

CINDY ROSE AND KRISTEN EDDINS

Appellant

v.

FREDERICK COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-19

OPINION

INTRODUCTION

This is an appeal of the decision of the Frederick County Board of Education (local board) to retain a textbook, Social Studies Alive! Our Community and Beyond, for use in third grade social studies. The local board filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable or illegal and should be upheld. The Appellants filed a response to the local board's Motion, to which the local board replied.

FACTUAL BACKGROUND

The school system has used the 2003 edition of the textbook, Social Studies Alive! Our Community and Beyond, in its third grade social studies classes since 2004. Use of the book was approved in accordance with local policy on instructional materials. The regular replacement cycle for the textbook is scheduled for fiscal year 2013, pending budget decisions. (Committee Final Report).

In April 2011, Appellant (Rose) filed a Request for Reconsideration of Instructional Materials with the school system in accordance with Regulation 500-39 – *Reconsideration of Instructional Materials Already in Use*, objecting to the school system's use of the textbook. The Appellant argued that the textbook "has a covert as well as overt bias toward social justice and left leaning ideologies"; that it "supports a multicultural agenda and undermines the readers appreciation for American culture"; and that it "makes a point of explaining how most of the things we use/have/buy in America come from other countries." (Rose Request for Reconsideration, 4/23/11).

Consistent with Regulation 500-39, the Associate Superintendent of the Elementary Division, Steve Lockard, referred the complaint directly to the Superintendent because only one complaint was filed. He explained that multiple resources are used to teach the third grade social studies curriculum. He stated that no text is completely free from bias and that the school system is required to infuse multiculturalism into its instruction. For particular areas of concern that might exist in the text, he recommended that modifications be made to lesson plans to ensure that multiple points of view are represented. (Lockard Memo, 6/3/11).

Thereafter, in June 2011, multiple complainants filed Requests for Reconsideration of Instructional Material, also objecting to the use of Social Studies Alive! Our Community and Beyond. Some of the complaints stated that the text might result in the “indoctrination of socialist ideology”, contains statements that are “liberal-leaning, misleading or just plain false”, and undermines America’s true history and its principles. (See Requests for Reconsideration of Instructional Material).

In response, Mr. Lockard appointed a Textbook Reconsideration Committee (Committee)¹ to review the requests and evaluate whether the book should be removed from use in the third grade. The Committee engaged in an extensive review process which also included interviews with some of the complainants.² The Committee issued its Final Report on March 1, 2012. (Final Report).

In its report, the Committee addressed the Appellants’ claims regarding bias:

[T]he committee recognizes that individuals come to decisions about political and social issues based on their backgrounds, economics, education, and age; we each have a point of view. Point of view can be synonymous with the term bias. The committee readily concedes that there are some statements and questions which could be interpreted as left-leaning by some in our community and contain social justice concepts as read by others. However, each of these same statements and questions could be viewed as important for educating our students in multiple perspectives and learning to respect and value other perspectives.

The responsibility of parents to expose their children to other perspectives is not something we as a committee should address, but it is incumbent upon educators to present multiple perspectives, and this text advances this goal. The role of the educator is to use multiple tools to educate students, to ask open-ended questions, and to expose students to those experiences that are not a part of their world.

(Final Report at pp. 3-4).

The Committee recommended that the textbook remain in place until the next regular replacement cycle, but no later than the 2014-2015 school year, finding that it would be more harmful to overall instruction to eliminate the textbook without having an appropriate

¹The Committee was comprised of ten members including community representatives, school system representatives, and parent representatives.

² Each individual who filed a complaint was offered the opportunity to meet with the Committee. Three availed themselves of that opportunity.

replacement. The Committee recognized that the book was chosen in 2004 because it most correlated to the curricular standards than the other books available at that time, but that there may now be better books available. The Committee urged the school system to focus resources on replacement and to begin the selection process for a new textbook as soon as possible. (Final Report).

The Committee also recommended that the school system initiate specific actions to mitigate the issues identified by the Appellants, some of which include increasing teacher awareness of issues of concern in the textbook, having the teachers go beyond the text to question students in the areas of concern, incorporating already existing resources outside the textbook into the lessons, and developing a curricular resource to accompany the textbook. (*Id.*).

Mr. Lockard transmitted the Final Report to the Superintendent on March 5, 2012. He recommended that the Superintendent approve the Committee's seven recommendations. He noted that since August 2011, the school system had already added supplemental and electronic resources to the third grade social studies curriculum and revised several existing lessons in response to the initial complaint in April 2011. (Lockard Memorandum, 3/5/12).

