

DARREN L.,

Appellant,

v.

WICOMICO COUNTY  
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-43

## OPINION

### INTRODUCTION

Darren L. (“Appellant”) is the parent of a high school student in Wicomico County Public Schools (“WCPS”). He appeals the decision of the Wicomico County Board of Education (“local board”) to uphold the Superintendent’s decision not to excuse Appellant’s child from participating and receiving instruction in subject matter objectionable to Appellant. The local board filed a Motion for Summary Decision. Appellant responded, and the local board replied

### FACTUAL BACKGROUND

During the 2020-2021 school year, Appellant’s child was a tenth grader in a WCPS high school. As a part of his Honors English 10 course, Appellant’s child read in class a short story by Kate Chopin entitled *The Story of an Hour*.<sup>1</sup> The short story was a part of the “Understanding Social Justice” unit of the course, in which the class discussed the story then students completed an individual written assignment. The English teacher gave Appellant’s child partial credit for answers to two of the questions:

“1.[B] The word “*repression*” is the act of keeping something under control. How does this word reveal more about Mrs. Mallard’s life? Consider the year the short story was written.”

“4. What is one social justice issue that is relevant in this short story? Explain how it is relevant.”

On September 24, 2020, the teacher emailed the Appellant to inform him of the classroom assignment, explain the two questions, and address why he did not provide Appellant’s child with full credit for his answers. The teacher also provided Appellant’s child with additional time to correct and resubmit the assignment for full credit. (Appeal, Ex. A-1).

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<sup>1</sup> *The Story of an Hour* is a short story written in 1894 about a married woman, Mrs. Mallard, who is informed that her husband has been killed in a train accident. Mrs. Mallard immediately begins feeling emotions of both sadness but also happiness at being “free” to spend the rest of her life as she wants, independent of her husband. When Mrs. Mallard, who is afflicted with a weak heart, suddenly learns that her husband is not dead, she dies of a heart attack. The story explores themes of independence and oppression in the context of marriage.

Appellant responded to the teacher by email expressing his concern that his child was receiving instruction in “philosophy” rather than English and literature. Appellant also expressed his belief that “[s]ocial justice activism is NOT the responsibility of the school system, and best left up to parents to teach their children.” Appellant concluded by stating that no WCPS staff member was to instruct his child in the following topics:

social justice/injustice, identity, activism, sexual orientation, sexuality, BLM (Black Liberation Movement), Antifa, anti-Semitism, categorization of people, discrimination, shaming, racism, equality, equity, socialism, Marxism, communism, anti-capitalism, fascism, inherency, privilege, supremacy, collective responsibility, wealth redistribution, reparations, the 1619 Project, victimhood, or anything of the sort.

(Appeal, Ex. A-2).

On September 30, 2020, Appellant submitted a complaint to the school principal against the teacher and the local board. In this complaint, Appellant repeated his demand that his child not be instructed in the aforementioned topics. (Appeal, Ex. A-3). On October 15, 2020, the WCPS Superintendent sent Appellant a letter explaining that the complaint was referred to her for review. The Superintendent found that the curriculum was developed by the Maryland State Department of Education (“MSDE”) to be in alignment with the Maryland College and Career Readiness Standards, and that it was not subversive. She also clarified that Appellant’s child was not required to “affirm or deny any beliefs or engage or refrain from engaging in any specific activities.” Teaching the material to the students was an opportunity to make the students aware of various points of view. She also confirmed that the teacher was attempting to provide Appellant’s child with an opportunity to earn full credit after he only responded with unacceptably short responses. Therefore, the Superintendent informed Appellant that his child would not be excused from the instructional matters to which Appellant objected. (Appeal, Ex. A-4).

On November 11, 2020, the Appellant filed an appeal with the local board. Appellant alleged that political indoctrination was occurring in the English class and throughout the school system. Specifically, Appellant argued that the English assignment was an attempt to brainwash his child, and any suggestion that the issue was about the completeness of his child’s answers was a pretense. Appellant further asserted that the school system employed inappropriate, subversive materials when it used reference of Tupac Shakur in class.<sup>2</sup> Appellant claimed that the curriculum was geared towards changing the minds of “students who come from Christian-ethical values, and inserting what is not considered normal among people of conservative values.” Appellant maintained these actions violated three local board policies: BOE-GEN-PL-024 (Mission and Vision Policy), INS-SCH-PL-008 (Selection and Review of Textbooks, Instructional Materials, and Media Materials Policy), and BOE-GEN-PL-023 (Political Solicitation in Schools Policy). Appellant requested that the local board cease and desist in

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<sup>2</sup> Tupac Shakur was an influential American rapper, songwriter, and actor. Appellant alleges that Tupac was a “criminal thug” and inclusion of his work in the classroom glorified an individual who engaged in criminal acts. Allegedly, Appellant had previously complained about his inclusion in the curriculum to the school principal.

indoctrinating his child and create a school-wide corrective action plan establishing a committee to review how political views are inserted into the public school curriculum. (Appeal, Ex. A-5).

