

STATE OF OHIO, MAHONING COUNTY

SEVENTH DISTRICT

DEFENDANT-APPELLEE.

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OPINION

Dated: November 23, 2009

[Cite as *Hingel v. Bd. of Edn. of Austintown Local School Dist.*, 2009-Ohio-6396.]
DeGenaro, J.

{¶1} This timely appeal comes for consideration upon the record in the trial court, the parties' briefs, and their oral arguments before this court. Appellant, Brianne L. Hingel appeals the November 18, 2008 decision of the Mahoning County Court of Common Pleas adopting the magistrate's summary judgment denial of Hingel's request for writ of mandamus to compel the Board of Education of the Austintown Local School District to withdraw two 'B' grades given to Hingel during the 2003-2004 school year and replace them with 'A' grades. Hingel argues that summary judgment was inappropriate because reasonable minds could conclude that she had a clear legal right to receive the grades demanded and that the Board had a duty to bestow such grades in accordance with its published grading policy.

{¶2} The content and enforcement of a school board's policies are within the realm of discretion, and a writ of mandamus will only lie to correct a gross abuse of that discretion. Hingel did not demonstrate that the Board abused its discretion, and it would be inappropriate for a court to direct the discretion of the Board by compelling it to give specific grades to Hingel. Because Hingel was not entitled to the requested relief as a matter of law, the decision of the trial court is affirmed.

Facts and Procedural History

{¶3} During the 2003-2004 school year, Hingel pursued a year-long course in Advanced Placement Calculus and a semester-long course in Honors Writing. Each course provided quarter-term grades and a final grade. Hingel received quarter-term grades of 83.7% (B), 92.9% (A), 93.2% (A), and 89.4% (B+) in her calculus class. The calculus teacher, Reardon, designated 'A' grades as 90% and above. Hingel received quarter grades of 96.61% (A) and 90.56% (B) in her writing class. Her writing teacher, Kunic, designated 'A' grades as 91% and above. Hingel does not dispute the grades that she received for each quarter-term.

{¶4} At the end of the year, Reardon averaged each student's quarter-term numeric grades in Calculus to determine a final grade, which resulted in an 89.8%, or a 'B+' for Hingel. At the end of the final semester, Kunic examined each student's quarter-term letter grade in Writing, giving more weight to the second quarter grade in the event that a student's performance changed between quarters. Because Hingel's performance

changed from an 'A' to a 'B' during the second quarter, Kunic gave Hingel a 'B' for her final semester grade.

{¶5} Hingel disputed the grades, alleging that Reardon incorrectly averaged the grades and Kunic incorrectly weighted grades in contravention to the Board's general policy that year grades be weighted and semester grades be averaged. Hingel spoke with her teachers, and Hingel and her father both met with the school's principal to discuss the grade discrepancies. Hingel's father corresponded with the school's principal, superintendant, board, and legal counsel regarding the alleged grading discrepancy. The Board conferred with the principal and superintendant of Hingel's school and asked for verification from all parties in order to understand how each party believed that the grades should be calculated. After receiving explanations from Hingel's teachers as related by the principal of Hingel's school, the Board approved of the teachers' actions and declined to change Hingel's grades as requested.

{¶6} Hingel then wrote letters to the Ohio Department of Education, asking for review. The Ohio Department of Education responded that "Ohio has a long tradition of local school district control over many education issues. Local boards of education have the exclusive authority to craft and enforce their grading policies." The Department declined to intervene in the matter.

{¶7} On August 23, 2005, Hingel filed a Complaint in Mandamus against the Board with the Mahoning County Court of Common Pleas. During the discovery process, each party offered a different purported official grading policy of the Board. The main difference between the two versions of the grading policy is that the Board's policy shows that semester grades should be weighted and year grades should be averaged, and conversely, Hingel's version shows that semester grades should be averaged and year grades should be weighted.

{¶8} Pertinent to this appeal, both parties contend the following language is contained in the Board's grading policy: "It is understood that extenuating circumstances must at times be taken into consideration in determining a grade. Therefore, since the judgment of the teacher is the most important factor in determining all grades, it shall be the prerogative of the teacher to deviate from these methods; however, all deviations

shall be reported to the principal in charge." The policy further states: "Any deviations are to be approved by Grade Principal."

{¶9} Reardon testified during his deposition that he chose not to use the weighted system and instead preferred to use an averaged percentage system. Reardon testified that he had been using the same grading methods for years in his classes, and that he had reported his choice of grading method to the principal when he began to use it. Reardon did not report his continued use of his personal grading policy for the 2003-2004 school year.

