

JASON GUARINO,

Appellant

v.

HARFORD COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 22-15

OPINION

INTRODUCTION

The Appellant, Jason Guarino, appeals the decision of the Harford County Board of Education (the “local board”) affirming the letter of reprimand issued to the Appellant. The local board filed a response to the appeal maintaining that its decision was not arbitrary, unreasonable or illegal. The Appellant filed a response and the local board filed a reply.

FACTUAL BACKGROUND

Appellant is a tenured teacher employed by Harford County Public Schools (“HCPS”). From August 18, 2008 through June 30, 2021, he taught business and computer science at ██████ High School (“█HS”) until his involuntary transfer to another school. During the time at █HS, he oversaw the business pathway program. Seniors enrolled in the business pathway program have the option of completing a Dual enrollment program at Harford Community College (“HCC”)(“Dual enrollment program”) or the Business and Entrepreneurship program (“Capstone program”). (Local Bd. Response). The Appellant received a letter of reprimand for misconduct for failing to provide his senior business pathway students with the necessary information to determine if it were in their best interest to complete the Capstone program or the Dual enrollment program and failing to seek approval before any financial commitments were offered to any student to cover tuition costs. The reprimand is the subject of this appeal.

The Capstone program is a personally designed, independently-conducted activity which enables students to further their knowledge/skills in an approved end-of-course final project. The students are required to work with a mentor in the business community who is not a family member or a teacher. The Dual enrollment program provides an opportunity for diploma-tracked high school students to take six credits of coursework at HCC which may count toward earning both a high school diploma and college credit. (Local Bd. Response). The Dual enrollment program is part of HCPS’s North Star program where students are encouraged to earn up to “a year¹ of college credit while in high school” where the “college experience” is offered at “no cost to students or families to reduce the potential college debt burden.” (Appeal, Ex. 17, attachment 11).

¹ The year of college credit can be accumulated through Advance Placement classes as well as the Dual enrollment program.

Tuition for any HCC course for dually enrolled students is determined by the high school grade point average (“GPA”) and qualification for free or reduced meal assistance (“FARMS”). Students with a GPA under 2.4 agree to pay the full price of the tuition of \$600.00 per course for a total of \$1200.00. Students with a GPA equal to or above 2.4 qualify for a 1/3 discount which reduces the cost of each course to \$400.00 for a total of \$800.00. FARMS students meeting the GPA requirement of 2.4 qualify to have the full cost of tuition covered by HCPS. (Appeal, Ex. 9).

Prior to the 2020-2021 school year, all students regardless of their GPA who were dually enrolled in HCC/HCPS classes received free or reduced tuition. (Appeal, Ex. 14). Students with a 2.4 or above GPA could enroll in the program and automatically receive the free or reduced tuition. For students without a minimum 2.4 GPA, the school guidance department submitted an exemption from the GPA requirement which allowed the students to complete the application, which was then approved by the principal and the executive director of middle and high school. Once the exemption was approved, the students could enroll and receive the free or reduced tuition. (Appellant’s Affidavit and Local Board Reply). Prior to the 2020-2021 school year, M■■■■ O■■■■² was the principal of ■■■HS and approved the exemptions for the 2.4 GPA requirement so students could participate in the class and receive the free or reduced tuition.

This changed in the 2020-2021 school year. In the fall of 2020, students who did not meet the GPA requirement, were notified that they would not be eligible for free or reduced tuition. On September 22, 2020, Appellant contacted Mr. O■■■■, the new executive director, and explained, “it seems the waiver has changed this year and students with under a 2.4 GPA, even with the waiver to take the class, are no longer eligible for the discount.” (Appeal, Ex. 7). He further explained “there is a capstone project option but I’m uncomfortable sending students out to find and work with a mentor in the field and in all honesty [it] is not very rigorous or in line with what Dr. Bulson wants of our students.” (Appeal, Ex. 7). The Appellant did not receive a response from Mr. O■■■■.

