

D.D.,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 24-25

OPINION

INTRODUCTION

Appellant challenges the decision of the Baltimore County Board of Education (“local board”) denying the Appellant’s request for a grade change and denying her student an exemption, based on religious grounds, from the Baltimore County Public Schools (“BCPS”) curriculum related to the Big Bang Theory. The local board filed a response maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

This appeal arises out of an appeal for a grade change filed by D.D. (“Appellant”). During the 2022-2023 school year, Appellant’s daughter, Student X, was a Grade 10 student enrolled in BCPS’s Virtual Learning Program (“VLP”). Student X was enrolled in the Earth Systems course and during the first quarter of that year, the Earth Systems’ curriculum covered the Big Bang Theory. (R. 60). Earth Systems is required for high school graduation as part of the State’s science education requirements. COMAR 13A.04.09.01A(2), *Science Instruction Programs for Grades Prekindergarten – 12*, provides that each local school system shall offer a science program in grades 9—12 which enables students to meet graduation requirements. COMAR 13A.04.09.01B provides that the comprehensive program shall include the Maryland College-and-Career-Ready Next Generation Science Standards (“NGSS”) for all students set forth in §§ C – G of the regulation. Section E provides that earth/space science students shall demonstrate an understanding of the processes that operate on Earth and address its place in the solar system and galaxy. COMAR 13A.04.09.01E. The NGSS standard for high school earth and space systems science classes requires students to “[c]onstruct an explanation of the Big Bang Theory based on astronomical evidence of light spectra, motion of distant galaxies, and composition in the universe.” (R. 373-378).

Student X is a devout Jehovah’s witness. On September 22, 2022, Appellant informed Mr. Mathew Doty, Coordinator for VLP, that Student X would not participate in Big Bang Theory assignments due to her religious/spiritual conscience and she requested that her daughter be excused from any Big Bang Theory assignments or be given alternative assignments. (R. 591). Mr. Doty contacted Megan Shay, Executive Director for the Department of Teaching and

Learning, and the Office of Science worked collaboratively with Mr. Doty to accommodate Student X's religious beliefs. (R. 162). Student X was excused from answering several questions relating to the Big Bang Theory in two minor assignments for Unit 1, but BCPS explained that Student X could not be excused from the major end-of-unit assessment on the Big Bang Theory because it was a required State standard and BCPS does not have the authority to exempt a student from a required State standard. (R. 546).

BCPS designed an alternative assessment for Student X and offered her the opportunity to meet the required standard by sharing an explanation of why she did not believe the Big Bang Theory to be the origin of the universe based upon her beliefs and she was welcome to include whatever reasoning she had. *Id.* Student X was given until the end of the quarter to complete the assignment. *Id.* Student X did not complete the alternative assessment and earned a grade of E in the first marking period and received an overall grade of B for the Earth Systems course. (R. 434-435).

On January 6, 2024, the Appellant filed an appeal of the first quarter grade and objected, based on religious grounds, to the alternative assessment offered to Student X. (R. 418-419). The first level appeal was denied by letter dated February 2, 2023, by Julie Forbes, Director, VLP. (R. 432-433). On February 9, 2023, the Appellant filed a second level appeal with Douglas Elmendorf, Executive Director, Academic Programs and Options. The Appellant argued in part that Student X should be excused from the Big Bang Theory assignments because Student X was excused from some assignments regarding evolution theory in a previous school year. (R. 437). By letter dated April 3, 2023, Dr. Elmendorf concurred that the content in the class was required by COMAR and could not be waived and affirmed the decision of Ms. Forbes. (R. 437-438). Appellant filed an appeal with the Office of the Superintendent and this matter was referred to Charles Smith, II, Manager, Employee & Student Hearings who served as the Superintendent's Designee. (R. 439 – 444).

On May 30, 2023, Mr. Smith held a virtual hearing on the matter. By decision dated August 3, 2023, Mr. Smith affirmed Dr. Elmendorf's April 3, 2023 Decision Letter, (R. 439-444), and stated the following as to the alternative assignment:

An evaluation of the proposed alternative assignment results in a conclusion that BCPS offered [Student X] an opportunity not only to remediate her grade for the course, but also to expound upon her spiritual consciousness and to share its importance to her thought process. Mr. Doty's communication clearly offered [Student X] a path to engage with the required curriculum, but in a manner that allowed her to maintain her religious integrity. [Appellant's] insistence that the mere mention of the Big Bang Theory is offensive to her sensibilities is not reconcilable with the State curriculum requirements, especially where BCPS redesigned a Learning Check to accommodate the religious concerns.

(R. 442).