By letters dated March 12, 2012, the Superintendent advised the Appellants that she concurred with the recommendations of the Committee, except for the recommendation requiring that textbook selection begin as soon as possible so that the next textbook could be purchased at the next textbook replacement cycle, but not later than the 2014-2015 school year. The Superintendent stated that she did not want to commit the school system to purchasing a replacement textbook by 2014-2015 because there are unknown variables that could impact the timeline, such as budget constraints, development of new State resources for the common core implementation, and the feasibility of online resources versus hard copy material. (Alban Letters, 3/12/12).

Appellants appealed the decision to the local board asking that the textbook be immediately removed from the classrooms. Appellants also requested that the review panel consist of the full board rather than a panel of three members of the board. (Rose Letter of Appeal to Local Bd.).

The local board conducted a hearing on August 6, 2012. At the hearing, Appellant (Eddins) requested that the local board uphold the recommendation of the Committee that the book no longer be used after the 2014-2015 school year and the other (Rose) requested its immediate removal. (Tr. 40).

Three members of the local board voted to uphold the decision of the Superintendent. Three members of the local board voted to adopt in full the recommendations of the Committee and replace the textbook no later than the 2014-2015 school year. Two members of the local board were not present at the hearing in this matter and did not participate in the decision. Because a majority of the board (4 members) was not convinced one way or the other, the Superintendent's decision stood.

This appeal followed.

STANDARD OF REVIEW

This appeal involves a decision of the local board involving a local policy, thus the local board's decision is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

In their appeal to the State Board, Appellants focus on the procedures followed in this case. They argue that the local board violated its own policy and the Appellants' substantive due process rights because only five of the seven members of the local board were present for the hearing and voted in the case.

COMAR 13A.02.01.01A provides that a local board may not adopt a motion or resolution without the concurrence of a majority of the whole board, which is four members when the board consists of six or seven individuals. Consistent with that provision, local board Policy 102.4B provides that motions or resolutions may be adopted only with the concurrence of an absolute majority (four votes) of the board. Although the local board Policy states that it "is an expectation that Board members be present at scheduled meetings" there is no absolute requirement that all board members be in attendance. Rather, the policy requires four members of the board to be present to constitute a quorum for the transaction of business. (Policy 102.4B).

This Board recently addressed a similar issue in *Herron v. Harford County Bd. of Educ.*, MSBE Op. No. 12-10 (2012), stating:

Appellants also maintain that the local board's decision is somehow rendered arbitrary, unreasonable or illegal because a board member who lives in close proximity to the bus stop did not participate in the proceedings. There is no legal basis for this claim as there is no requirement that every member of the board participate in every decision. The local board's policy requires only a quorum of the board to decide the appeal.

The Appellants refer to the local board's appeal procedures, arguing that they require the full board to be present. (Policy 105 – Appeal and Hearing Procedures). Those procedures allow the board the option of using a three member panel for appeal hearings, but the decision on the type of proceeding to be used in a case must be made by the "full board." When a three member panel is used, that panel presents its recommendation to the "full board." These are the only references to the term "full board" in the procedures. (Policy 105.7). In this case, a three member panel was not utilized.

We are not aware of any constitutional or legal requirement that would necessitate the presence of the full board at an appeal hearing or the presence of the full board to vote on an appeal. To impose such a requirement would make it difficult for a local board to transact business given that there are times when members are unable to attend meetings for various reasons. We conclude, therefore, that the local board did not act illegally. The absence of the two board members did not prevent the duly constituted quorum of the local board from properly acting on the appeal.

The burden in this case was on the Appellants to demonstrate that the Superintendent's decision was arbitrary, unreasonable or illegal. Appellants have not presented any arguments or pointed to any evidence in their appeal to the State Board to satisfy that burden. Based on the record before us, it was reasonable for the Superintendent to retain the textbook without a date certain for replacement. This gave the school system flexibility given considerations of budget, upcoming changes in core curriculum standards, and the possibility of using online resources and other technology. The textbook was already scheduled for the evaluation and replacement process. The Committee, which contained education professionals, as well as the Associate Superintendent found educational worth in the book and the school system was making certain adjustments to address concerns raised by Appellants.

We note that in their appeal to the local board, Appellants requested that the textbook be immediately removed from the classroom. None of the five voting local board members voted for that option, rather three voted to uphold the Superintendent and two voted to adopt the full recommendation of the Committee.

CONCLUSION

For these reasons, we affirm the decision of the Superintendent.

Absent

Charlene M. Dukes
President

Mary Kay Finan

Mary Kay Finan
Vice President

James H. DeGraffenreidt, Jr.

James H. DeGraffenreidt, Jr.

S. James Gates, Jr.

S. James Gates, Jr.

Absent

Luisa Montero-Diaz

Absent

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Absent

Guffrie M. Smith, Jr.

Linda Eberhart

Linda Eberhart

March 28, 2013