On September 23, 2020, the Appellant contacted ■■■HS’s guidance counselors to inform them that students who did not meet the GPA requirement were not granted a tuition waiver or reduction. The new principal, ■■■■■ Q■■■■, requested that staff reach out to Mr. Limpert, Supervisor of the Magnet and CTE Programs, regarding the tuition waivers for those students. Mr. Limpert stated he was not aware of the waivers for students with a GPA below 2.4 and said they were bound by their agreement³ with HCC and could not offer a reduced or free tuition to these students. (Appeal, Ex. 8).

In October 2020, the school counselor received a complaint from the mother of a student, ■■■ indicating that the mother was frustrated with the Appellant because he was encouraging her daughter to remain in the Dual enrollment program even though she had informed ■■■HS that she was unable to pay the tuition. In an email dated October 2, 2020, the Appellant advised the counselor, “if you’re able to get [■■■■] and her mother again please let them know I will be

² Mr. O■■■■ became the executive director of middle and high school for the 2020-2021 school year.

³ The Memorandum of Understanding between HCC and HCPS is silent as to the 2.4 GPA requirement but discusses qualified students. (Appeal, Ex. 13).

willing to help out with tuition so she can take the course.”). (Appeal, Ex. 12). In an email dated October 15, 2020, Appellant sent an email to ■■■■ stating:

I know your family is concerned about the cost of the class so I will offer an incentive for you. If after going through the class and catching up you earn an A I will cover the total cost of the class for you, if you earn a B I will cover \$200 and if you earn a C I will cover \$100. Most students end up with a B but I truly believe you are capable of earning an A.

(Local Bd. Response, Ex. 4).

In February of 2021,⁴ the principal met with the Appellant to discuss a complaint from a parent that she had to make a payment for tuition for her student participating in the Dual enrollment program. The Appellant spoke to the parent and informed the parent that he spoke to admissions at HCC and HCC agreed to extend the deadline for payment and not to drop the student from the class. The next day the principal and Mr. Limpert met with the Appellant and told him that he needed to share more information with his students about the Capstone program. (Local Bd. Response). In February 2021, the Appellant requested a list of all of his students who had an outstanding balance from the fall semester with HCC and he advised the principal on February 19, 2021 that he paid the balances for six of his students from personal funds to help because the tuition waiver was denied. (Appeal, Affidavit, Ex. 15; and Local Bd. Response).

In June of 2021, Principal Q■■■■ told the Appellant that he was involuntarily transferring the Appellant to ■■■■■ Virtual School. The reasoning for the transfer was stated in an email:

As discussed previously, your handling of the Business Capstone program has impacted the students of ■■■■S as well as our larger community. I firmly believe that irreparable damage has been done and your continuance in the ■■■■HS Business Department will only further damage and undermine its growth but create distrust in the community.

(Appeal, Ex. 17, attachment 2). When the Appellant’s Harford County Education Association (“HCEA”) representative asked what “irreparable damage” had been done or what evidence of harm there was, HCEA was told that no additional information was shared with the Appellant and no additional information needed to be shared with the Appellant. *Id.* The Appellant and HCEA contend that the involuntary transfer was actually discipline.

On September 9, 2021, the Appellant appealed the involuntary transfer decision. The local board by decision dated November 18, 2021, upheld the Appellant’s transfer. (Local Bd. Response, Ex. 5). The local board decision states in part, “[D]uring the 2020-2021 school year

⁴ The local board submitted an affidavit signed by Dr. Mae Alfree, Director of Staff and Labor Relations, attesting to the Statement of Facts in the local board’s response. (Local Bd. Response, Ex. 3). The Statement of Facts erroneously states that these events occurred during the month of January and February 2020.

there was an issue with the program in that some students who were enrolled in the program and were taking a course of [HCC] fell under new regulations which created family financial issues.” *Id.* The local board concluded that the Superintendent had the authority to transfer the Appellant to a new school. The Appellant did not appeal the transfer decision to the State Board.