On January 25, 2021, the local board issued its order finding that Appellant failed to produce any evidence to support his assertions that the Superintendent violated board policy. The local board also found Appellant failed to provide evidence to support that his child's civil rights were violated. The local board cited to case law to support the proposition that the public school curriculum need not be viewpoint neutral and that a parent's right to choose a public or private education for his child does not include the ability to dictate the public school curriculum. As such, the local board upheld the Superintendent's decision, finding it in compliance with all applicable policies and laws. (Appeal, Ex. A-9).

This appeal followed.

### STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. Appellant bears the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

### LEGAL ANALYSIS

In his appeal, Appellant identifies three bases for his request that we overturn the local board decision:

- 1) The local board used political propaganda as teaching materials;
- 2) The local board admitted to indoctrinating his minor child against his will (and that of Appellant's) by use of force; and
- 3) The local board unethically and abusively handled the appeal process outside the School Board Governance Policy (BOE-GEN-PL-002) and the Maryland Education Article § 4-205 (Powers and Duties of County Superintendent).

The local board submitted a Motion for Summary Decision in the matter, asserting that Appellant failed to produce any evidence to support his claims. The local board contended its decision was reasonable, not an abuse of its statutory authority, and not illegal. In response, Appellant submitted a reply wherein he raised new claims. Chiefly, Appellant alleged that the local board, the MSDE, and the State of Maryland interfered with his freedom of religion in violation of the First Amendment of the U.S. Constitution, as well as the Due Process Clause of the Fourteenth Amendment. Appellant also alleged that his child's teachers discriminated against him and punished him with lower grades for his beliefs. Appellant claims that the WCPS Superintendent, local board, and the MSDE are responsible for these actions, and requests we sanction the MSDE for its framework and curriculum (i.e. Maryland College and Career Readiness Standards). We address these arguments in turn.

### *New Claims*

First, we address two of the claims raised by Appellant in his reply to the local board – namely that the local board, MSDE, and the State of Maryland violated his Fourteenth Amendment rights and his child was subjected to retaliatory behavior. Our review of the record demonstrates that Appellant failed to bring these claims before the WCPS Superintendent and the local board. We have long held that the local board of education must first decide a matter before it is submitted to the State Board on appeal. *See* Md. Code Ann., Educ. § 4-205(c). Appellants must exhaust statutorily prescribed administrative remedies in the appropriate matter. *See Alice M. v. Cecil County Bd. of Educ.*, MSBE Op. No. 10-01 (2010); *Kemp v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-14 (2001); *Stewart v. Prince George’s County Bd. of Educ.*, 7 Op. MSBE 1358 (1998). As such, we decline to review these new claims.

### *Constitutional Challenges*

Appellant alleges that the curriculum taught by WCPS infringes on his child’s and his Freedom of Religion and Free Speech rights under the First Amendment of the U.S. Constitution. The Free Exercise of Religion Clause prohibits a governmental entity from enacting policies that are “designed to suppress religious beliefs or practices unless the laws are justified by a compelling governmental purpose and narrowly tailored to meet that purposes.” *See Booth v. Maryland*, 327 F.3d 377, 380 (4<sup>th</sup> Circ. 2003); *Citizens for a Responsible Curriculum, et al. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-30 (2007). Appellant fails to identify how the English assignment or other WCPS curriculum interferes with his child’s right to practice their religion. In fact, in reviewing the record, we do not see any evidence that supports this assignment touched on religion at all. The curriculum is religion-neutral in that it does not directly target or restrain religion, and does not treat religious students different from non-religious students. While the Appellant contended in his local board appeal that the curriculum was designed to change the “hearts and minds” of students from Christian backgrounds, a mere conclusory statement is not sufficient to demonstrate the curriculum violates the Free Exercise of Religion Clause.