{¶10} Kunic testified during her deposition that she had switched from a policy of averaging grades to a policy of weighting second-term grades approximately ten years prior, and reported her choice of grading policy to the principal at that time. Kunic stated that her grading policy was approved by administrators. Regarding the continued use of her personal grading policy, Kunic stated "I've always had a policy. And I've turned it into administrators; said, This is the policy I'm using for this course. And when it wasn't disputed, I stayed with the policy."

{¶11} The board's president, Michael Creatore, testified during his deposition that he spoke with principal Doug McGlynn and superintendant Stan Watson about Hingel's complaint. Creatore also asked Hingel to speak directly with the teachers, McGlynn, and Watson. The teachers met with the Board during an executive session in order to explain their personal grading policies. Creatore asked McGlynn to investigate the teachers' actions, and McGlynn's subsequent conclusion and explanation were satisfactory. Creatore noted that the Board's policy had changed in recent years, and that he believed the version provided by Hingel was the one in effect during the 2003-2004 school year.

{¶12} Both parties filed motions for summary judgment, and on January 22, 2008, the magistrate overruled Hingel's motion and granted the Board's motion on the grounds that Hingel no longer had a stake in the outcome of the dispute. The magistrate held that Hingel had not suffered injury or damage, given that she had long since graduated and provided no claim that the 'B' grades had affected her college admission and scholarship opportunities.

{¶13} On February 28, 2008, the trial court overruled and remanded the

magistrate's decision after a hearing on Hingel's objections. The trial court instructed the magistrate to hold further proceedings to determine the nature of the Board's grading policy as mandatory, the extent of teacher obligation and discretion, whether the teachers abused their discretion, and whether a violation by the teachers or administrators would result in a clear legal right in mandamus.

{¶14} Upon further briefing of the issues, the magistrate granted the Board's motion on the substantive issues posed by the trial court. The magistrate specifically found that the Board's grading policy was mandatory, that the policy allowed the teachers to deviate from the model rules with administrative approval, and that the teachers had complied with the grading policy, at the very least, by having their personal policies approved by the administration. The magistrate found no error, and thus no abuse of discretion. The magistrate further noted that Hingel did not raise the claim that the Board itself had abused its discretion in its review and enforcement of its grading policy. Finally, the magistrate declined to address whether an abuse of discretion in this case would have risen to the level of a clear legal right in mandamus, because such an error did not occur.

{¶15} On November 18, 2008, subsequent to further objections and hearing, the trial court overruled Hingel's objections and adopted the decision of the magistrate.

Mandamus to Correct an Abuse of Discretion

{¶16} In her sole assignment of error, Hingel asserts:

{¶17} "The trial court erred to the prejudice of Appellant by granting Summary Judgment to Appellee, when there are numerous genuine issues of material fact and Appellee was not entitled to judgment as a matter of law."

{¶18} Hingel argues that summary judgment was inappropriate because reasonable minds could possibly conclude that she had a clear legal right to receive the grades demanded and that the Board had a duty to bestow such grades in accordance with its published grading policy.

{¶19} A motion for summary judgment is properly granted if the court, upon viewing the evidence in a light most favorable to the party against whom the motion is made, determines that: (1) there are no genuine issues as to any material facts; (2) the

movant is entitled to a judgment as a matter of law; and, (3) the evidence is such that reasonable minds can come to but one conclusion and that conclusion is adverse to the opposing party. Civ.R. 56(C); *Byrd v. Smith*, 110 Ohio St.3d 24, 2006-Ohio-3455, 850 N.E.2d 47, at ¶10. Appellate review of a summary judgment decision is de novo. *Ohio Govt. Risk Mgt. Plan v. Harrison*, 115 Ohio St.3d 241, 2007-Ohio-4948, 874 N.E.2d 1155, at ¶5. Only the substantive law applicable to a case will identify what constitutes a material issue, and only the disagreements "over facts that might affect the outcome of the suit under the governing law" will prevent summary judgment. *Byrd* at ¶12, citing *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202.

{¶20} The substantive law in this matter involves the writ of mandamus, which is an extraordinary remedy. For a writ to issue, a relator must demonstrate: (1) that she has a clear legal right to the requested relief, (2) that the respondent has a clear legal duty to perform the requested relief, and, (3) that the relator has no adequate remedy in the ordinary course of law. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 118-119, 515 N.E.2d 914.

