

M.D. AND D.C.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 24-09

OPINION

INTRODUCTION

M.D. and D.C. (“Appellants”) appeal the decision of the Montgomery County Board of Education (“local board”) affirming the decision of the local superintendent’s designee to deny Appellants’ request to allow their child to make-up missing coursework from lawful absences or to excuse missed assignments. The local board responded. Appellants responded, and the local board replied.

FACTUAL BACKGROUND

The Appellants’ child was enrolled in the 11th grade in Montgomery County Public Schools (“MCPS”) during the 2022-2023 school year. During that school year, the student was absent 134 days due to a documented health condition.¹ As early as October of 2022, Appellants and the student were engaged in conversations with the school regarding the student’s attendance and missing assignments. (Local Bd., Ex. 1, MCPS 68-69).

On December 5, 2022, school staff emailed Appellants that the school would continue to provide the student with time to make up work from marking period one and two, but she would not be exempt from any assignments or assessments. (Local Bd., Ex. 1, MCPS 68).

On February 15, 2023, an Educational Management Team meeting was held with Appellants, the student, and school staff, including the Pupil Personnel Worker. Staff discussed options to accommodate the student’s medical needs and attendance concerns, including Interim Instructional Services, the Virtual Academy, a health plan, or a Section 504 Plan. According to school staff, Appellants were uninterested in these options and solely sought excusals for missing assignments. (Local Bd., Ex. 1, MCPS 69).

There is a significant dispute amongst the parties over the level of support that was provided to the student in accommodating her absences and missed work. Ultimately, during the first three marking periods, the student’s grades were modified once the assignments were

¹ The parties disagree on whether doctor’s notes were submitted for all absences and in a timely fashion. However, it is clear from the record that the student had a medical condition that impacted her ability to attend school regularly.

received and graded. However, in the fourth marking period, the school required the student to submit make-up work by the end of the school year. Ultimately, the student received four D's, two C's, four A's, and four B's as her final grades for the 2022-2023 school year. (Local Bd., Ex. 1, MCPS 9-10).

On June 15, 2023, the Director of Student Support and Well-being held a meeting with the student and her mother, as well as the school principal, assistant principal, school counselor, and AP Psychology teacher. The purpose of the meeting was to discuss the student's grades and make-up work. The participants reviewed some of the missing assignments and tests for various courses the student was enrolled in. MCPS explained that it would not be waiving any of the student's coursework and that there were too many assignments missing for grades to be changed. The Director provided the parent with a copy of the public complaint process. (Local Bd., Ex. 1, MCPS 64-67).

On July 6, 2023, Appellants filed a *Complaint from the Public* alleging that their daughter "was given low or failing grades that are not the grades she earned and not reflective of her true skills, abilities and knowledge." Appellants alleged that school staff blocked their daughter from making up missing work, excluded completed work in calculating her grades, and failed to provide her with the required time to make up missing work. Appellants stated these actions reflected race and disability-based discrimination against their daughter. (Local Bd., Ex. 1, MCPS 60-61).

The complaint was referred to a hearing officer for review. During the hearing officer's investigation, the hearing officer communicated with the Appellants, the school principal, the assistant principal, the guidance counselor, and the Director of Student Support and Well-being. On August 17, 2023, the hearing officer issued a report recommending MCPS deny the complaint. The hearing officer did not find any evidence that MCPS deviated from their attendance and grading policies or that its decisions were based on race or disability. (Local Bd., Ex. 1, MCPS 17-20).

On August 17, 2023, the Chief of District Operations (acting as the superintendent's designee) adopted the hearing officer's recommendations and denied the complaint. (Local Bd., Ex. 1, 16).

On September 13, 2023, Appellants filed an appeal to the local board. Appellants made numerous arguments, including that their daughter was inappropriately assigned zeros and 50% grades for work missed during medically excused absences. Appellants argued that this was in violation of the Americans with Disabilities Act ("ADA") and MCPS policy. Appellant contended that school staff were unaccommodating and failed to provide adequate support to their daughter in making up her work. They also described how they felt statements made by MCPS personnel were racist and in violation of MCPS' Nondiscrimination Statement. For example, Appellants allege that the school principal made comments suggesting that Ivy League schools are not for Black people and are too expensive for Black people. School staff also allegedly assisted white students in making up work when out sick, but failed to support Appellants' child who is African American. (Local Bd., Ex. 1, MCPS 22-55).

On October 5, 2023, the local superintendent submitted a memo to the local board in support of the decision to deny the complaint. The local superintendent argued that the student was allowed time to make-up work and noted that teachers submitted grade modifications for the first three marking periods of the school year upon receiving late assignments. The superintendent also addressed the Appellants' allegations of discrimination and found no supporting evidence. (Local Board, Ex. 1, MCPS 8-15).

On November 9, 2023, the local board voted to uphold the decision of MCPS to deny the complaint. The local board found that school staff provided the student with an opportunity to make up most of her work and that the student was given more than the standard ten days to complete missed assignments. The local board also found the school attempted to provide support for the student by offering Interim Instructional Services, a Section 504 Plan, a health plan, and access to the Virtual Academy – all of which were declined by Appellants. The local board did not find any evidence of discrimination. (Local Board, Ex. 1, MCPS 2-4).

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.01.05.06A.

