

DR. AND MRS. SAID JAHANMIR,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-52

OPINION

In this appeal, Appellants and their son contest the decision of the principal at Quince Orchard High School to deviate from the long-standing school practice of selecting a single valedictorian at graduation based on weighted grade point average, and instead honor the school's top graduating scholars in a new manner. The local board has filed a Motion to Dismiss the case as moot. Alternatively, the local board has filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable or illegal. Appellants have filed an opposition to the motion.

BACKGROUND

After commencement exercises for the 1997-98 graduating class, the director of school administration for Quince Orchard High School advised the principal of the school, Daniel Shea, to adopt an academic recognition practice for graduation that took into consideration what was interpreted as local board policy eliminating the use of class rank by Montgomery County schools.¹ Thus, following commencement exercises in June, 1998, the Principal of Quince Orchard High School, decided to discontinue the school's long standing practice of selecting a single valedictorian at graduation using class rank based on weighted grade point average ("GPA"), and to find a new way of honoring high achieving graduates. *See* Affidavit of Daniel J. Shea.

¹Beginning in early 1990, various studies were undertaken examining the practice of providing students with weighted and non-weighted grade point averages and class rankings. On February 22, 1993, the local board eliminated its policy of providing the class rankings of high school seniors. Thereafter, a student's transcript contained the student's weighted and non-weighted GPA, but not class rank. Class rankings were made, but kept confidential and supplied only to institutions of higher education upon request. On June 14, 1994, the local board eliminated the calculation of class rank altogether, effective June 15, 1995. Additionally, in response to the local board's inquiries, the local superintendent briefed the board on alternatives to valedictorian selection as a means by which to honor high achieving students. *See* memorandum dated March 25, 1995 to local board from local superintendent.

At the beginning of the 1998-99 school year, the principal began exploring methods used by other public schools in Montgomery County to honor outstanding academic achievement at graduation. Discussions within the school involved the school counselor who assists with graduation planning, the assistant principal for the 12th grade, and the 12th grade class advisor. The principal eventually decided that Quince Orchard High School would now honor those students whose unweighted GPAs placed them in the top five percent of their class, and would select two of those students to speak at the commencement ceremony based on a speech competition. Although the president of the Parent Teacher Student Association was notified of this change towards the end of the first semester, the student body was not informed until March, 1999.

During the 1998-99 school year, Farid Jahanmir was a senior at Quince Orchard High School in Montgomery County, and had the highest weighted GPA for the class of 1999. Upset with the decision not to name a single valedictorian at graduation, Appellants met with the principal on April 6, 1999 and stated their objections, including their belief that Farid was discriminated against based on his Iranian descent. The principal explained his reasons for the change in the tradition, and in a letter to Appellants dated April 7, 1999, stated the following:

The concerns you have raised about the decision to cease the recognition of a valedictorian in our graduation ceremonies have been made as a result of central office and Board of Education directions that schools not use weighted class rank as the sole means of recognizing students at graduation. This school has been in error for years, by naming a valedictorian based solely on weighted class ranking. We were informed of the original directive at last year's graduation. Therefore, we have changed our system.

It was decided that we could create a system of recognizing top scholars in several ways. After the seventh semester, a new process would be initiated. Every year, the top five percent of the class receives special recognition from the State of Maryland. The students in the top five percent will be announced by me and asked to stand at graduation. As we have in the past, a special certificate from the State will be awarded to these students as they pick up their diplomas. Top scholars are selectively identified in the commencement program with an asterisk. This tradition will continue. Finally, and new this year, two of the top scholars will be chosen to make brief remarks at graduation. A group of the top scholars have been invited to participate in a speech selection process. Farid is among these students.

One last response I would like to make is that this decision was not based on the race of the students involved. . . .

Thereafter, by letter dated April 13, 1999, Appellants through an attorney presented the principal with the option to either (1) name a valedictorian based on weighted GPA and permit the valedictorian to speak at graduation, or (2) name a valedictorian and allow the winners of the speech competition to address the audience. The principal attempted to negotiate a satisfactory resolution, which Appellants rejected. By letter dated April 19, 1999, Appellants proposed the following: (1) Farid and the other 4.0 students would be named as valedictorians but Farid would deliver the valedictorian address at graduation; (2) Farid would be seated on the stage and introduced as having attained the highest weighted GPA in the graduating class; (3) a special edition of the school newspaper would highlight Farid's accomplishments; and (4) Farid's name would be listed first among the valedictorians. It appeared as though the parties would satisfactorily resolve the dispute, and areas of agreement were proposed in a letter from local board attorney, Judith S. Bresler, dated April 23, 1999.

