

DONALD MCCOMB,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-28

OPINION

This is an appeal from the local board decision made on remand in *Donald McComb v. Montgomery County Board of Education*, MSBE Op. No. 98-21 (April 29, 1998), where the State Board concluded that Mr. McComb had standing to contest a decision made by his principal to change a student's grade. The State Board explained the parameters of its ruling as follows:

In finding that Appellant has standing to pursue this appeal, we want to emphasize that the State Board is not departing from the well-settled policy that the State Board will not review the merits of student grade decisions. As we have held on repeated occasions, "the merits of students' grades 'should be kept within the school building,' and 'are to be made by the persons most able to evaluate the situation from personal knowledge.'" *Crawford v. Washington County Board of Education*, 4 Op. MSBE 890 (1987); *see also Rjue Mai v. Board of Education of Montgomery County*, MSBE Op. No. 97-31 (June 25, 1997); *George Thompkins v. Montgomery County Board of Education*, MSBE Op. No. 96-41 (October 29, 1996); *Marshall v. Montgomery County Board of Education*, 5 Op. MSBE 380 (1989). The State Board only accepts appeals regarding academic grades if there are specific allegations that the local board failed to follow proper procedures or violated a student's due process rights. *Id.*

In an appeal by a teacher of a grade change by a superior, we believe that the focus is on the procedure followed by the superior. The standard of review for such an appeal is whether the superior followed local board policy and procedures or whether the superior acted arbitrarily, unreasonably, or illegally in making the grade change. *See generally* COMAR 13A.01.01.03E(1) (general standard of review applied by State Board to local board decisions.)

The local board issued a new decision in this matter on May 26, 1998. Thereafter,

Appellant requested reconsideration of that decision and the local board issued a supplemental opinion of reconsideration on July 29, 1998, further explaining its ruling upholding the principal's decision.

Before the State Board, Appellant contends that the local board acted arbitrarily, unreasonably, and illegally in upholding the principal's decision to give the student an incomplete instead of an "E," and to allow the student to make up missed assignments. Appellant also contends that by allowing the student to participate in the track meet, the principal abused his discretion, acted arbitrarily, and violated local board policy prohibiting students from participating in extracurricular sports when their academic performance does not meet certain criteria. Appellant suggests that the real motivation for this action was the student's eligibility to participate in a track meet, coupled with the fact that the student's parent was a principal of another school in the Montgomery County School System.

The local board has filed a Motion to Dismiss asserting that the appeal is moot. Alternatively, the local board has filed a Motion for Summary Affirmance maintaining that the local board's decision was not arbitrary, unreasonable, or illegal. Although given an opportunity to file a response to the board's motion, Appellant has not done so.

ANALYSIS

As a threshold matter, Appellant argues that he should have been granted an oral evidentiary hearing before the local board on remand. In its earlier opinion in this case, the State Board did not direct the local board to hold an evidentiary hearing. Rather, the State Board remanded the case for the local board's "review and determination." *See McComb*, MSBE Opinion No. 98-21, p. 4. It is well established that an oral argument or an evidentiary hearing is not required on non-factual issues. *See Anderson & Blake v. Prince George's County Board of Education*, 5 Opinions MSBE 415, 417 (November 15, 1989). Here there does not appear to be any material fact in dispute.¹

¹With regard to receipt of the Interim Progress Report, the parents claim that they never received it in the mail. Appellant claims that the school mailed the report out and it was not returned by the post office. Because these facts are not inherently contradictory, we do not find that they create a genuine dispute. In any event, the local board has noted that the alleged failure of the parents to receive the interim report was only one of several factors that influenced their decision.

Furthermore, the local board was not required to re-open the record in this case or remand for receipt of additional evidence. The events in this appeal occurred in the 1996-97 school year. The original appeal to the local board was filed in the summer of 1997, and the remand opinion from the State Board was issued in April, 1998. Presumably, all relevant material had already been submitted. If Appellant had new facts, it was incumbent upon him to supplement his filing with the local board. Moreover, on reconsideration, the local board reviewed Appellant's new argument concerning a similar past case, but distinguished it from this case by clarifying that the alleged failure of the parent to receive the interim report in this case was only one of several factors that influenced the local board's decision.

