CINDY ROSE,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
FREDERICK COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 18-08

OPINION

INTRODUCTION

Cindy Rose (Appellant) challenges the application of a testing policy established by the Frederick County Board of Education (local board) as applied to her daughter. The local board filed a Motion for Summary Decision. Appellant responded and the local board replied.

FACTUAL BACKGROUND

On April 26, 2016, the State Board issued a decision entitled "In the Matter of Refusal or Opting Out of State Assessments." MSBE Op. No. 16-13 (2016). We concluded that "nothing in state law permits parents to 'opt out' their children from state assessments or for students to refuse to take assessments." *Id.* We acknowledged that parents have the right to direct their children's educational upbringing, but that "this right is limited once parents decide to enroll their children in public school." *Id.*

In response to this decision, the local board revised its policy on assessments. Local Board Policy 511.6 concerns "refusals." The policy reads:

> A. The Board recognizes that the State of Maryland has not passed legislation allowing for parental opt-out of statewide testing as part of the regular instructional program of the public school system. Consequently, the Board cannot grant parental requests to opt-out of testing on behalf of their children. However, the Board acknowledges that in spite of the declaration of the Maryland State Board of Education (State Board), some students may still refuse to take assessments or may be barred from doing so by their parents. In the case of refusals, it is the Board's expectation that students and families are treated by school staff with the same equity, dignity and respect as provided to test takers. If a school administrator is able to provide an alternative activity it must align with testing protocol.

Another portion of the policy indicates that the local board "will honor any student's typical mode of communication in the matter of honoring [testing] refusals." Local Board Policy 511.6B.

In January 2017, Appellant contacted the local board to inquire about its interpretation of the phrase "some students may still refuse to take assessments or may be barred from doing so by their parents." On February 2, 2017, the board president responded by indicating that the language in the policy was "not meant to be interpreted as an 'either/or' scenario (i.e. either the student refusing or the parent refusing). Rather the language recognizes students may be refusing based on their own decision or based on the decision of her/his parent." (Motion).

Around the same time, Appellant began corresponding with the principal for her daughter's school. On January 20, 2017, she wrote an email to the principal stating "I am instructing you I have barred my child from participating [in testing]. Neither you, nor anyone from [Frederick County Public Schools] has my permission to put her in the awkward, political position of refusing . . . . As the policy now reads I may bar her and that leaves her completely out of the process." (Response, January 20, 2017 email).

On April 21, 2017, Appellant sent a follow-up email to the principal, specifically barring her daughter from participating in PARCC assessments. On April 28, 2017, the principal responded and explained the process he planned to use for Appellant's daughter:

> [G] is scheduled in a small group setting and Ms. McGrath is going to let [G] know that on test days she should report to the testing location and find Jill Wilton (secretary that helps with testing) or Ms. McGrath, at which point she would express testing refusal. One of them will take her to the counseling office to work or read. If it is during a time when she has a class that is not testing, she will be sent back to class with a pass. (April 28, 2017 Dillman email).

Appellant responded back the same day, indicating that she was fine with the process except for her daughter having to "express testing refusal." She offered two alternative suggestions for staff: (1) "We know you aren't participating, you need to go with Ms. Wilton/McGrath" or (2) "It's our understanding that your parents have barred you from participating?", after which Appellant's daughter would say yes. On May 2, 2017, the principal responded and endorsed Appellant's second suggestion. Appellant replied that she was "happy we could come to an understanding." (May 2, 2017 Rose and Dillman emails).

On May 17, 2017, Appellant's daughter was required to state that she was refusing PARCC assessments.[1] On May 23, 2017, Appellant appealed the application of the local board's assessment policy as applied to her daughter. Appellant argued that her daughter should not have been required to state her refusal to take tests, given Appellant's prior emails barring her daughter from testing.

On June 13, 2017, the local superintendent issued her decision, in which she concluded that the principal followed Local Board Policy 511.6. The superintendent determined that asking the question "It's our understanding your parents have barred you from participating" complied

[1] It is unclear from the record what type of conversation school staff had with Appellant's daughter. Appellant alleges that the principal violated their prior agreement, but does not explain how. The local superintendent maintains that school staff asked the question as previously agreed upon by Appellant and the principal. Although this may be a disputed fact, it is not material to our decision.

with the board's policy. (Local Board Decision). Appellant appealed the decision.