Appellant also alleges that the curriculum violates his child’s free speech rights because it forces his child to adopt a particular way of thinking and belief contrary to his child’s own personal beliefs. The local board argues that the Appellant’s fundamental right to raise his child is limited when it comes to the curriculum chosen by the local school system. The Supreme Court has recognized that “local school boards must be permitted to establish and apply their curriculum in such a way as to transmit community values” because “public schools are vitally important ‘in the preparation of individuals for participation as citizens,’ and as vehicles for ‘inculcating fundamental values necessary to the maintenance of a democratic political system.’” *Board of Educ. v. Pico*, 457 U.S. 853, 863-64 (1982), citing *Ambach v. Norwick*, 441 U.S. 68, 76-77 (1979). However, a government speaker cannot compel individuals to support a particular viewpoint. *See, e.g., Rumsfeld v. Forum for Academic & Institutional Rights, Inc.* 126 S.Ct. 1297, 1308-10 (2006).

If Appellant’s argument that WCPS is forcing his child to adopt certain beliefs was true, then it may conflict with constitutional rights; however, this allegation is not supported by the

facts. Appellant's child participated in an English lesson in which the child read a story and answered reflection questions. Appellant's child received partial credit for the written assignment based on failure to provide a substantive enough answer to the questions – not because of the child's particular beliefs in relation to the story. Appellant argues that by simply teaching a viewpoint to a student, the school system is requiring the student to adopt that set of beliefs; this does not follow. Appellant fails to provide any evidence that demonstrates his child was forced to adopt any political beliefs as a result of the English assignment; therefore, there is no evidence that the assignment violates the First Amendment.

### *Local Board Policies*

Appellant argues that the local board decision should be overturned for violating local board policy. First, Appellant argues that the Superintendent did not comply with BOE-GEN-PL-024 (Mission and Vision Policy), section III.D. which reads, "In our school system, education should be a dynamic process subject to evaluation, revision and updating of existing program, as well as the implementation of new programs, *based upon the needs of students*, the latest knowledge and current scientific information as to how individuals learn." (emphasis added). Appellant argues that the Superintendent must consider his child's personal needs under this policy. There is no evidence to demonstrate that the policy requires the Superintendent or the local board to individualize lesson content for each student based on his personal beliefs. The local board argues that to adopt such a position would present an unreasonable burden on the school system not required by the courts; we concur.

Appellant also argues that the local board violated INS-SCH-PL-008 (Selection and Review of Textbooks, Instructional Materials, and Media Materials Policy). The policy states the local board "encourages the use of textbooks and materials which enlighten, inspire, encourage, instill hope and foster good decision-making, as in comparison to those which discourage, convey a sense of futility or affirm negative or destructive character traits." Appellant simply asserts that the materials used by WCPS are in violation of this standard without any evidence but his personal opinion. Mere assertions, especially ones based on personal opinion rather than objective facts, are insufficient for proving the Superintendent and local board have violated the policy.

Finally, the Appellant argues that WCPS and the local board have violated BOE-GEN-PL-023 (Political Solicitation in Schools Policy) by instructing his child in a political ideology. First, there is no evidence that Appellant's child was taught any political ideology. The class read a story as a part of a thematic unit on social justice. Appellant fails to state what political ideology was contained in the lesson. However, even if the lesson contained a political ideology, section II.A of the policy states "[i]nstructional activities where issues or political events are discussed as part of a broad-based instructional format are permitted during an employee's work time or during school-sponsored activities." The policy clearly allows politics to be taught in class. As we discussed above, we believe the courts and reason allow this flexibility to local school systems. Appellant fails to produce any evidence that the political solicitation policy was violated.

CONCLUSION

For the foregoing reasons, we affirm the local board’s decision not to excuse Appellant’s child from participating and receiving instruction in subject matter objectionable to Appellant.

Signatures on file:

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Clarence C. Crawford  
President

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Chuen-Chin Bianca Chang

\_\_\_\_\_  
Susan J. Getty

\_\_\_\_\_  
Rachel McCusker

\_\_\_\_\_  
Joan Mele-McCarthy

\_\_\_\_\_  
Lori Morrow

\_\_\_\_\_  
Warner I. Sumpter

\_\_\_\_\_  
Holly C. Wilcox

Absent:  
Shawn D. Bartley  
Gail H. Bates

Abstain:  
Charles R. Dashiell, Jr., Vice-President  
Vermelle Greene

Dissent:  
Jean C. Halle

July 27, 2021