On August 25, 2023, the Appellant filed an appeal with the local board. (R. 457-460). The matter was referred to Roger Thomas, the local board's hearing examiner, to hold an evidentiary hearing on behalf of the local board and to issue factual findings, conclusions of law,

and a recommendation to the local board. The hearing was held on January 4, 2024, in which both parties presented witness testimony and exhibits and following the hearing both parties submitted closing arguments. (R. 572). On April 17, 2024, the hearing examiner, found that “the student was provided carefully designed alternative assignments that were reasonable and complied with mandatory State Science curriculum requirements.” (R. 8). The hearing examiner concluded that the Superintendent’s Designee’s decision upholding the grades was not arbitrary, unreasonable, or illegal and recommended to the local board that the board affirm the Superintendent’s Designee’s decision. (R. 7-15).

Oral argument was held before the local board on June 24, 2024. The local board considered the parties’ oral arguments and conducted an independent review of the record and issued its Opinion and Order on July 9, 2024. (R. 571-574). The local board failed to reach a majority vote and thus adopted the Superintendent’s Designee’s decision denying the Appellant’s requested relief. *Id.*

On August 5, 2024, the Appellant filed her appeal to the State Board.

STANDARD OF REVIEW

A decision of the local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board is considered *prima facie* correct. COMAR 13A.01.05.06A. A decision may be arbitrary or unreasonable if a reasoning mind could not have reached the conclusion the local board or local superintendent reached. COMAR 13A.01.05.06B(2). 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 has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public-school laws and State Board regulations. COMAR 13A.01.05.06E.

LEGAL ANALYSIS

The Earth Systems curriculum requiring discussion of the NGSS specific performance standard on the Big Bang Theory is required for high school graduation in Maryland and cannot be waived. COMAR 13A.04.09.01. The Appellant argues that the failure of the local board to exempt Student X from the Big Bang assessment created a burden to Student X’s religion in violation of the Free Exercise of Religion Clause under the First Amendment to the Constitution.

The Appellant’s Free Exercise argument is not supported in the case law. A recent decision from the United States Court of Appeals for the Fourth Circuit, *Mahmoud v. McKnight*, 102 F.4th 191 (4th Cir. 2024), held that a policy that did not allow young elementary school students to opt out of reading story books with LGBTQ+ characters in their language arts class curriculum did not violate any constitutional rights. The Fourth Circuit held that there is no cognizable burden to religious exercise because the curriculum exposes the students to views offensive to their religious beliefs absent “some sort of direct or indirect pressure to abandon religious beliefs or affirmatively act contrary to those beliefs.” *Mahmoud*, 102 F.4th at 209-210. The Court determined that the public school system did not infringe upon the rights of the parents and their children under the First Amendment as “no student or adult is asked to change

how they feel about these [LGBTQ+] issues.” *Id.* See also *Blau v. Ft. Thomas Sch. Dist.*, 401 F.3d 381, 395-96 (6th Cir. 2005) (reviewing cases); *Leebaert v. Harrington*, 332 F.3d 134, 142 (2d Cir. 2003) (The fundamental right to control the upbringing and education of one's child does not include “the right to tell public schools what to teach or what not to teach him or her.”); *In Re: Gloria H.*, 410 Md. 562, 583-84 (2009).

The State Board also has recognized that a local school system is not required to waive State required curriculum based on religious grounds. *T.J. and D.J. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 24-10 (2024). In *T.J. and D.J.*, the Appellants requested a waiver, based on religious grounds, from the one credit health education course because teachers were instructed to review LGBTQ+ resources and to incorporate more inclusive language in the health curriculum. We stated “[p]ublic schools are not obligated to shield individual students from ideas which potentially are religiously offensive, particularly when the school imposed no requirement the student violate his or her faith during classroom instruction.” MSBE Op. No. 24-10 at 8 (citations omitted). We concluded that State required health curriculum did not infringe on any religious rights under the Constitution. MSBE Op. No. 24-10 at 8-9. See also, *Yasmean W. v. Howard Cnty. Bd. of Educ.*, MSBE Op. No. 13-56 at 2-3 (2013)(holding that the appellant’s request for a religious based exemption from a music course is not constitutionally required).

The record before us demonstrates that BCPS made more than reasonable efforts to accommodate Student X’s religious concerns. There is no evidence that BCPS burdened Appellant’s religious beliefs by requiring her to disavow her religious beliefs or conscience. Student X was excused from selected sections of two minor assignments and BCPS also carefully designed an alternative assessment for Student X to meet the required State standard by sharing an explanation of why she did not believe the Big Bang Theory to be the origin of the universe based upon her beliefs. We find this alternative assessment was reasonable, complied with the State science curriculum requirements, and did not infringe upon any constitutional rights.

CONCLUSION

Based on our review of the record developed in this matter, we find that there is no factual or legal basis to conclude that the local board’s decision was arbitrary, unreasonable, nor illegal.

Signatures on File:

Joshua L. Michael
President

Monica Goldson
Vice-President

Kenny Clash

Clarence C. Crawford

Susan J. Getty

Nick Greer

Irma Johnson

Kim Lewis

Rachel McCusker

Joan Mele-McCarthy

Xiomara Medina

Samir Paul

Abstained:
Chuen-Chin Bianca Chang

December 3, 2024