

IN THE MATTER OF

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

BEFORE THE

BOARD OF EDUCATION

AND

OF

CARROLL COUNTY

\*\*\*\*\*

**DECISION OF THE BOARD OF EDUCATION OF CARROLL COUNTY**

This is an appeal before the Board of Education of Carroll County (the "Board") pursuant to Section 4-205(c) of the Education Article to the Annotated Code of Maryland. The Appellants, \_\_\_\_\_ and \_\_\_\_\_, have appealed Superintendent Stephen H. Guthrie's decision of March 17, 2015, denying the \_\_\_\_\_ request that their children be allowed to opt-out of the PARCC assessment.<sup>1</sup> Superintendent Guthrie's decision of March 17, 2015, upheld an earlier decision by the Director of Research and Accountability, Gregory J. Bricca, denying the \_\_\_\_\_ request to opt-out of the PARCC assessment.

The Board has reviewed all of the written materials submitted by the \_\_\_\_\_ as well as documentation submitted by Superintendent Guthrie in response to the \_\_\_\_\_ appeal. Pursuant to its review, the Board has determined that this appeal may be decided without an evidentiary hearing or oral argument.<sup>2</sup>

For the reasons set forth below, the Board has determined that the Superintendent's decision is not arbitrary, unreasonable or illegal. Accordingly, the Board shall affirm the

<sup>1</sup> PARCC, or Partnership for Assessment of Readiness for College and Careers, is a computer-based battery of standardized assessments for K-12 students in the areas of mathematics and English language arts/literacy. About PARCC, <http://parcconline.org/about-parcc> (last visited April 28, 2015).

<sup>2</sup> It is well settled that where, as here, the issues before the Board do not involve a genuine dispute of material fact, due process does not require an evidentiary hearing. *See Helthman v. Prince George's County Bd. of Educ.*, 6 Ops. MSBE 646, 648-49 (1993). Furthermore, the Maryland State Board of Education has held that there is no right to an evidentiary hearing when there is no constitutional or statutory basis for providing one. Finally, the Board notes that \_\_\_\_\_ did not request an evidentiary hearing on their Appeal Information Form.

decision denying the request that they be allowed to opt-out of having the PARCC assessment administered to their children.

### FINDINGS OF FACT

On February 10, 2015, [redacted] sent Gregory Bricca, Director of Research and Accountability for Carroll County Public Schools, an e-mail raising issues in reference to the recent request that their children be allowed to opt-out of participating in the PARCC Assessment. Specifically, [redacted] indicated that she had been unable after conducting her own research to find where in the “2001 ‘No child left behind’ law it states my children are required to take PARCC testing.” In her e-mail, [redacted] conceded that she had been able to identify in the law the requirement that local school systems test students annually. Further, [redacted] expressed concern regarding the number of assessments being administered to her children. [redacted] questioned the efficacy of the PARCC assessment given the fact that the results would not be available to administrators until nearly halfway through the school year. Finally, [redacted] stated that in her opinion the PARCC assessment was “unnecessary and intrusive” and that children’s time would be better utilized for classroom instruction. Based on the foregoing, [redacted] indicated that they had determined that their children would not take part in the PARCC assessment.

Mr. Bricca responded by e-mail on February 11, 2015, and explained that although the reporting of the PARCC scores this year would be delayed, which is not optimal, that this year’s scores would be used as a baseline for determining student growth and as a measure of teacher effectiveness. Addressing [redacted] question about the statutory mandate applying to the PARCC assessment, Mr. Bricca indicated that The No Child Left Behind Act of 2001 (P.L. 107-110) contained numerous mandates which, in pertinent part, require school systems to assess students using statewide assessments aligned to statewide standards. Mr. Bricca explained that

participation in the PARCC assessment was mandated by the Maryland State Department of Education ("MSDE"). Mr. Bricca further explained that school systems that fail to comply with federal testing mandates may be sanctioned. Finally, Mr. Bricca stated that students attending school on the scheduled testing dates would be administered the PARCC assessment.

Dissatisfied with Mr. Bricca's response, the [redacted] sent an e-mail to the individual members of the Board of Education of Carroll County, members of the Carroll County Board of Commissioners, and members of Carroll County's state legislative delegation. In their e-mail the [redacted] indicated they had received the Superintendent's position on testing time for students who have determined not to take the PARCC assessment but that the [redacted] would like the Board's position on the issue. In the e-mail, the [redacted] explained they had been informed by the Superintendent that although CCPS staff would not attempt to force her children to take part in the PARCC assessments and that no disciplinary action would be taken against them for refusing to take the assessments, that no alternative activity would be offered to them and if they were in school the day the PARCC assessment was administered they would be expected to sit quietly while other students were administered the assessment. The [redacted] further indicated their dissatisfaction with the fact that although they had made arrangements to pick their children up from school the day they were scheduled to be administered the PARCC assessment, a change in the testing schedule nearly led to one of the [redacted] children being administered the assessment. In summation, the [redacted] requested (1) the Board's position on students opting out of the PARCC assessment and (2) the Board's justification for not providing some sort of alternative programming for students not taking the assessment.

