

ALLAN M. FISHER,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-01

OPINION

In this appeal, Appellant challenges the local board's decision concerning his daughter's grades. The local board has submitted a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

In early 2001, Appellant contacted Dr. Edward W. Shirley, Principal of Northwest High School in Montgomery County, to discuss concerns about Nicole's first semester grades in Spanish, Psychology, Modern World, English and Math.¹ Specifically, Appellant raised issues regarding the testing and grading elements for those courses and wanted Nicole's grades reassessed. Appellant also indicated that his daughter's difficulty with test taking negatively impacted her grades. *See* 2/19/01 letter to Shirley. On February 28, 2001, the Principal advised Appellant that he had reviewed the grades at issue, addressing each of the specified grade concerns in turn, and concluded that all policies were followed and no mistakes were made. In that letter, Dr. Shirley also wrote:

As I said in our conference, for whatever reason, it is apparent that Nicki's test scores are negatively impacting her marking grades. Obviously, she is having extreme difficulty on semester exams. However, I believe that our efforts need to focus on correcting this difficulty as opposed to eliminating test scores from the grading equation. Hopefully the various strategies identified during the Educational Management Team Meeting will start to show some form of positive improvement.

By letter dated March 6, 2001, Appellant requested further review of the matter by the Deputy Superintendent of Schools, Dr. James A. Williams. The matter was assigned to Mr. Arch Webster, who contacted Appellant to discuss his concerns. As a result of discussions with Mr. Webster, a meeting was arranged between Appellant and Mr. Shirley to focus on plans for

¹At that time, Nicole was in the eleventh grade.

Nicole's future. The meeting eventually took place in April; however the meeting failed to resolve Appellant's issues. By letter dated March 16, 2001, Appellant informed Dr. Williams that he still desired to have the circumstances of Nicole's first semester grades reviewed.

On March 21, 2001, Appellant submitted a "Complaint From The Public" with an attachment requesting the following actions:

- 1) Spanish – the final exam. I want information proving that the percentage of D's and E's in that class was significantly wrong. If a "reasonable" person after reviewing the class percentage of D's and E's concludes it is a problem, the final class grade should be changed.

- 2) Psychology, Modern World, and English – events resulting in final grade. In each of these courses Nicki's grade was declining during the 2nd marking period by at least one grade (I found this out after the fact from the school in January 2001). The MCPS Policy and Regulation on Grading and Reporting delineates a process on how this type of situation is to be addressed. It was NOT followed. Nicki should not be punished because Northwest HS did not comply. Action should be taken that reverses the punishment of the victim.

- 3) Math - review facts. Nicki failed the math final after having a high B in class. When I asked the teacher his assessment of what could have happened, he said "she didn't study." This was not the situation. I requested a comparative analysis of the course instructional methodology to the final exam study sheet and exam to determine if the exam questions could have confused her, based on the classroom approaches taught. This has not been done, and should be done.

Thereafter, on April 19, 2001, Appellant wrote to the president of the local board, having heard nothing in response to his "Complaint From The Public." The president responded on April 23, indicating that the letter was being treated as an appeal to the local board of the underlying issues identified in the "Complaint From The Public."

In response to the appeal, the superintendent submitted a memorandum to the local board dated June 4, 2001 in which he indicated that although this case had been assigned to Mr. Webster in March, 2001, due to various conflicts, misunderstandings, and personal illness, Mr. Webster did not speak with Appellant subsequent to their initial contact in March until May 4, 2001. At that time, Mr. Webster advised Appellant that he was waiting for staff responses to the specific issues raised in the "Complaint From The Public" regarding Nicole's first semester exams and other information. Mr. Webster had contacted subject area coordinators from the Office of Instruction and Program Development to assist him and staff from Northwest High

School in analyzing the grade distributions and test validity. The superintendent noted that “[n]o problems in the administration of or preparation for the final examinations were found.” On May 16, 2001, Mr. Webster advised Appellant of the completed investigation, recommending no grade change in Spanish, Math or English, but indicating that the psychology teacher would give Nicole a new exam and use the new grade to determine the final first semester grade.² The superintendent indicated that the following actions had been taken to further address Appellant’s concerns: Northwest High School staff is providing assistance and mentoring to Nicole in test-taking skills; a staff member has been assigned as mentor to Nicole and liaison between her parents and classroom teachers; Dr. Shirley is reviewing the emotional and educational concerns raised and will direct staff to provide Nicole with the necessary support.