On August 4, 2021, Melanie Wernig, Coordinator of Internal Investigations, conducted an investigation and met with the Appellant to discuss the allegation that the Appellant failed to provide students with enough information regarding tuition obligations. The local board in its response stated that the investigation concluded that the Appellant failed to provide his business education students with the necessary information to decide between enrollment in the Capstone program or the Dual enrollment program, contrary to the directive of HCPS personnel. The investigation further concluded that the Appellant without authorization paid or offered to pay the tuition debts owed by certain students for their enrollment in the Dual enrollment program using his own personal funds. The investigative report is not part of the record before the State Board. The following statements made to Ms. Wernig as part of the investigation are included in the Local Board Response and attested to by the Affidavit of Dr. Mae Alfree:

- Appellant admitted that he told his students that the Dual enrollment was a better option than Capstone;
- Appellant stated that that he sent a letter to his students’ parents in January 2020 which explained both the Dual enrollment option and the Capstone option but the letter did not provide any information about Capstone;
- Statement by Mr. Limpert that Appellant only offered the Dual enrollment program option to his students and that the majority of those students were not academically ready for the Dual enrollment program;
- Statement by Mr. Limpert that he verbally advises teachers to offer both the Dual enrollment option and the Capstone option;
- Statement by Mr. Q■■■■ that the Appellant did not provide his students with sufficient information about the Capstone program and that the Appellant told his students that there was no viable alternative to the Dual enrollment program because in Appellant’s opinion, the Capstone was too difficult;
- Appellant’s statement that he did not offer the Capstone program to student ■■■■ because he would not have completed the work required in the Capstone program;
- Statement of student ■■■■’s mother that she was frustrated that the Appellant was encouraging her daughter to remain in the Dual enrollment program despite her inability to pay the tuition;
- Statement in the email from the Appellant to student ■■■■ dated October 15, 2020 offering an incentive to the student to pay a certain amount of the tuition based on his grades;
- Appellant’s statement to Ms. Jacobson that he told all of his students that they should inform him if they needed help paying tuition;
- Appellant’s statement to Ms. Jacobson denying that he offered student ■■■■ specific dollar amounts; and
- Appellant’s statements to Ms. Jacobson that he intended to use some of his personal money to pay students’ tuition since HCPS was not providing waivers of such tuition.

On October 20, 2021, the Appellant met with Colin Carr, Director of Secondary School Instruction and Performance, acting as the Superintendent's Designee, in a pre-disciplinary meeting to discuss the results of the investigation. On November 1, 2021, Appellant received a letter of reprimand from Mr. Carr stating that the charge of misconduct:

Is a result of the findings resulting from an internal investigation completed by Ms. Melanie Wernig...Ms. Wernig received a report that you failed to act in the best interest of your students by failing to provide them with the necessary information to determine if it were in their best interest to complete the capstone project or the dual enrollment option through [HCC]...After a thorough review of all pertinent information, please be advised I am issuing you this letter of reprimand for your misconduct. Moving forward, it is my expectation that you will stay up to date on all HCPS policies and procedures relevant to the courses you teach, especially those related to dual enrollment opportunities at [HCC]. Additionally, you will refer to the school's counseling office and seek approval from HCPS Business Services Office before any financial commitments are offered to any HCPS student.

(Local Bd. Response, Ex. 1).

On December 1, 2021, the Appellant through his representative filed an appeal under §4-205 of the Education Article to the Superintendent. In the appeal, Appellant argued that he did not engage in misconduct but rather Appellant "believed he was doing what was moral and right given he worked in a school with many students who experienced poverty and financial hardship even before the pandemic and after request for assistance to Executive Director ██████ O█████n went unanswered." (Appeal, Ex. 17). Appellant also argued that the discipline was contrary to sound educational policy because his actions were in alignment with the North Star program's mission to "offer opportunity for students to earn ...college credit...at no cost to students or families to reduce potential college debt burden." *Id.*

By letter dated December 10, 2021, the parties were advised that Appellant's appeal was to the local board as Mr. Carr's letter noted he was acting as the Superintendent's Designee. Each party submitted briefs to the local board.

By letter dated February 22, 2022, the local board upheld the letter of reprimand and concluded that the Appellant failed to carry his burden that the decision of the Superintendent's Designee was arbitrary, unreasonable or illegal. The decision in part states:

Not only did Appellant steer the students to the Dual Enrollment Program, he then discovered that the parameters for tuition waivers and tuition discounts changed in 2020 of which he was unaware. Students with under a 2.4 GPA, even with the waiver to take the class, were no longer eligible for a tuition waiver. This proved a problem as classes had started. Then, because accurate information

was not presented and students had incurred liability, Appellant offered to assist with the payment so that students could remain in the courses.