On March 17, 2015, Superintendent Guthrie responded by e-mail. Superintendent Guthrie indicated in his e-mail that he has been in contact with Dr. Henry Johnson, Assistant

State Superintendent, Maryland State Department of Education, and had reviewed Dr. Henry's e-mail correspondence with the [redacted] on the issue of PARCC testing. Quoting from Dr. Henry's March 12, 2015, e-mail to the [redacted], Superintendent Guthrie indicated "[t]he Code of Maryland Regulations and Education Article of the Maryland Code contain no provisions for 'opting out' of statewide assessments, and we are aware of no legal right to do so." Superintendent Guthrie further clarified that although COMAR 13A.04.18.01F(5)(a) and I(2)(a) permits parents to opt-out of "Family Life and Human Sexuality" and "HIV/AIDS instruction" no similar provision exists for parents to opt-out of standardized assessments. Superintendent Guthrie reported that based on conversations with Dr. Lillian Lowery, Maryland State Superintendent of Schools, and various other local superintendents around the state, they had concluded that the following procedure was appropriate for students who do not wish to take the PARCC assessment:

1. Students are not required, nor will they be forced to answer questions contained in the PARCC assessment.
2. As long as they are not disruptive to the testing process, they will not receive any disciplinary action.
3. We are unable to provide alternative assignments or activities as the instructional program for the day is to take the PARCC assessment. To provide alternative assignments or alternative locations constitutes granting an opt-out.
4. The parents have the choice of keeping the child home, having the [student] sit for the assessment and not answer any questions, or take the assessment.

Finally, Superintendent Guthrie informed the [redacted] that the Board had not yet reviewed their request and advised that the matter would be forwarded to the Board for consideration under the Board's formal appeal procedures.

On March 18, 2015, James L. Doolan, President of the Board of Education of Carroll County, sent the \_\_\_\_\_ a letter enclosing a copy of the Board's appeal procedures and an Appeal Information Form to be completed and returned by the \_\_\_\_\_.

On March 30, 2015, the Board received the \_\_\_\_\_ completed Appeal Information Form and attached documentation. In their appeal, the \_\_\_\_\_ framed the issues for appeal as follows:

1. The decision by the Superintendent to block our sons, \_\_\_\_\_ and \_\_\_\_\_, from remaining in school to pursue alternative productive educational exercises during PARCC testing times.
2. The requirement for our son, \_\_\_\_\_, to take the non-binding PARCC exam for Algebra I as a requirement for graduation even though the score will not count.

In the attachment to their Appeal Information Form, the \_\_\_\_\_ cite several regulations in support of their position that their children should be offered alternative educational programming during the administration of the PARCC assessment. The \_\_\_\_\_ cite COMAR 13A.03.02.06B for the proposition that students are to receive the Maryland High School Assessments for a given subject matter area after the student has completed the course. In particular the \_\_\_\_\_ note the PARCC assessment will be administered prior to the completion of coursework this year. The \_\_\_\_\_ cite COMAR 13A.03.02.06C for the proposition that each local school system is required to provide support to students who have not achieved satisfactory scores on the Maryland High School Assessments. The \_\_\_\_\_ point out that because PARCC scores this year will be used to establish baseline data, the PARCC assessment scores this year will not be counted. The \_\_\_\_\_ cite to COMAR 13A.03.02.02B(5) for the proposition that Maryland High School Assessments must measure student skill and knowledge in the content area for each subject. In reference to this regulation the \_\_\_\_\_ assert the PARCC cannot be regarded as an accurate measure of student knowledge because no historical data exists to support that

determination. Finally, the [redacted] cite language from a Report of the House Appropriations Committee to the House of Delegates which raises questions about the technology used to implement the PARCC assessment and related accuracy issues.

On April 7, 2015, Superintendent Guthrie responded to the [redacted]' appeal by letter. In his letter, Superintendent Guthrie stated that no right to opt-out of the administration of the PARCC assessment exists under Maryland law or regulation. Further, CCPS is obligated to administer the PARCC assessment based on statutory and regulatory mandates. Responding to the [redacted] citation to various regulatory provision relating to the accuracy of the Maryland High School Assessments and graduation requirements, Superintendent Guthrie stated these issues and the underlying regulations are irrelevant to the question of whether the [redacted] are entitled to opt-out of the administration of the PARCC assessment and, if so, whether CCPS staff must provide alternative educational programming for students opting out of the assessment.