On November 6, 2017, the local board issued its decision. The board emphasized that there is nothing in state law that permits "opting out" or refusing assessments. The board acknowledged, however, that school staff cannot "force" a student to take an assessment that he or she refuses to take. Local Board Policy 511.6 was designed to address such situations by requiring school staff to treat students and parents with dignity and respect. As to Appellant's arguments, the board concluded that there is no difference between a parent "barring" a student from assessments and a parent "opting out" of assessments. The board determined that nothing in its policy "would permit a parent to simply notify the school that the student is not permitted to participate in the assessment." The board concluded that the principal handled the situation in compliance with the school system policy. (Local Board Decision).

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, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A. By contrast, the State Board exercises its independent judgment in interpreting the education law of Maryland. COMAR 13A.01.05.05E.

LEGAL ANALYSIS

Although framed somewhat differently by the Appellant,[2] this appeal raises two questions: (1) is the local board's assessment policy illegal on its face and (2) did the local board violate its policy as applied to Appellant's daughter.

The pertinent part of Local Board Policy 511.6 is the following two sentences:

> However, the Board acknowledges that in spite of the declaration of the Maryland State Board of Education (State Board) [that there is no right to opt out of testing], some students may still refuse to take assessments or may be barred from doing so by their parents. In the case of refusals, it is the Board's expectation that students and families are treated by school staff with the same equity, dignity and respect as provided to test takers.

The local board's policy references our previous testing declaratory ruling, *In the Matter of Refusal*, MSBE Op. No. 16-13. In that decision, we answered this question posed by the local board:

> Q: If a student "opts out" or refuses to take a state assessment, what alternative activities may a local board provide to those students?

[2] Appellant argues that her appeal raises one question: Do parents have a right to refuse testing "on behalf" of their children? As this Board has made clear, "nothing in state law permits parents to 'opt out' their children from state assessments or for students to refuse to take assessments." *See In the Matter of Refusal*, MSBE Op. No. 16-13.

> A: We acknowledge that in spite of our declaration [that there is no right to opt out of testing], some students may still refuse to take assessments or will be barred from doing so by their parents. There is no legal obligation on the part of school systems to provide alternative activities.

Appellant seizes on this answer to argue that parents have a right to prohibit their students from taking assessments. That was not the intent of our prior decision, but the inartful language has caused some confusion. Our intent was not to open the door to test refusals, but to establish that local boards were under no legal obligation to provide alternative activities if a student refused to test. To the extent that our previous opinion was unclear, we take this opportunity to answer the local board's question from our previous opinion with greater specificity and clarity:

> Q: If a student "opts out" or refuses to take a state assessment, what alternative activities may a local board provide to those students?
>
> A: There is no legal obligation on the part of school systems to provide alternative activities.

As our previous decision made clear, once they enter the public schools, students do not have a legal right to refuse testing and parents do not have a legal right to prohibit their children from testing. *See In the Matter of Refusal*, MSBE Op. No. 16-13. This Board has explained, at length, why no such rights exist. *Id.* If refusals occur, local boards have discretion to decide how best to address them, consistent with our previous opinion. The local board's policy here is consistent with our decision and not illegal.

The second question posed by Appellant is whether the local board violated its own policy in requiring Appellant's daughter to state that she refused to test. Appellant quotes the local board's policy — "some students may still refuse to take assessments or may be barred from doing so by their parents" — to argue that the local board recognizes Appellant's right to "bar" her daughter from assessments. The local board meanwhile maintains that its policy merely recognizes that students sometimes refuse to test, whether on their own initiative or because a parent or guardian has told them not to do so. Again, to the extent that language in our prior opinion has been read to grant a parent the "right" to tell the school system that it cannot test her child or to permit her to bar her child from being tested, we state that that was never our intent. In addition, the local board's policy itself states that parents cannot "bar" a student from testing. *See* Local Board Policy 511.6 (stating that "the Board cannot grant parental requests to opt-out of testing on behalf of their children"). Consequently, the local board did not violate its own policy as applied by requiring Appellant's daughter to tell school authorities that she herself refused testing.

CONCLUSION

We affirm the decision of the local board because its policy is not illegal and the application of that policy was not arbitrary, unreasonable, or illegal.

Signatures on File:

_____
Andrew R. Smarick
President

_____
Chester E. Finn, Jr.
Vice-President

_____
Michele Jenkins Guyton

_____
Justin M. Hartings

_____
Stephanie R. Iszard

_____
Rose Maria Li

_____
Michael Phillips

_____
David Steiner

March 20, 2018