{¶21} As for the third prong, the Board's decision regarding Hingel's grades was not rendered in a quasi-judicial proceeding, thus the ability to appeal the decision was not possible through R.C. Chapter 2506. *State ex rel. Barno v. Crestwood Bd. of Edn.* (1998), 134 Ohio App.3d 494, 500, 731 N.E.2d 701; *Sebest v. Campbell City School Dist. Bd. of Edn.*, 7th Dist. No. 00-CA-272, 2002-Ohio-3467, at ¶6. When there is no statutory right to appeal the decision of a political subdivision, mandamus is an appropriate remedy. *State ex rel. Leigh v. State Emp. Relations Bd.*, 76 Ohio St.3d 143, 145, 1996-Ohio-416, 666 N.E.2d 1128. Because Hingel did not have another adequate remedy in the course of law, mandamus is an appropriate vehicle for her action.

{¶22} As for the right and corresponding duty involved, "[w]hen an asserted legal right is based on a statutory provision, the relator must demonstrate that the statute, as applied and interpreted, gives rise to the requisite clear legal right." *State ex rel. Deters v. Wilkinson*, 72 Ohio St.3d 54, 56, 1995-Ohio-79, 647 N.E.2d 480. Hingel lists multiple statutes and administrative code provisions as applicable to the Board. Some of the

statutes list duties such as the keeping of records and issuance of diplomas, but because Hingel has not argued that the Board has failed to keep Hingel's records or issue her diploma, such statutes are not applicable to this case.

{¶23} Applicable to this case is the statute requiring local boards of education to adopt rules necessary for the government of its pupils. R.C. 3313.20(A). Additionally, Ohio Adm.Code 3301-35-04(E) requires school districts to provide a reliable assessment system for all students. The Board's statutory duty is thus to create and enforce its own rules, including rules of assessment for student academic performance. Pursuant to the language of the statute, the form and execution of those rules are within the Board's discretion. See *Holroyd v. Eibling* (1962), 116 Ohio App. 440, 445-446, 22 O.O.2d 264, 188 N.E.2d 797. In the context of public school systems, courts are historically deferent to a school board's decision making process, presuming that decisions are made in good faith and declining to substitute judgment absent a gross abuse of discretion, clear demonstration of bad faith, or fraud. See *Holroyd* at 446; *Clay v. Harrison Hills City School Dist. Bd. of Edn.* (1999), 102 Ohio Misc.2d 13, 723 N.E.2d 1149; *State ex rel. Masters v. Beamer* (1923) 109 Ohio St. 133, 141 N.E. 851, syllabus; *Epperson v. Arkansas* (1968), 393 U.S. 97, 104, 89 S.Ct. 266, 21 L.Ed.2d. 228.

{¶24} Hingel contends that the two grades given did not follow the model grading system mandated by the Board's written policy, specifically the policy regarding weighted versus averaged quarter-term grades for semester and year-long classes. This dispute has been able to continue thus far because the different grading grids proffered by each party allowed them to debate whether the teachers did or did not compose their grading systems exactly by the model rules in effect at that time.

{¶25} Regardless of which proffered grading guideline is correct, both versions allow teachers the discretion to create alternative grading systems, and state that any deviation from the grading guideline is to be reported to the principal. Neither version states when or how often such reports must be made. Both teachers testified during their depositions that they had been using the same grading methods for years, and that their choice of method had originally been reported to the school administration when they began to use it. Hingel does not argue that these statements by the teachers were

untrue, rather that the teachers did not report the continued use of their deviating grading policies at the beginning of the 2003-2004 school year. Additionally, there is no dispute that the grades given to Hingel were reported to the principal, in compliance with the Board's grading guidelines.

{¶26} The evidence provided by both parties' shows that the Board followed its own policies by reviewing Hingel's case to ensure that any potential deviation by the teachers was acceptable. The Board requested information and review from the principal and superintendent, and discussed the matter with Hingel and her father. The teachers used the same grading method for all of their students and did not treat Hingel any differently. Hingel did not present any evidence that the grades given were unfair or arbitrary to the point that the administrative approval thereof would clearly be a gross abuse of discretion. Hingel does not argue, and nothing in the record indicates that the Board's review process was undertaken in bad faith or decided in an arbitrary manner.

{¶27} Hingel's own evidence demonstrated that the school administration and the Board followed their policies. Hingel's evidence did not demonstrate that the Board had acted arbitrarily or in bad faith. Because reasonable minds could only conclude that Hingel did not have a clear legal right to the relief she requested, Hingel's mandamus action was rightfully dismissed.

{¶28} Accordingly, Hingel's sole assignment of error is meritless and the judgment of the trial court is affirmed.

Vukovich, P.J., concurs.

Waite, J., concurs.