In his response letter, Superintendent Guthrie points out that COMAR only provides parents the right to opt-out of "Family Life and Human Sexuality" and "HIV/AIDS Instruction." That fact was brought to the [redacted] attention by e-mail from Assistant State Superintendent, Dr. Henry R. Johnson, on March 12, 2015. In his response letter, Superintendent Guthrie argues that allowing the [redacted] children to leave the testing area during the administration of the PARCC to "pursue alternative productive educational exercises" would be paramount to creating an opt-out provision similar to the one which exists only for instruction on "Family Life and Human Sexuality" and "HIV/AIDS Instruction." Superintendent Guthrie further explained that students choosing not to participate in the PARCC assessment may not bring alternative materials into the testing room due to mandatory testing protocols.

On April 14, 2015, the \_\_\_\_\_ submitted a letter in response to Superintendent Guthrie's April 7, 2015, letter. In their letter, the \_\_\_\_\_ assert the absence of a statutory or regulatory opt-out provision for the PARCC assessment does not preclude the Board from creating such a provision by the adoption of Board policy. In support of this proposition, the \_\_\_\_\_ point to a statement made by Dr. Henry R. Johnson in his e-mail to the \_\_\_\_\_ on March 12, 2015, in which he states "[w]e believe your concerns are best directed to your local school system and we encourage you to work constructively with them." Finally, the \_\_\_\_\_ argue that providing their children alternative educational opportunities during the PARCC administration is sound educational policy because it will avoid what would otherwise amount to an egregious waste of instructional time.

#### **STANDARD OF REVIEW**

Under Section 4-205(c)(2) of the Education Article of the Annotated Code of Maryland, the Superintendent is charged with "decid[ing] all controversies and disputes that involve: (i) The rules and regulations of the county board; and (ii) The proper administration of the county public school system." Where, as here, appellants challenge a Superintendent's decision, appellants bear the burden of demonstrating that the Superintendent's decision was arbitrary, unreasonable, or illegal. *See* COMAR 13A.01.05.05.<sup>3</sup>

---

<sup>3</sup> Although COMAR 13A.01.05.05 sets forth the standard of review of the Maryland State Board of Education with regard to the State Board's review of decisions of the local boards, this standard is widely used by local boards to review the decisions of local superintendents. COMAR 13A.01.05.05 reads, in relevant part:

- A. General. Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be 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.
- B. A decision may be arbitrary or unreasonable if it is one or more of the following:
  - (1) It is contrary to sound educational policy; or
  - (2) A reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.

## ISSUES PRESENTED

The type, frequency, development, and implementation of standardized assessments as a means of measuring student achievement and, in some cases, teacher performance has been the subject of a heated and vibrant national debate over the last few years. That this subject has engendered such passion in the community underscores the vital role that public education plays in preparing our nation's youth for full participation in civil society. However, the issue before the Board in the instant matter is far narrower and more concrete than the broader policy discussions about the use of standardized assessments in public education which continue to swirl in the national political debate. Specifically, before the Board are the following interrelated questions:

1. Whether parents have the right under Maryland law to opt-out of having the PARCC assessment administered to their children;
2. If not, whether it was arbitrary, unreasonable, or illegal for the Superintendent to decline to exercise discretion in adopting a policy or practice of allowing parents to opt-out of having their children participate in the PARCC assessment; and
3. Whether it was arbitrary, unreasonable, or illegal to not provide the \_\_\_\_\_ children with alternative educational programming during the administration of the PARCC assessment.

- 
- C. A decision may be illegal if it is one or more of the following:
- (1) Unconstitutional;
  - (2) Exceeds the statutory authority or jurisdiction of the local board;
  - (3) Misconstrues the law;
  - (4) Results from an unlawful procedure;
  - (5) Is an abuse of discretionary powers; or
  - (6) Is affected by any other error of law.
- D. The appellant shall have the burden of proof by a preponderance of the evidence.