The evidence in this matter supports the proposition that Appellant did not fully explain the liabilities to be included in the Dual Enrollment Program which he advanced over the Capstone Program which had no such liabilities. Students who did not carry a GPA were then exposed for financial obligations to [HCC].

The Dual Enrollment Program was the Appellant's recommendation. Moreover, Appellant never received any approval to undertake the payment of financial liabilities for those students in the Dual Enrollment Program once tuition waivers were denied. Further by paying or offering to pay these tuition debts, Appellant ran afoul of the HCPS Statement of Ethics and the Statement of Professional Conduct.

(Appeal, Ex. 19).

This appeal followed.

STANDARD OF REVIEW

The standard of review that the State Board applies in reviewing the decision of a local policy or the administration of the school system is that the local board decision shall be considered *prima facie* correct and 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. A decision is arbitrary or unreasonable if “it is contrary to sound educational policy” or if “a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.” COMAR 13A.01.05.06 B(1) & (2). The Appellant has the burden of proof by a preponderance of the evidence.” COMAR 13A.01.05.06D.

LEGAL ANALYSIS

The Appellant is appealing a letter of reprimand he received for his misconduct. The Appellant bears a heavy burden that the imposition of the discipline by the local board is either contrary to sound educational policy or arbitrary, unreasonable or illegal. Typically, we examine misconduct in terms of teacher discipline that involves a suspension or termination. Although the letter of reprimand he received does not rise to the level of suspension or termination, our cases involving discipline for misconduct are relevant to this case. In prior cases, we have looked to several court decisions to guide us in determining the parameters of misconduct. *See Meyers v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 16-50 (2016); *Gwin v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 12-19 (2012); *McSwain v. Howard County Bd. of Educ.*, MSBE Op. No. 09-07 (2009). We do so again here.

In *Resetar v. State Bd. of Educ.*, 284 Md. 537, 560-561 (1979), the Court of Appeals, interpreted the term “misconduct,” as used in the educational arena, as follows:

The word is sufficiently comprehensive to include misfeasance as well as malfeasance, and as applied to professional people it includes unprofessional acts even though such acts are not inherently wrongful. Whether a particular course of conduct will be regarded as misconduct is to be determined from the nature of the conduct and not from its consequences.

The Court also noted that the teacher’s conduct must bear on the teacher’s fitness to teach in order to constitute misconduct. *Resetar*, 284 Md. at 561. *See also Kinsey v. Montgomery County Bd. of Educ.*, 5 Op. MSBE 287, 288 (1989) (To constitute “misconduct in office” a teacher must engage in unprofessional conduct “which bears upon a teacher’s fitness to teach” such that it “undermines his future classroom performance and overall impact on his students.”).

In *Public Service Commission v. Wilson*, 389 Md. 27 (2005), the Court of Appeals concluded that:

The term “misconduct,” . . . means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, or a course of wrongful conduct committed by an employee, within the scope of his employment relationship, during hours of employment, or on the employer’s premises.

Id. at 77, citing *Department of Labor, Licensing, and Regulations v. Hider*, 349 Md. 71, 85 (1988). The Court also made clear that the person’s conduct need not be an intentional wrongdoing. *Id.*, 389 Md. at 76-77.

A. Failure to Provide Information about the Capstone Program

With this in mind, we turn to the record in this case to determine whether the Appellant has satisfied his heavy burden to demonstrate that the letter of reprimand is arbitrary and unreasonable. The letter of reprimand disciplines the Appellant for his failure to act in the best interests of his students by failing to provide them with the necessary information to determine if it were in their best interest to complete the Capstone program or the Dual enrollment program.

