

ROBERT ASTROVE,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-14

OPINION

Appellant contests the format in which Montgomery County Public Schools (“MCPS”) reported the results of the Comprehensive Test of Basic Skills (“CTBS”) administered in Spring, 2001. Specifically, Appellant maintains that the aggregate results summary excluded test score data on special education students. The local board has filed a Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, maintaining that: (1) Appellant lacks standing, due to lack of any injury-in-fact; (2) Appellant’s belated allegation of harm to support standing which he first raised at the State Board level should be barred since no such allegation was made by Appellant in his presentations before the local board; (3) the appeal should be dismissed because a quasi-judicial appeal under §4-205(c) of the Education Article is not an appropriate avenue for raising or changing quasi-legislative matters of policy; and (4) Appellant has failed to satisfy his burden of proof. Appellant has filed a reply in opposition to the local board’s motion.

FACTUAL BACKGROUND

On July 7, 2001 Appellant wrote to the MCPS Associate Superintendent for Shared Accountability, Dr. Pamela Hoffler-Ridick, and MCPS Director of Special Education, Dr. Bobbi Jasper, and again on August 4, 2001 to Dr. Hoffler-Ridick, regarding two general concerns: the manner in which MCPS published the results of special education students on the CTBS administered in Spring, 2001, and the unequal representation of special education students within the “System of Shared Accountability” as presented to the local board at its June 25, 2001 business meeting. Appellant requested that MCPS take the following specific actions:

- Republish results of the CTBS. The highest level results, and the first printed in the published report are to include all students who took the assessment regardless of the model of administration (Standard & non-standard). Fully aggregated results are also to be published at the school level. In addition students with 504 plans are not to be included with the results of children who receive “special education.”
- Publish the results of all other state and district wide assessments in similar form.
- Provide clarification of the methods for calculating the measures defined in the “System of Shared Accountability”.

- Provide demonstration that the “System of Shared Accountability” includes all MCPS students, each of the designated grades or levels of school, with equal weight in measures of school and system wide performance. And if it does not, explain how this model provides for equity.

Having received no response, on August 18, 2001, Appellant initiated an appeal to the superintendent in which he relied on the issues set forth in his August 4 and July 7 letters.

The superintendent responded specifically addressing each of Appellant’s concerns. With regard to issue one, the superintendent indicated that MCPS would not republish the CTBS results because the method of reporting was consistent with the Maryland State Department of Education’s practice of reporting results for the 2000 Maryland School Performance Program Report. He explained that MSDE does not report aggregate CTBS results that include all children because there were no norms or expected levels of performance established by the publisher for students taking the assessments under non-standard conditions. He indicated that results reported for special education students were only for those students identified in the student database as receiving special education services, and did not include students with 504 plans. He also explained that the data is disaggregated for results of standard and non-standard administration of the CTBS.

With regard to issue two, the local superintendent indicated that MCPS aggregated and published all data results for students who took the assessments under standard conditions specified by the test designer. He also indicated that data was disaggregated by school, race/ethnicity, gender, standard/non-standard administration, and support services (non/limited speakers of English, eligibility for free and reduced price meals, and special education.)

As to request number three, the superintendent referred Appellant to a draft technical manual for the System of Shared Accountability and to a contact person within MCPS with whom to confer on questions.

Finally, concerning Appellant’s fourth request, the superintendent explained that the Shared System Accountability included all MCPS students in each of the specified grades or levels of schools for all equity categories identified. The measures included 95 percent of the student population. He indicated that data on students who participated in the Independent Mastery Alternative Programs and High School Assessments would be incorporated in the accountability system as soon as results were available.

Appellant appealed to the local board, stating that he was limiting the appeal to the superintendent’s rejection of the first proposed action regarding the reporting of CTBS results. The superintendent responded by memorandum indicating, among other things, that MCPS did not include students who took the CTBS on a nonstandard basis in its totals because there were no norms for these students. He noted that MCPS was aware of the recommendation from the

test developer, CTB McGraw-Hill, to include all students in the totals,¹ but that MCPS disagreed with it, as did other testing experts.