Because an Educational Management Team (“EMT”) meeting was to be held, the local board deferred action on the appeal until the meeting had taken place. On July 6, 2001, an EMT meeting was conducted. The EMT determined that Nicole did not qualify for either an Individualized Education Plan under the Individuals With Disabilities Education Act (“IDEA”) or a specific plan under Section 504 of the Rehabilitation Act. The EMT concluded, however, that Nicole could benefit from additional assistance and constructed a plan for the 2001-2002 school year which included:

- Provision of additional time for tests, quizzes and assignments
- Provision of study skills techniques as needed
- Provision of extra notes from note taker when needed
- Availability of teachers on a weekly basis
- Provision of mentoring by social studies teacher
- Teachers maintaining contact with Nicole’s outside tutors
- Permitting one re-take of a major test, quiz, or final exam if failed
- Allowing periodic breaks during tests or exams upon request

In a unanimous decision, the local board affirmed the decisions made with respect to Nicole’s individual grades and courses.³ In addition, the local board stated the following:

The Board of Education further notes that based upon the EMT meeting held on July 6, 2001, certain accommodations will be put into place for Nicole during the 2001-2002 school year to assist her with any difficulties she may have in taking tests. This plan, which will provide Nicole with assistance in the future, is the appropriate response to the situation at hand. However, it would not be appropriate to change the grades received by Nicole in the past on the basis of an alleged learning disability that has not been found to exist then or at present. As Nicole enters her senior year, one can

²It appears that issues concerning Nicole’s psychology grade have been resolved.

³Two board members did not participate in the appeal.

continue to dispute whether her instruction and her testing for one of four marking periods last year were proper. However, this Board is not inclined to substitute its judgment for that of professional educators when the conduct complained of was neither arbitrary nor capricious.

ANALYSIS

As a preliminary matter, Appellant requests a “full hearing of this case.” However, the procedures for appeals to the State Board do not grant Appellant the right to an evidentiary hearing when there is no constitutional or statutory basis to provide one. Nor does due process require an evidentiary hearing on issues that do not involve a genuine dispute of material fact. *See Hethmon v. Prince George’s County Board of Education*, 6 Op. MSBE 646, 648-649 (1993). There is no constitutional or statutory basis for a hearing in an appeal involving student grades. Moreover, given the well established record in this case, we do not believe that there is a genuine dispute of material fact that would trigger an evidentiary hearing

The crux of this appeal concerns the merits of Nicole’s grades for the fall semester of 2000. However, it is well settled that the State Board will not review the merits of student grade decisions. As stated in *Crawford v. Washington County Board of Education*, 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 Board of Education*; MSBE Opinion No. 99-43 (September 22, 1999)(upholding grade of D in AP English); *Chase v. Carroll County Board of Education*, 7 Op. MSBE Op. 915 (1997)(upholding grade of B in Expository Writing); *Mai v. Montgomery County Board of Education*, 7 Op. MSBE 752 (1997)(upholding grade placement decision); *Tompkins v. Montgomery County Board of Education*, 7 Op. MSBE 475 (1996)(upholding grade of D in English). The State Board will only accept appeals regarding academic grades if there are specific allegations that the local board failed to follow proper procedure or violated a student’s due process rights.

Appellant asserts that MCPS policies and procedures were not followed in that he was not warned that Nicole was at risk of failing certain courses. It is significant to note that Nicole did not fail any courses for the fall 2000 semester. She received an A in SAT Prep class, a B in Chemistry, and C’s in Honors English, Spanish 3, Honors Modern World History, Algebra 2, and Advanced Placement Psychology. However, of the 6 classes in which final exams were given, Nicole received 2 C’s, 1 D, and 3 E’s on the exams.

The MCPS Policy on Grading and Reporting provides in relevant part that “[c]onferences should be encouraged and held when needed. Teacher-Student conferences as well as Parent-Teacher conferences are encouraged.” MCPS Policy at (f)(5).

Based on a comparison of the final course grade with the course exam, evidence that Nicole may have problems with test taking did not surface until the results of the exams were compiled. At that time Appellant requested and was granted numerous conferences to discuss Nicole’s abilities. Under these circumstances we do not find any violation of the MCPS policy

on grading and reporting.

In summary, we do not find that the local board acted arbitrarily, unreasonably or illegally in this matter. To the contrary, we find that the local board afforded Appellant sufficient opportunity to address his concerns. As previously noted, there were several layers of review in this case. Although the local board ultimately found no basis upon which to change Nicole's grades, the school system responded to Appellant's concerns regarding his daughter's test taking difficulties. The school system evaluated Nicole to determine whether or not she qualified as an individual with a disability under the special education laws or under Section 504. Having found no disability, but recognizing Nicole's test taking difficulties, the local board noted that Nicole would be provided with a seven-point plan of assistance to address her test-taking problems.⁴

CONCLUSION

For all of the above reasons, we affirm the decision of the Board of Education of Montgomery County.

Marilyn D. Maultsby
President

JoAnn T. Bell

Philip S. Benzil

Reginald L. Dunn

⁴With regard to Appellant's claims concerning decisions made by the school system for special education and related services for Nicole, the State Board is not the appropriate forum for redress. Appellant's remedy is through the due process procedures set forth in IDEA.

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

January 29, 2002