On May 3, 1999 however, Appellants demanded that Farid be named sole valedictorian and that a school-wide announcement to that effect be made on or before May 7, 1999. Further discussions ensued and in a letter to Appellants dated May 12, 1999, Ms. Bresler advised Appellants that Farid would be listed in the graduation program as one of the four individuals designated as valedictorians and offered him the opportunity to present his speech to the graduation committee to determine if he could deliver one of the graduation addresses.²

Dissatisfied with this outcome, Appellants appealed to the local superintendent. The matter was referred to a hearing officer for investigation. After a thorough review, the hearing officer produced a lengthy report in which he stated the following in response to Appellants' claims:

From the information available to me, however, the direction to move away from a single valedictorian occurred well before the end of the seventh semester when GPAs are calculated and, therefore, well before the principal knew who would have the highest weighted grade point average at that time. There is also no question in my mind that the move by Quince Orchard High School away from recognition of the "top" student based on weighted grade point average (WGPA) is consistent with the direction the entire system has moved since the Board of Education eliminated the ranking of students by WPGA.

²Appellants had previously objected to the need for Farid to present his speech in person to the committee for approval. Ms. Bresler indicated that this was necessary if Appellants wished to preserve the opportunity for Farid to speak at graduation.

The parents have asserted that there is no policy prohibiting the naming of a single valedictorian based on WPGA and that there is general confusion about what the Board policy is. While it is true that there is no explicit prohibition on a school naming a single valedictorian based on WPGA, the ranking of students based on WPGA in order to determine the student ranked number one in the class runs counter to the Board's decision to eliminate the ranking of students based on decimal points, carried out to the hundredth of a point. It is also difficult for me to conclude that there is general confusion about this issue, given the fact that nearly all senior high schools in Montgomery County have replaced a single valedictorian based on WPGA with other forms of recognizing high academic achievers.

Neither the timing nor the basis for the decision to recognize a group of top scholars in lieu of a single valedictorian supports the parents' claim of discrimination against their son, either as a legal matter or a personal one. The lack of any personal animus is clear from the principal's willingness to provide special recognition for Farid, although not in the way the parents desire. Therefore, I recommend that the principal's decision in this matter be upheld because it is consistent with Board policy, school system practice, and is in the best interests of high achieving students who deserve the recognition the school will bestow on them at graduation this June.

Based on the recommendation of the hearing officer, the superintendent through a designee upheld the principal's decision.

Appellants appealed the matter to the local board. Because the local board failed to reach a majority decision of its voting members, the superintendent's decision remained unchanged. Four members of the board voted to affirm the decision of the superintendent maintaining that discrimination was not a factor in the principal's decision, and that the practice of honoring valedictorians is a matter of local school policy because the local board policy eliminating class rank neither prohibits nor requires high schools to have valedictorians.³ Three members of the board voted to reverse, agreeing that discrimination played no part in the process and that the issue was a matter of local education policy, but finding that the principal's mid-year announcement of the change in practice may have been inequitable to students and therefore was

³These members also indicated that the local board's policy regarding class rank may have been misinterpreted by some school administrators.

an abuse of discretion.⁴ Appellants requested that the local board reconsider its decision, but their request was denied.

Quince Orchard High School's commencement ceremony took place on June 9, 1999. Farid was seated on the dias with the four other students who had attained a 4.0 non-weighted GPA, was one of the two student speakers and delivered the first of the two addresses, was cited during the principal's speech as attaining the highest weighted GPA, and is listed first on a plaque in the school office honoring the top scholars for the class of 1999.

ANALYSIS

As a preliminary matter, the local board contends that this appeal should be dismissed as moot because the commencement exercises for the 1999 graduating class are complete and Farid has graduated from Quince Orchard High School. Appellants argue that the case is not moot because a valedictorian designation is honorary. In their minds an effective remedy is available even though graduation has already occurred for Farid's class.

It is well established that a question is moot when, "there is no longer an effective remedy which the courts [or agency] can provide." *In Re Michael B.*, 345 Md. 232, 234 (1997). *See also Walter Chappas v. Montgomery County Board of Education*, MSBE Opinion No. 98-16 (March 25, 1998). Despite Appellants' indication that at this juncture they would be satisfied with Farid's designation as valedictorian of the class of 1999 and publication of the designation to the school community, we believe that this appeal is moot. Valedictorian is defined as a "student, usually ranking highest in a graduating class, who delivers the farewell speech at a commencement ceremony." *See Webster's II New Riverside University Dictionary* 1274 (1988). Consistent with this definition, the prior practice at Quince Orchard was to designate as valedictorian the student with the highest weighted grade point average and have that student address the class at commencement. Moreover, the naming of a valedictorian is tied solely to graduation ceremony tradition. Because commencement exercises for the 1999 graduating class are over, we believe there is no effective remedy available to Appellants.