The local board dismissed the appeal finding that Appellant did not have standing, and that because Appellant sought a change in policy, the appeal was not a “controversy and dispute” under 4-205(c). The local board noted that the appropriate vehicle for seeking a change in policy was to lobby the local board members as the policy makers for the school system in an attempt to gain the majority necessary to change policy or adopt new policy.

ANALYSIS

In his appeal to the State Board, Appellant alleges that (1) because all students, including Appellant’s child, suffer injury when MCPS fails to properly include scores of students with disabilities in its performance assessment measures, he has standing to bring this appeal; (2) MCPS wrongfully excluded data from its published aggregate totals on the CTBS; (3) the exclusion of that data violated MCPS Policy AFA, Educational Accountability regarding conducting standardized testing activities; and (4) because MSDE delegated its reporting responsibility under IDEA to the local school system, MCPS violated the provisions of IDEA concerning aggregate reporting of the results of special education students.

As a preliminary matter, Appellant has raised two issues for the first time on appeal to the State Board: his claim that MCPS violated local board policy AFA by not reporting according to the recommendation of CTB McGraw-Hill,² and his claim that MSDE delegated its assessment reporting responsibility under IDEA to the local school system and thus MCPS violated the IDEA provisions by not aggregating the CTBS results of special education students with the results of all other students.³

¹See CTB McGraw Hill “Guidelines for Using the Results of Standardized Tests Administered Under Nonstandard Conditions” at 3.

²Policy AFA (B)(1)(e) states: “All standardized tests shall be administered, processed, and scored in the manner specified in the manuals or instructions. Deviance from the approved procedures without the written approval of the superintendent, is prohibited” On its face we believe that policy AFA does not apply here because the method of reporting scores is not the same as test administration, test processing, or test scoring. Furthermore, the method of reporting specified in the CTB McGraw-Hill guideline is a recommendation only.

³IDEA requires that the State report to the public disaggregated data on the performance of students with disabilities as defined by IDEA. It also requires that the State report to the public aggregate data that include the performance of children with disabilities together with all other children. 20 U.S.C. §1412(a)(17); 34 C.F.R. §300.139. These provisions specifically apply to the State education agency, not to a local school system. Appellant has presented no evidence to support his assertion that MSDE has delegated its reporting responsibility to the Montgomery County Public School System. Moreover, by letter dated 2/5/01, Carol Ann Baglin, Assistant State Superintendent for Special Education, indicated that MSDE would review all data that MSDE reports to the public and would take all necessary steps to ensure that the State is in compliance with federal reporting requirements.

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 issues before the local board, we find that he has waived his right to raise them before the State Board.

The local board maintains that the appeal should be dismissed because Appellant lacks standing. We believe it is not necessary to determine the standing of Appellant because the appeal may be properly dismissed on jurisdictional grounds. This is an unusual type of appeal in that Appellant is attempting to use a quasi-judicial process to force a change in policy which is a quasi-legislative decision. As stated by the local board in its decision:

This does not mean that the Board is unmindful of local educational policy issues raised in connection with this appeal, but only that an individual appeal under §4-205(c)(4) is not the proper method for establishing or altering local educational policy. In fact, at the Board's public meeting on November 13, 2001, Board members, staff, and consultants discussed the testing and reporting of scores of special education students as part of a lengthy discussion on the needs of special education students. The primary purpose of this appeal is to change the format used to report the results of the CTBS; an appeal in an individual case is not an appropriate vehicle for modifying such a policy. Therefore, the appeal must be dismissed.

We concur.

CONCLUSION

For these reasons, we dismiss the appeal. *See* COMAR 13A.01.01.03J(2)(c).

Marilyn D. Maultsby
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John L. Wisthoff

April 24, 2002

Dunbar Brooks, a newly appointed member of the State Board of Education, did not participate in the consideration of this case.