

NICOLE K.,

Appellant

v.

CHARLES COUNTY BOARD  
OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-14

## OPINION

### INTRODUCTION

Appellant challenges the decision of the Charles County Board of Education (“local board”) affirming the removal of her daughter from the Criminal Justice Program at her school. The local board filed a motion for summary affirmance maintaining that its decision is not arbitrary, unreasonable or illegal and should be upheld. The Appellant responded to the motion and the local board replied.

### FACTUAL BACKGROUND

The Appellant’s daughter, J.C., is in the 11<sup>th</sup> grade and attends North Point High School (“North Point”). North Point consists of a comprehensive high school for students residing within the school’s geographic attendance zone. It also offers various specialized Science, Technology and Industry (“STI”) programs. Students must submit an application and meet specific criteria in order to participate in one of the STI programs.

One of the STI programs at North Point is the Criminal Justice Program (“the Program”). Students in the Criminal Justice Program take specialized criminal justice classes, as well as various other classes taken by the general student population. Students in the Program also perform additional community service related to criminal justice and take part in teen court and other activities in preparation of a possible career in law or law enforcement.

Students who participate in the Criminal Justice Program must comply with the Code of Student Conduct, all school rules applicable to North Point, and the specific rules of the Program. Each participating student and the student’s parent sign a 17 page behavioral “contract” stating they will abide by the Program’s Standard Operating Procedure, rules and regulations. (Motion, Attach. 2). The parent also signs the following statement on the last page of the “contract”:

I understand that my child will be held to a higher standard and their actions inside the school and outside in the community could result in disciplinary actions in the class. I further understand and agree that any infraction that results in charges/arrest, weapons offenses or other drug related offenses of my child will *result in termination of enrollment in the Criminal Justice Program.* (Emphasis in original).

(Motion, Attach. 3).

J.C. applied for and was accepted into the Criminal Justice Program starting with the fall 2014 semester. Appellant and J.C. both signed the “contract” agreeing to the conditions for participation in the program in August 2014.

Approximately one year later, in August 2015, J.C. was arrested and charged with theft for stealing from two retail stores. The Department of Juvenile Services referred the charges to Teen Court.<sup>1</sup> Subsequently, Appellant and J.C. signed the Criminal Justice Program “contract” for the 2015-2016 school year. (Motion, Attach. 4). Neither J.C. nor her mother informed the school of the charges.

In early fall 2015, school system staff learned of the charges against J.C. from an employee of the Sheriff’s Office.<sup>2</sup> J.C. did not deny the charges when staff questioned her. At some point, the Appellant participated in a meeting with Mr. Calloway, the Program instructor; Mr. Simms, North Point principal; and Lt. Baker from the Sheriff’s Office to discuss J.C.’s future in the Program. The Principal determined that J.C. would be allowed to continue at North Point, but that she would be removed from the Criminal Justice Program and would be provided with a new class schedule.

Appellant appealed J.C.’s removal from the Program to Sylvia Lawson, Assistant Superintendent of School Administration.<sup>3</sup> (Motion, Attach. 5). Appellant acknowledged that her daughter made a poor judgment call, but that she had already been sanctioned by the Teen Court, was remorseful, had excelled in the Criminal Justice Program, and otherwise had a “stellar” reputation. *Id.* After conducting a paper review, the Assistant Superintendent of School Administration, acting as the Superintendent’s designee, upheld the principal’s removal decision based on the violation of the terms of the “contract” and informed J.C. that she would be transitioning to her new classes on October 23, 2015. (Motion, Attach. 6).

Appellant appealed to the local board. The local board upheld the decision to remove J.C. from the Criminal Justice Program. (Motion, Attach. 1).

This appeal followed.

## STANDARD OF REVIEW

Local board decisions involving a local policy or a controversy and dispute regarding the rules and regulations of the local board are considered *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.01.05.05A.