Moreover, we also find the matter moot because Farid was specially recognized at graduation and at the senior awards banquet for his attainment of the highest weighted GPA for the graduating class. Thus, on at least two occasions, school officials publicized Farid's achievement to the school community. Farid's record speaks for itself.

Appellants contend that even if the matter is moot, it fits within one of the recognized

⁴The local board orally advised Appellants of its decision on June 8, 1999, one day prior to Farid's graduation. It issued a written opinion on June 21, 1999.

exceptions to the mootness doctrine.⁵ We disagree. This matter is not capable of repetition yet evading review. Quince Orchard High School's graduation tradition has been changed. The transition occurred during the 1998-99 school year, and current and future students can have no expectation of being named valedictorian at graduations in the years to come. Moreover, although Appellants' pride regarding Farid's accomplishments is understandable, whether Farid is designated as valedictorian of his graduating class is not a matter of public concern.

Another preliminary matter is Appellants' claim that the principal violated local board regulation JFA-RA by not involving students in the change to the valedictorian practice. Local board regulation JFA-RA indicates that in a revision or development of a major local school policy, program, or rule affecting students, there must be involvement of students at the local schools in the revision or development of the policy, program or rule. *See* Regulation JFA-RA at III.B.4. Appellants make this particular argument for the first time on appeal to the State Board.

The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See Chase Craven v. Board of Education of Montgomery County*, MSBE Opinion No. 97-43 (October 29, 1997) (failure to challenge suspension before local board constituted waiver); *Theresa H. Fentress v. Howard County Board of Education*, MSBE Opinion No. 96-37 (September 25, 1996) (failure to challenge 5-day suspension before the local board constituted waiver); *Earl Hart v. Board of Education of St. Mary's County*, MSBE Opinion No. 97-37 (September 25, 1996) (failure to raise issue of age discrimination below constituted waiver of issue on appeal). Accordingly, because Appellants did not raise this issue before the local board, they have waived their right to raise it on appeal.

Even if the State Board were to consider the substance of this appeal, we believe that the decision below was not arbitrary, unreasonable or illegal. We find no merit to Appellants' claim that discrimination motivated the principal's decision to eliminate the selection of a single valedictorian. Based on the record, it is clear that the change in the student recognition process at graduation was discussed and implemented well in advance of the calculation of the weighted

⁵Appellants cite *Coleman v. Coleman*, 57 Md. App. 755 (1984) to support this argument. *Coleman* involved a husband who sought injunctive relief to prevent his wife from having an abortion. Because the pregnancy was terminated prior to the appeal, the court acknowledged that the case was moot. However, the court reviewed the matter because it would likely arise again, and it was in the public's interest to provide guidance to litigants and trial courts on the issue. *Id.* at 758. Appellants also cite *Robinson v. Lee*, 317 Md. 371 (1989), which was an action for a declaratory judgment requesting that the court determine the duration of a prisoner's custody pursuant to numerous convictions and sentences. The court indicated that it would review the matter, which was moot since the prisoner had already been released, because it appeared that there were important issues of public interest which merited an expression of the court's views for guidance to future litigants. *Id.* at 375. Appellants' case is clearly distinguishable from these factual situations.

GPA's for the graduating class. Perhaps it would have been better for the principal to disclose the change earlier in the school year; however, there is no evidence that the decision was motivated by discriminatory reasons.

Furthermore, the principal's decision concerning his school's practice of honoring high-achieving students at graduation in place of a single valedictorian is purely a matter of local education policy that is well within his discretion. As stated in the local board decision, its policies neither prohibit nor require a public school in Montgomery County to select a single valedictorian. The principal's decision is reasonable and is supported by the fact that the majority trend in the county is to eliminate the single valedictorian practice from graduation ceremonies in order to give more widespread recognition to high-achieving students.

CONCLUSION

For these reasons, we dismiss this appeal as moot. *See* COMAR 13A.01.01.03J. Alternatively, because we find that Appellants have not met their burden of proving that the local school officials acted arbitrarily, unreasonably, or illegally in this matter, we would affirm the decision of the superintendent of schools of Montgomery County.

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December 8, 1999