program coordinator.

the Superintendent's designee instead issued a decision on the record.⁵ The State Board has consistently held, however, that that the opportunity for a full evidentiary hearing serves to cure any deficiencies that occurred in prior administrative proceedings. See *Williamson v. Board of Educ. of Anne Arundel County*, 7 Op. MSBE 649 (1997); *Harrison v. Somerset County Bd. of Educ.*, 7 Op. MSBE 391 (1996); see also *Mayberry v. Board of Educ. of Anne Arundel County*, 131 Md. App. 686, 690-691 (2000)(any defects in procedure were cured by *de novo* evidentiary hearing before local board). Here, the Appellant had the opportunity to participate fully in an evidentiary hearing before the local board's hearing officer, having a curative effect on any violation that may have occurred.

Counsel for Appellant claims, however, that the hearing before the local board's hearing examiner was so deficient that the hearing deprived the Appellant of her due process rights as well. He bases this argument on limiting the presentation of the Appellant's case to 10 minutes. He maintains that Appellant lacked adequate time to "raise all of the issues at stake" and "to fully confront and cross examine witnesses."

We are not persuaded by this argument. Appellant's legal counsel made a strategic decision not to present a case. He was quick to state at the hearing that he lacked time to put on a case, yet he chose to do almost nothing with the time that he was given. He did not call Appellant as a witness in the case in chief, despite the fact that she was there. Although he called her as a rebuttal witness, he asked her only one question. Nor did he request that the Hearing Officer postpone the matter until such time as the student could be there given that she was unavailable due to her health condition. He did not request that school system staff to be present and he did not disclose names of witnesses he would have called. Nor did he submit any documentary evidence, including the work that the student allegedly completed. He simply abstained from presenting a case and stated that he was preserving the record for appeal to the State Board. The only reason counsel stated a basis for the appeal was because the Hearing Officer asked him if he intended to state one. Moreover, it is not even clear that the Hearing Officer would have cut him off after 10 minutes given the fact that the hearing went on for approximately 1 hour.

Counsel for Appellant also argues that he lacked sufficient time to cross examine the school system's witnesses. The school system offered one witness, the RP Teacher. On cross-examination, counsel asked the teacher only one question about the due date for the paper. He then told the Hearing Officer that he had no additional questions. If he chose not to ask her questions when given the chance, he cannot now claim that he was denied that opportunity.

In addition, at the conclusion of the testimony in the case, the Hearing Officer asked the parties if they wanted to offer anything further in the case. Neither side offered anything else, including oral argument. The record is clear that at no time did the Hearing Officer stop either

⁵ We note that counsel for the Appellant contributed to the events that transpired that day when he chose not to appear for the conference without first receiving confirmation of its cancellation. Nor do we believe that counsel could, on his own accord, cancel a conference that had been set by the Superintendent's designee.

party from establishing a case based on limited time frames. Appellant simply made a poor strategic decision by choosing not to use his time to put on a case.

Substantive Issues

Although the appeal identifies due process matters as the sole issue in this case, the issue of whether or not the student has earned Certificates of Completion for the Science and Technology and the Finance Academy programs remains. As to the FA program, there was no evidence introduced below or here to support a claim that the student completed the FA work. Thus, as to that matter the Appellant has not met her burden and the local board's decision was not arbitrary, unreasonable or illegal.

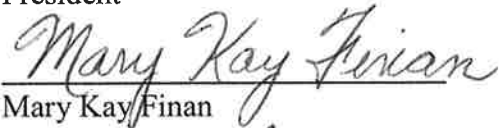
With regard to the STP Certificate of Completion, Appellant continues to maintain that her daughter completed the Research Practicum work and earned the certificate. The Appellant claims that her daughter completed the required assignments, including the PowerPoint and the thesis. Despite her claims, Appellant has submitted no evidence to support her position. Even at this stage of the case, there is no PowerPoint or thesis put forward to show that the student completed that work. Thus, Appellant has failed to meet her burden of proof in this case.

CONCLUSION

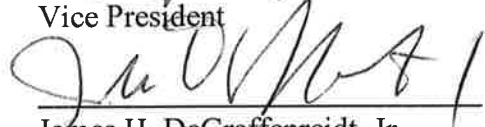
For all of these reasons, we uphold the local board's decision because it was not arbitrary, unreasonable or illegal.



Charlene M. Dukes
President



Mary Kay Finan
Vice President



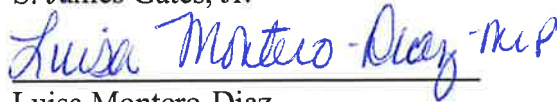
James H. DeGraffenreidt, Jr.



Linda Eberhart



S. James Gates, Jr.



Luisa Montero-Diaz



Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Guffie M. Smith, Jr.

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December 16, 2013