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<sup>1</sup> Teen Court is a program that diverts youth from the Department of Juvenile Services who have been arrested for misdemeanor offenses and have admitted their involvement in the charge. The Teen Court jury (made up of teens) determines the sanction to be assigned to the youth offender. If the youth completes the sanctions within the allotted time period, the criminal charges are dismissed. If not, the case returns to the original referring agency. *See* <http://www.mdca.org/what-is-teen-court>.

<sup>2</sup> We point out here that the employee of the Sheriff’s Office may have violated Department of Juvenile Services’ privacy rules.

<sup>3</sup> J.C. was allowed to remain in the Criminal Justice Program while the appeal was pending.

## LEGAL ANALYSIS

This case is about the consequences that can follow a student's bad decision. Appellant makes various arguments that the local board's decision to remove J.C. from the program is arbitrary, unreasonable or illegal. We address them in turn.

### *No Policy on Removals from STI Programs*

Appellant maintains that the decision to remove J.C. from the Program was an abuse of discretionary powers because there is no policy on the removal of students from the STI Programs at North Point. Appellant reasons that if there is no policy to use as a guide, any removal decision must be arbitrary.

There is no formal, numbered local board policy addressing removals from the Program, but the Criminal Justice Program does have a policy that specifically addresses the issue. That policy is set forth in the Criminal Justice Standards of Procedure ("SOP") document that the school system distributed to the parents and students. J.C. and the Appellant signed the last page of the document, which is the "contract." It is a form in which J.C. acknowledged receipt of the SOP and her agreement to follow the rules of the Program and the Standards. Appellant signed the same form acknowledging her agreement to the Standards and her understanding of the removal policy. The policy on removal is clearly stated -- "any infraction that results in charges/arrests, weapons offenses or drug related offenses" against the student will result in termination of enrollment in the Program. The school system applied the policy to J.C. and removed her from the program due to the charges against her. There is no basis to claim that no policy existed on removing a student from the Program simply because the policy was not a formal, written and numbered policy of the local board.

### *Superintendent's Failure to Fully Investigate Appellant's Claims*

The Appellant argues that the Superintendent's designee, Dr. Lawson, failed to sufficiently investigate the claims that Appellant raised in her appeal as required by the local board's policy on resolving disputes.

Appellant focuses her argument on the fact that Dr. Lawson issued her decision in less than 24 hours after receiving it, and on the fact that Dr. Lawson did not request additional information from the Appellant.<sup>4</sup> There is no requirement that the designee seek out additional information from the parent.

The school system policy for handling disputes, such as the Appellant's dispute about the removal of her daughter from the Program, provides that once a parent has filed a written request for review, the Assistant Superintendent of School Administration "may arrange a conference with the principal of the school, complete a paper review of the concern or complaint, or involve

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<sup>4</sup> We recognize that the Appellant did not make this particular argument before the local board and, therefore, waived her right to raise the issue for the first time on appeal to the State Board. See *Cone v. Carroll County Bd. of Educ.*, MSBE Op. No 99-31 (1999). By addressing the argument herein, we are not reversing that long held position.

staff from other central administrative departments.”<sup>5</sup> It then states that once that action is completed, the Assistant Superintendent of School Administration will provide a written decision to the parents, usually within 10 school days. (Appeal, Ex.4). Here, Dr. Lawson quickly conducted a paper review of Appellant’s concern given that it affected J.C.’s class placement and swiftly communicated the decision to the Appellant by phone and in writing. We do not find her actions to be a violation of local board policy.

### *Conflict of Interest*

Appellant claims that a conflict of interest renders the removal decision improper. She claims that the Criminal Justice Program teacher, Mr. Calloway, who recommended that J.C. should be removed from the Program, had a vendetta against J.C. and was biased against her. She believes that the removal process should involve those who are not associated with the program to remove any bias from the decision, similar to the way the Program selection process does not involve school system employees associated with the Program.