LEGAL ANALYSIS

Appellants request that the State Board overturn the decision of the local board affirming the denial of their appeal. Appellants request that their child be afforded the opportunity to make up the assignments missed while she was absent or to have those assignments waived, ultimately resulting in the recalculation of the student's grades from the 2022-2023 school year. Appellants make several arguments in support of their contention that the local board's decision is arbitrary, unreasonable, and illegal, and should be overturned. These arguments can largely be summed up as follows:

1. MCPS through the enforcement of its grading policies, as well as the statements of the school staff, demonstrates race-based discrimination towards African American students;
2. MCPS' failure to provide additional accommodations for the student to make up missed work constitutes disability-based discrimination in violation of the ADA; and
3. MCPS staff hindered the student's ability to access her assignments, quizzes, and tests and failed to comply with its own grading policies.

Race-Based Discrimination

Appellants make several allegations, which they believe show MCPS's biased and discriminatory treatment of their child based on her race. Appellants claim that school personnel

made racially related comments regarding available courses and attendance at Ivy League schools and provided more assistance to white students to make up work when sick. They argue these alleged comments and incidents demonstrate that school staff were racially motivated in denying the Appellants' requests for additional time for their child to make up work. They further contend that MCPS's policy requiring make-up work be completed within 10 days after an excused absence is "strategically designed to harm children with disabilities, especially minorities." (Response, p. 5).

If true, these allegations give pause; however, Appellants have failed to provide any evidence to support their allegations. For example, there are no emails, recordings, or signed affidavits to validate the numerous allegations raised. Appellants do not provide dates for when the alleged statements were made. As we have held before, allegations alone are insufficient to support a claim of discrimination. *See S.R. v. Montgomery Cnty. Bd. of Educ. (III-VI)*, MSBE Op. No. 21-11 (2021) citing *Weeks v. Carroll Cnty. Bd. of Educ.*, MSBE Op. No. 13-44 (2013). The State Board cannot rely on hearsay in deciding these important matters, nor can it accept blanket statements that groups of students are treated differently based on race without a factual basis to support such an assertion. Therefore, we find there is insufficient evidence to demonstrate the actions of MCPS were racially discriminatory.

Violations of the ADA

A large portion of Appellants' claims relate to the alleged failure of MCPS to comply with the ADA and MCPS's engagement in disability-based discrimination. While qualified students with disabilities are protected from disability-based discrimination under both the ADA and Section 504 of the Rehabilitation Act ("Section 504"), the State Board has declined to exercise jurisdiction where a separate administrative forum exists to address grievances under federal law. *See Ashley J. v. Montgomery Cnty. Bd. of Educ.*, MSBE Order No. OR21-07; *Phil N. v. Anne Arundel Cnty. Bd. of Educ.*, MSBE Op. No. 18-42 (2018). The Office for Civil Rights at the U.S. Department of Education receives and investigates complaints against public school systems accused of discrimination, including violations of the ADA and Section 504, which serves as the appropriate venue for the Appellants' disability-related allegations. Accordingly, we decline to address this part of the appeal.

Violations of MCPS Policy

Appellants also take issue with MCPS's application of its grading policies. In the student's high school handbook, it states, "For long-term legal absences (five days or longer), the teacher and student will work together to formulate their own plan. All make-up work must be completed within 10 days following the absence." (Local Bd., Ex. 2, MCPS 11). There is also MCPS Regulation IKA-RA, *Grading and Reporting*, which states that while teachers may not assign a grade lower than 50% to a task or assessment, the teacher is allowed to assign a zero when the student does not submit a task or assessment. (Local Bd., Ex. 2, MCPS 40).

The parties differ on how much time and support was provided to the student to make up her work. MCPS contends that for the first two marking periods the student was provided with more than 10 days to complete her assignments, and grades were changed as assignments were turned in and graded. Appellants allege that certain teachers closed down access to assignments

or changed rubrics, making it difficult for the student to complete her work. It appears from the filings that the final breakdown of communication occurred in June when MCPS informed Appellants and the student that all outstanding work must be turned in by the end of the school year. Appellants and their child were under the impression from school staff that a plan would be in place to assist the student with making up her work. When it was made clear at the June 15th meeting that the school would not provide any additional extensions, Appellants were upset and felt that the policy as applied in their child’s situation is arbitrary and unreasonable.

This is a particularly challenging case given the high number of absences the student experienced. At first glance, one can understand why an individual may find that only 10 days to complete make-up work after absences as long as the student experienced appears unreasonable. The student was out of school almost 73% of the school year, which represents a significant amount of make-up work. However, our analysis does not stop there. MCPS has policies in place to address educational services for students with chronic health conditions that prevent regular attendance at school, including Interim Instructional Services (“IIS”) and Section 504 services.

If MCPS failed to offer the student and her family these supports, then the actions of MCPS may be arbitrary and unreasonable; however, that is not the case. MCPS staff offered multiple avenues to address the student’s chronic absences, including IIS and Section 504 services, as well as access to the Virtual Academy or a health plan. One or more of these services were offered to the family in October, December, February, and March that school year. For reasons that are unclear from the record, Appellants turned down all of these offers of support. While we are sympathetic to how challenging the school year must have been for the student given her chronic health issues, it does not entitle the student to a waiver of school grading policies. We do not find that the application of the grading policies in this situation is arbitrary or unreasonable given the offers of support provided to the family.

CONCLUSION

For the foregoing reasons, we dismiss the ADA claims. We otherwise affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

Signatures on File:

Clarence C. Crawford
President

Joshua L. Michael
Vice-President

Chuen-Chin Bianca Chang

Susan J. Getty

Nick Greer

Irma E. Johnson

Rachel McCusker

Joan Mele-McCarthy

Samir Paul

Absent:
Shawn D. Bartley
Monica Goldson
Holly Wilcox

April 30, 2024