

TOBIAS H. AND
MARGARET H.

Appellants

v.

CARROLL COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR22-05

ORDER

The Appellants challenge the quasi-legislative January 12, 2022 decision of the Carroll County Board of Education (“local board”) to modify its COVID-19 quarantine protocol for employees and students. The modification limits the requirement to quarantine for anyone who has had a close contact with someone with COVID-19 to only those who are experiencing symptoms of COVID-19.

In response to the COVID-19 pandemic, on April 27, 2021, the State Board issued Resolution #21-01 requiring county school systems to open for the 2021-2022 school year and to permit all students to attend school in person for at least 180 actual school days and a minimum of 1,080 school hours during a 10-month period for in-person, in-school instruction, with the teacher in the classroom. The Resolution requires State Board approval for any deviation from the required in-person and in-school instruction.

On January 6, 2022, in response to the Centers for Disease Control and Prevention (“CDC”) recent changes in COVID-19 isolation and quarantine recommendations for the general public, the Maryland Department of Health (“MDH”) and the Maryland State Department of Education (“MSDE”) distributed *Interim K-12 School and Child Care COVID-19 Isolation and Quarantine Guidance* replacing the joint guidance issued by MDH and MSDE on October 27, 2021 as revised. See <https://www.marylandpublicschools.org/Documents/HP/MemoSchoolChildcareGuidance01062022.pdf> (“*Interim Guidance*”). The *Interim Guidance* requires in relevant part that any unvaccinated individuals quarantine for at least 5 days after the last close contact with the person with COVID-19.

During the open session of the regularly scheduled board meeting on January 12, 2022, the local board received an update on COVID-19 related matters from Susan M. Doyle, Acting Director of the Carroll County Department of Health (“CCDH”).¹ Ms. Doyle reported that in

¹ A video recording of the local board’s January 12, 2022 meeting is available at: <https://video.search.yahoo.com/search/video?p=youtube+carroll+county+board+of+education+board+meeting+january+12&fr=yhs-trp-001&fr2=p%3As%2Cv%3Av%2Cm%3Asb%2Crn%3Atop&ei=UTF-8#id=1&vid=c0bc658281b1862fbb2859ed72a28cbd&action=view> (“January 12th video recording”). The relevant COVID-related presentations begin at the 1:29:00 mark.

December 2021, the CDC relaxed its quarantine and isolation protocols.² In response, CCDH revised its protocols and shared the following guidance in relevant part:

If you come into close contact with someone with COVID-19, you should quarantine if:

- You are ages 18 or older and completed the primary series of recommended vaccine, but have not received a recommended booster shot when eligible.
- You received the single-dose Johnson & Johnson vaccine (completing the primary series) over 2 months ago and have not received a recommended booster shot.
- You are not vaccinated or have not completed or primary vaccine series.

The local board also heard COVID-19 data updates from Karl Streaker, Director of Student Services for the Carroll County Public Schools (“CCPS”) and Jonathan O’Neal, Chief Operating Officer for CCPS. Mr. Streaker reported that CCPS’s student attendance rates had decreased from 94.5% in January 2019 to approximately 90% in January 2022.³ He shared information from the CCPS dashboard that 1,313 staff and students were in isolation due to testing positive for COVID-19 and 1,288 students and staff were in quarantine. Mr. O’Neal reported that the biggest challenge facing CCPS is staffing and providing coverage in schools during the pandemic.⁴

Local Board Member Donna M. Sivigny estimated that based on her review of the dashboard data that approximately 1.5% to 2% of CCPS students who were in quarantine ultimately tested positive for COVID-19.⁵ She stated that she felt the quarantine rules were doing a disservice to the students because they were quarantining fifty kids and catching only one positive case. She made a motion to modify the local board’s protocol to require quarantining only for students and staff who are symptomatic, and after further discussion, the local board unanimously approved the change in protocol.⁶ The local board announced the change on its website on January 13, 2022.⁷

The Appellants, parents of a CCPS student, filed this appeal seeking the State Board to overturn the local board’s change in quarantine protocol as the protocol departs from all guidance issued by MSDE, MDH, CCDH and CDC. The local board filed a motion to dismiss and a response to the appeal maintaining that the State Board lacked jurisdiction because Appellants did not allege violations of State or federal law. The Appellant responded and the local board replied.

² The CDC guidance is available at <https://www.cdc.gov/coronavirus/2019-ncov/your-health/quarantine-isolation.html#quarantine>

³ January 12th video recording at 1:57:40 - 1:59:26.

⁴ *Id.* at 2:00:22 - 2:01:056.

⁵ *Id.* at 2:07:00 - 2:09:39. The record is unclear how these estimates were derived and for what period of time.

⁶ *Id.* at 2:12:36 - 2:30:47.

⁷ See <https://www.carrollk12.org/Superintendent/CommunityMediaRelations/Pages/Coronavirus-Disease-2019.aspx>

Education Article, §2-205(e) grants jurisdiction to the State Board to determine the “true intent and meaning” of State education law and to decide all cases and controversies that arise under the State education statute and State Board rules and regulations. Section 2-205 was intended by the General Assembly as a grant of “original jurisdiction” to the State Board allowing an appellant a direct appeal to the State Board “without the need to exhaust any lower administrative remedies.” See *Board of Educ. for Dorchester County v. Hubbard*, 305 Md. 774, 789 (1986); *Board of Educ. of Garrett County v. Lendo*, 295 Md. 55, 65-66 (1982). As the Court of Appeals has explained in dicta, the category of cases heard under §2-205 “deal primarily with statewide issues (i.e., statutes and/or bylaws applicable to *all* county boards of education)...” 295 Md. at 65 (emphasis in original); see also *Strother v. Board of Educ. of Howard County*, 96 Md. App. 99, 113-114 (1993).

We exercise “our original jurisdiction sparingly” and the law confines matters subject to review under §2-205 to those involving State education law, regulations, or a policy that implicates State education law or regulations on a statewide basis. *In the Matter of Wendy Lippe*, MSBE Op. No. 21-37 (2021); see also *Nash v. Montgomery County Bd. of Educ.*, Op. No. 20-41(2020); *T.G. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 18-10 (2018); *Sartucci v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-31 (2010). Here, Appellants seek the State Board to exercise its original jurisdiction to review the local board’s change in its quarantine protocol. They do not challenge the local board’s quarantine protocol based on violations of State law or State Board regulations; rather they challenge the protocol based on its departure from non-regulatory guidance issued by MSDE, MDH, CCDH and the CDC.⁸

As this appeal presents no alleged violations of State education law or State Board regulations, we decline to exercise our original jurisdiction. We note that this order in no way limits our authority to regulate quarantine protocols in the future should we issue regulations on this matter. Since the beginning of the COVID-19 pandemic, the State Board continues to receive monthly school logistics and transmission rate data related to COVID-19 reports and will issue regulations should the need arise.

Accordingly, it is this 26th day of April 2022 by the Maryland State Board of Education,

ORDERED, that the appeal referenced above is hereby dismissed because the State Board has no jurisdiction. See COMAR 13A.01.05.03(B)(1)(d).

MARYLAND STATE BOARD OF EDUCATION

Signature on File:

Clarence C. Crawford
President

⁸ There is no dispute that the local board quarantine policy departs from the *Interim Guidance* issued by MDH and MSDE. However, the *Interim Guidance* at p.2 specifically states, “[By] law, each local school system may set their own policies and procedures for their schools, students/children, teachers, and staff”.