First, while the Appellant claims Mr. Calloway had a vendetta against J.C., she has not submitted any evidence to support her allegations. The local board, on the other hand, has submitted Mr. Calloway’s affidavit denying any vendetta or animosity toward J.C. (Motion, Attach. 7). Second, although Mr. Calloway recommended J.C.’s removal to the Superintendent, it was the Superintendent’s designee, Dr. Lawson, who ultimately made the removal decision. That decision was reviewed on appeal by the local board. In *Kenneth Etefia v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-03 (2003), we held that even if a recommendation was based on some personal bias, there was no evidence that the independent decision-makers were influenced by that bias. We do not find any conflict of interest here.

### *Right to an Evidentiary Hearing*

The Appellant maintains that her due process rights were violated by the local board’s failure to provide her with an evidentiary hearing. There is no right to an evidentiary hearing unless there exists a constitutional or statutory basis to provide one. See *Lessie B. v. Caroline County Bd. of Educ.*, MSBE Op. No. 11-16 (2011); *Barbeito and Griffin v. Frederick County Bd. of Educ.*, MSBE Op. No. 09-32 (2009). The constitutional right to a hearing derives from the 14<sup>th</sup> Amendment’s prohibition against governmental action that deprives individuals of life, liberty or property without due process of law. See *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972). Property interests are created and defined “by existing rules or understandings that stem from an independent source such as State law-rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.” *Evans v. Burruss*, 401 Md. 586, 593-594 (2007) (quoting *Board of Regents v. Roth*, 408 U.S. at 577). In order to have a property interest, a person must have a “legitimate claim of entitlement” to the property interest. *Id.*

In this case, J.C. was not deprived of a property right. As this Board has often said, there is no legal right in Maryland for a student to attend any particular school or to participate in a particular school program. See *Bernstein v. Board of Educ. of Prince George’s County*, 245 Md. 464 (1966); *D.H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-14 (2007); *Haibel v.*

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<sup>5</sup>The policy has since been revised to state that the Assistant Superintendent “will review the concern, contact the parent and appropriate staff as needed.” It also eliminated the requirement for a written decision. (Appeal, Ex.4).

*Board of Educ. of Montgomery County*, 7 Op. MSBE 1163 (1998); *Czerska v. Board of Educ. of Montgomery County*, 7 Op. MSBE 642 (1997). Thus, J.C. had no legitimate claim of entitlement to continued attendance in the Criminal Justice Program. Rather, her participation was a privilege that could be revoked, per the Program “contract,” as a consequence of her involvement in any infraction that resulted in charges against her. There was no due process violation here.

Nor is there a statutory basis for an evidentiary hearing. J.C.’s appeal rights are governed by §4-205 of the Education Article. This entitled her to appeal the Superintendent’s decision to the local board, and the local board’s decision to the State Board, which she did. It did not entitle her to an evidentiary hearing at any stage of the process. *See McKelvie v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 11-03 (2011) (Appeal pursuant to §4-205 did not entitle probationary employee to an evidentiary hearing before the superintendent, local board or State Board).

### *Alleged Sex Discrimination*

Appellant claims that J.C. was removed from the Criminal Justice Program based on discrimination in violation of the 14<sup>th</sup> amendment to the Constitution because she is female. She claims that Mr. Calloway, the program instructor, made direct statements that there were other male students who violated the terms of the Criminal Justice Program “contract” in a similar fashion but were permitted to remain in the program. She further claims that Mr. Simms, the principal of North Point, and Lt. Baker from the Charles County Sherriff’s Office witnessed the conversation.

