

RICHARD REGAN,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-29

### OPINION

In this appeal, Appellant challenges the local board decision regarding an instructional activity in a Montgomery County elementary school which teaches students about Native Americans. The local board has submitted a Motion to Dismiss, or in the Alternative, a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has submitted a reply in opposition to the local board's Motion.

### FACTUAL BACKGROUND

On December 3, 2001, Appellant submitted a complaint to the local superintendent about an allegedly inappropriate instructional activity in the Montgomery County Public Schools (MCPS) involving a re-enactment of the first Thanksgiving.<sup>1</sup> The complaint was based on a picture published in a local newspaper depicting a kindergarten student at Farmland Elementary School in Native American headdress with a bow and arrow pointed at the school principal. The picture was erroneously captioned as a re-creation of the first Thanksgiving with a kindergartner playfully pointing a bow and arrow at a smiling school principal.<sup>2</sup>

The superintendent assigned the matter to his designee, Deputy Superintendent James A. Williams who referred the case to hearing officer, Wayne R. Fleeger. Mr. Fleeger discovered the following information during his investigation, as stated in his report:

The activity pictured was not a re-enactment of the first Thanksgiving but rather the culmination of the school unit in celebration of American Indian Heritage Month. In this unit the students had researched American Indian customs, beliefs, games, jewelry, dress, and general heritage. Students made their own costumes using their research to guide them in making the clothing

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<sup>1</sup>The complaint also took issue with the celebration of Thanksgiving, claiming that it glorifies the European immigrants and their domination of the American Indians.

<sup>2</sup>Appellant had contacted the principal of Farmland Elementary regarding the picture and the principal explained to Appellant that the newspaper was in error. The principal also invited Appellant to be a resource and speaker for the unit on Native Americans for the following year.

authentic. Far from being a “sickening manifestation of violence and bigotry against American Indians” as Mr. Regan characterized it, this activity was a manifestation of the desire to explore the cultural heritage of an important racial group within our society.

Mr. Fleeger recommended that Appellant’s complaint be denied. Finding “no denigration of any racial or ethnic group, either knowingly or unknowingly, on the part of the building staff or administration,” the superintendent’s designee adopted Mr. Fleeger’s recommendation and denied Appellant’s complaint.

On appeal to the local board Appellant maintained that the students were inappropriately dressed and that the bow and arrow “reinforces the misconceived, self-serving concept of the savage American Indian being universally inclined toward war-like behavior.” He claimed that the activity discriminates against American Indians who reside in Montgomery County and the American Indian school children who attend public school in Montgomery County making a mockery of their culture, people, and history.

The superintendent responded in part:

The costumes were constructed by the students from their research, and Mr. Regan has been invited to help with that research next year. The bow and arrow, even though authentic, may, of course, be interpreted in different ways. The important point is that the activity in question was an effort in good faith to foster understanding of the diverse backgrounds of our community. Dr. Fineman is to be commended for her leadership in this effort and for her willingness to involve community resources, such as Mr. Regan. I find no evidence of a hostile environment in Farmland Elementary School.

In a unanimous decision, the local board dismissed Appellant’s appeal based on lack of jurisdiction and lack of standing.<sup>3</sup>

Thereafter, Appellant appealed to the State Board by letter of March 18, 2002. In his appeal, Appellant claims that the local board “allows schools under their jurisdiction to teach about American Indians in a manner which reinforces the concept of the savage American Indian.” He maintains that the instructional program violates local board policy ACA on Human Relations and COMAR 13A.04.05, Education That Is Multicultural.

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<sup>3</sup>One board member did not participate in the decision.

## ANALYSIS

Appellant has made various allegations throughout the different levels of appeal in this case. Appellant now argues before the State Board that MCPS violated COMAR 13A.04.05, Education That Is Multicultural, by failing to provide an environment that avoids misrepresentation and discourages stereotype. Appellant also now argues that MCPS violated local board policy ACA on Human Relations by not creating schools, classrooms, offices, and school sponsored representations that are inclusive, bias free, and provide a welcoming climate for all. Appellant did not raise either of these issues before the local board.

The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver on appeal). Because Appellant failed to raise these specific issues below, we find that he has waived his right to raise them before the State Board.

Moreover, based on our review of the record in this case, we do not find that Appellant has satisfied his burden of proof that the board's decision violates either the MCPS policy on human relations or the State Board regulation on multicultural education. We find that Appellant is actually seeking in this appeal a change in the way the unit on Native Americans is taught in the Montgomery County Public Schools, even though his request is based on the manner in which the unit is taught in the kindergarten at Farmland Elementary. We agree with the local board that the appeal process is not the appropriate vehicle for modifying the existing curriculum or adopting a new policy governing the teaching of the curriculum.

## CONCLUSION

For these reasons, we dismiss the appeal. *See Astrove v. Mont. Cty. Bd. of Ed.*, MSBE Op. 02-14 (attempt to change existing policy is quasi-legislative matter not subject to 4-205 appeal process).

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June 26, 2002