As another threshold matter, the local board contends that this appeal should be dismissed as moot. It is well established that a question is moot when, "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide." *In Re Michael B.*, 345 Md. 232, 234 (1997); *See also Walter Chappas v. Montgomery County Board of Education*, MSBE Opinion No. 98-16 (March 25, 1998). Here, by virtue of the appeal, Appellant requests that the student's grade be changed back to an "E," reflecting the original grade prior to the principal's involvement in the matter. Appellant argues that the grade change has undermined his credibility at the school.

However, since the filing of the original appeal in this case, the record discloses that Appellant awarded the student a "B" for the second quarter based on the make up assignments.² The student, who was a junior during the 1996-97 school year, has graduated from high school, with his school record reflecting the "B" grade. The record further discloses that although the principal did intervene with regard to the student's grade, Appellant retained authority to determine the final grade, and was advised by the principal that the student should not receive a grade higher than a "D" due to the circumstances. Nonetheless, Appellant awarded the student a "B." We find under these circumstances that the award of such a high grade by Appellant essentially eliminated any controversy that may have existed between the parties, making the current appeal moot.

Even if the State Board were to consider this case on its merits, it does not appear that the local board's decision was arbitrary, unreasonable or illegal. The earlier appeal to the State Board in this case was remanded to the local board for its limited review of "whether the superior followed local board policy and procedures or whether the superior acted arbitrarily, unreasonably, or illegally in making the grade change." *McComb*, MSBE Opinion No. 98-21.

Montgomery County Public School Regulation IKA-RA states the following with regard to evaluation feedback to parents:

²The student also earned "B's" in the third and fourth quarters.

Parents will be apprised of learning difficulties through the reporting system and by conferences as needed. A conference with the parent is encouraged when there is a marked difference in student achievement from the previous reporting period, such as a decrease of more than one letter grade. Conferring with parents is encouraged beyond the minimum conference provisions of this regulation so that parents may be aware of the student's progress at all levels.

Although Regulation IKA-RA contains no specific statement for a principal to become involved in grade disputes, it clearly emphasizes the importance of communication with parents, particularly where there is a decrease in a student's letter grade. Here, the principal was faced with a situation in which the parents complained that the school neglected to inform them about a three letter grade decline in their child's chemistry grade.³ We believe the principal as the head of the school had a responsibility to investigate the situation.

The investigation revealed questions concerning the communication between the parents and the teacher. The parents claimed that they never received the Interim Progress Report acknowledging that the student was in danger of failing or dropping more than one letter grade in chemistry class. The report that they did receive from the athletic department neglected to reference chemistry as one of the classes that the student had a possibility of failing. Additionally, there was never any conference or oral communication between the teacher and the parents concerning the student's declining performance.

A clear lack of communication is also memorialized in Appellant's own notes, which show a lack of response to the parent's e-mail message a mere two or three weeks before Appellant turned in the interim report. Appellant's failure to respond is particularly surprising, given the fact that a student whom he considered "bright" and "capable" had declining grades, and that Appellant had recently spoken to the parent about make up assignments for work the student missed as a result of a suspension.

Based on these facts, the principal decided that it was prudent for the student to receive an incomplete for the term, and be permitted to make up missed assignments. The principal told Appellant to limit the new grade to nothing higher than a "D" for the marking period due to the circumstances, but did not substitute his own assessment for that of the teacher. Appellant was the one who awarded the student a "B" for the second quarter. Under these circumstances we find that the principal was acting within his discretion, and did not act arbitrarily, unreasonably, or illegally.

³The decline in grade resulted from the student's failure to complete and submit several assignments.

CONCLUSION

For the reasons described above, we dismiss this appeal as moot. *See* COMAR 13A.01.01.03J(2)(b).

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