As we have often stated in our Opinions, unsupported allegations are insufficient to further a claim of discrimination. *See Keene v. Washington County Bd. of Educ.*, Op. No. 04-02 (2004); *Ewing v. Cecil County Bd. of Educ.*, 6 Op. MSBE 81 8 (1995). Although the Appellant has made various claims about alleged statements made by Mr. Calloway, the Appellant has presented no evidence to support her allegations, by form of affidavits or other evidence. On the other hand, the local board, with its motion for summary affirmance, has supplied the affidavits of Mr. Calloway and Mr. Simms attesting under oath that neither one of them has any recollection of the alleged statements. *See* Motion, Attachs. 7 and 8. Rather, Mr. Calloway stated in his affidavit that he only had knowledge of two other students who had been arrested and charged with a crime who were no longer in the Program. (Motion, Attach.7). One student was a boy who withdrew from the program before the school system removed him. The other was a girl who the school system removed from the program. *Id.* Mr. Simms stated in his affidavit that he knows of no student who remained in the Program after being arrested and charged with a crime. (Motion, Attach. 8). The Appellant has not submitted any evidence to contradict these affidavits.

### *Undue Delay Claims*

Appellant argues that the case was fraught with undue delay based on the actions of the Superintendent’s designee who she claims did not contact her in writing regarding the removal decision or with regard to her request for board policies. Based on the record, the Superintendent’s designee received the Appellant’s appeal on October 13, 2015 and responded by phone with a verbal decision the next day and in writing on October 15, 2015. The Appellant then filed her appeal to the local board on November 13, 2015, and the local board issued its

written decision on December 8, 2015, the day of the subsequent board meeting. We do not find any delay in the processing of the case.

As for the Appellant's request for the local board appeal policies, it is our understanding that Appellant was able to get a copy of the policies within 11 days of her initial request. Appellant filed her appeal and it proceeded through the various levels of review in a timely manner.

#### *Timing of "Contract" and Alleged Violation*

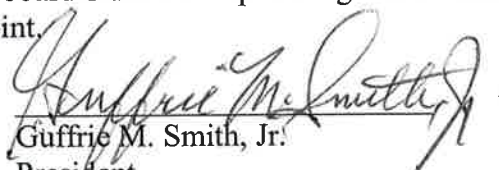
The Appellant maintains that there could be no violation of the September 2015 "contract" because the incident at issue took place in August 2015, sometime between the dates of the two contracts she signed. The Appellant had signed a "contract" on August 25, 2014 and then again on September 2, 2015. In so doing, she acknowledged her understanding that J.C. would be terminated from enrollment in the Program for "any infraction that results in charges/arrest, weapons offenses or other drug related offenses" against her. The reference in the "contract" to charges, arrests, and weapon or drug related offenses does not limit removal to infractions taking place during the school year in which the "contract" applies. Thus, the termination provision applied to J.C.'s arrest and charges that occurred in August 2015.

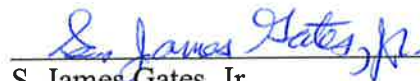
#### *Impact to Educational Progress*

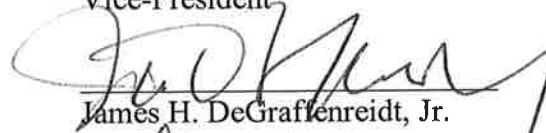
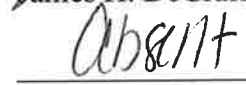
Finally, Appellant claims that J.C. has been negatively impacted as a result of the mistreatment that she received by the school system, and that this has had a negative impact on her educational progress. Based on the record, we do not find any mistreatment. Unfortunately, J.C. was involved in something for which removal from the Criminal Justice Program was the consequence.

#### CONCLUSION

For all of these reasons, we affirm the local board's decision upholding the removal of J.C. from the Criminal Justice Program at North Point.

  
Guffrie M. Smith, Jr.  
President

  
S. James Gates, Jr.  
Vice-President

  
James H. DeGraffenreidt, Jr.  
  
Linda Eberhart

*Chester E. Finn, Jr.*

Chester E. Finn, Jr.

*Absent*

Larry Giammo

*[Signature]*  
Michele Jenkins Guyton

*[Signature]*  
Stephanie R. Iszard

*Madhu Sidhu*  
Madhu Sidhu

*[Signature]*  
Andrew R. Smarick

*[Signature]*  
Laura Weeldreyer

April 26, 2016