The local board in part faults the Appellant for not knowing about the change in policy prior to September 2020. The record is devoid of any notification to staff including the Appellant about when the change in policy occurred and whether the policy was communicated to staff prior to the start of the 2020-2021 school year. The record demonstrates that there was a new executive director in charge of the program and as soon as the students were notified that they would not receive the reduced or free tuition after the start of the school year, the ■HS administration and staff were trying to figure out how to handle the situation. The record in this case does not contain information about how the Appellant should have known about the change

in policy prior to the 2020-2021 school year and if this were the sole basis for the discipline we would question if the discipline was reasonable.

However, the record contains numerous examples of the Appellant failing to offer adequate information about the Capstone program. The record contains numerous instances in which the investigator concluded that the Appellant failed to provide his business education students with the necessary information to decide between enrollment in the Capstone program and the Dual enrollment program, contrary to the directive of HCPS personnel. The investigator, Ms. Wernig, found several failures on behalf of the Appellant including but not limited to the following:

- Appellant stated he sent a letter to his students' parents in January 2020 which explained both the Dual enrollment option and the Capstone option but the letter did not provide any information about the Capstone program;
- statement by the principal that the Appellant did not provide his students with sufficient information about the Capstone program and that the Appellant told his students there was no viable alternative to the Dual enrollment program because in Appellant's opinion, the Capstone program was too difficult; and
- Appellant's statement that he did not offer the Capstone program to student [REDACTED] because [REDACTED] would not have completed the work.

The letter of reprimand states "that moving forward, it is my expectation that you will stay up to date on all HCPS policies and procedures relevant to the courses you teach, especially those related to dual enrollment opportunities at HCC." *See* Local Bd. Response, Ex. 1. Under COMAR 13A.01.05.06A, decisions of a local board regarding a local policy or dispute regarding rules or regulations of the local board shall be considered by the State Board as *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. The Appellant must demonstrate that "a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached." COMAR 13A.01.05.06B(1) & (2).

Based on the record before us, we fail to find that "a reasoning mind could not have reached the conclusion of the local board." *See* Local Bd. Response, Ex. 1. The letter of reprimand simply requires the Appellant to be more familiar with the policies of the HCPS policies and procedures relevant to the courses he teaches, especially those related to Dual enrollment program. The discipline was carefully tailored to prevent future problems with the administration of the Dual enrollment and Capstone programs and to ensure that the Appellant provided sufficient information about both programs to his students.

B. Failure to Seek Approval for Tuition Waivers and Paying Tuition

The local board also disciplined the Appellant for failing to receive approval to undertake the payment of financial liabilities for those students in the Dual enrollment program once tuition waivers were denied. Specifically, the letter of reprimand states, “you will refer to the school’s counseling office and seek approval from HCPS Business Services Office before any financial commitments are offered to any HCPS student.” *See* Local Bd. Response, Ex. 1.

The local board argues Appellant’s actions in paying the tuition debts of six students constituted a violation of HCPS "Statement of Ethics" policy, which mandates that an educational employee “maintain just, courteous, and appropriate relationships with students, parents, staff members, and others” and “perform their job with honesty and integrity.” *See* Local Bd. Response, Ex. 2 - Statement of Ethics policy. The local board further argues Appellant’s actions constituted a violation of the “Statement of Professional Conduct” in HCPS Employee Handbook, which mandates that an employee “disclose and take reasonable steps to avoid any conflicts of interest” and behave at all times in a manner that upholds and reflects the values, integrity, and reputation of the of HCPS. *See* Local Bd. Response, Ex. 3 – Employee Handbook.

It is not disputed that the Appellant paid the tuition for six students in the Dual enrollment program and the Appellant did not seek or have approval from the HCPS Business Services Office before he made the payment. Accordingly, we do not find that the carefully tailored letter of reprimand advising the Appellant to seek approval prior to offering any financial commitments to students is unreasonable, arbitrary or illegal.

CONCLUSION

For all of the foregoing reasons, we affirm the decision of the local board upholding the issuance of the letter of reprimand.

Signatures on File:

Clarence C. Crawford
President

Charles R. Dashiell, Jr.
Vice-President

Shawn D. Bartley

Gail H. Bates

Chuen-Chin Bianca Chang

Susan J. Getty

Vermelle D. Greene

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Abstained:
Jean Halle

June 28, 2022