## CONCLUSIONS OF LAW

### I. Under Maryland Law Parents Do Not Have the Right to Opt-out of the PARCC Assessments

Congress, through the No Child Left Behind Act of 2001 ("NCLB"), mandated "that the State educational agency, in consultation with local educational agencies, has implemented a set of high-quality, yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading or language arts, and science." 20 U.S.C.A. § 6311. NCLB requires that the mandated assessments be aligned with rigorous academic standards established by the states and that the mandated assessments provide a clear indication as to whether students have achieved those academic standards. *Id.*

The State of Maryland in turn has determined to meet the foregoing obligations under NCLB by adopting and administering the PARCC assessment. See COMAR 13A.03.04.01A(1). To that end, the Maryland State Department of Education has directed Maryland's local boards of education to adopt testing and data reporting policies which are consistent with state regulatory requirements. COMAR 13A.03.04.03A. Under those regulatory requirements for testing and data reporting, it is a violation to "exclude a student or students from participation in mandatory tests administered by or through the State Board of Education except in accordance with [State] Department- [of Education] approved procedures."<sup>4</sup> COMAR 13A.03.04.06B (emphasis added) (alteration in original). While COMAR 13A.03.04.06B does contemplate the exclusion of students from test participation in accordance with Maryland State Department of Education ("MSDE") approved procedures, the [redacted] are unable to identify any MSDE approved procedure whereby parents can opt-out of having their children participate in the

---

<sup>4</sup> The Board notes that the common meaning of the word "exclude" encompasses both affirmatively barring someone from participation in an activity as well as acquiescing or facilitating an individual voluntarily removing themselves from participation. See Meriam-Webster's Dictionary, <http://www.merriam-webster.com/dictionary/exclude> (last visited May 19, 2015).

PARCC assessment. Indeed, various government officials, including Assistant State Superintendent, Dr. Henry R. Johnson, have confirmed to the [redacted] that no such MSDE approved procedure exists.

Based on the foregoing it is clear (1) that the State of Maryland is subject to a federal statutory mandate to administer an annual standardized academic assessment such as PARCC, (2) that the Board is obligated by state regulation to administer the PARCC assessment to students attending Carroll County Public Schools, (3) that excluding students from administration of the PARCC assessment, unless in compliance with approved MSDE procedure, constitutes a violation of MSDE testing and data reporting requirements, and (4) there is no existing MSDE approved procedure, policy, or regulation which would allow the [redacted] to opt-out of having the PARCC assessment administered to their children. Contrary to the [redacted] assertions, there is no right under Maryland law for parents to opt-out of the administration of the PARCC assessment to their children. Indeed, were the Carroll County Public Schools to affirmatively allow the [redacted] to opt-out of the PARCC assessment as they have requested the Board would be in violation of existing state regulatory requirements and find itself subject to potential sanctions for violations of testing and data reporting procedures.

## **II. Neither the Superintendent Nor the Board Has the Discretion to Adopt an Opt-out Policy in Reference to the PARCC Assessments**

The [redacted] have asserted that although no opt-out provision exists under state law or regulation, Superintendent Guthrie should have used his discretion to create a parental opt-out policy or practice. In addressing this issue the Board need not reach the broader question of whether the adoption of such a policy or practice would be sound educational policy or reciprocally whether the failure to adopt such a practice or policy was contrary to sound educational policy. Instead, the [redacted] argument fails because it is erroneously premised on the

proposition that Superintendent Guthrie, or indeed this Board, had or has the discretion to adopt such a policy or practice. Contrary to the assertion, COMAR 13A.03.04.06A(3) expressly precludes Superintendent Guthrie, the Board, or any other CCPS employee from excluding any individual from PARCC testing except in accordance with MSDE procedures. As the foregoing clearly indicates, the discretion to which the appeal does not reside with the Superintendent or this Board; instead, the State Board of Education and by extension MSDE have reserved exclusively to themselves the authority which the argue the dictates of sound educational policy compel the Superintendent to exercise. For this reason we find it was neither arbitrary, unreasonable, nor illegal for the Superintendent to decline to adopt a policy or practice of allowing parents to opt-out of the PARCC assessment based on the request.

**III. It is Neither Arbitrary, Unreasonable, Nor Illegal for the Superintendent to Decline to Make Alternative Education Programming Available to the Rolfes' Children During the Administration of the PARCC Assessment**

In his letter of April 7, 2015, Superintendent Guthrie indicates that he cannot provide alternative educational programming for the children during PARCC testing because to do so, in practice, would be paramount to adopting a parental opt-out policy. Instead, Superintendent Guthrie offered the some alternatives which thoughtfully balanced the desire for their children not to take the PARCC assessment against the regulatory mandates CCPS is bound to implement. Specifically, he indicated to the that they could either (1) keep their children home from school on the day of testing or (2) their children could sit quietly while other students took their tests. We can discern no basis for disturbing or ascribing error to a decision by the Superintendent which thoughtfully provided the with options by which they may, through their own actions, exclude their children from taking the

PARCC, while keeping CCPS' policies and practices soundly cabined within the confines of mandatory MSDE regulatory restrictions.

**DECISION**

For the reasons discussed above, this Board affirms the Superintendent's decision. Should they choose to do so, the \_\_\_\_\_ may appeal this decision to the Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing, within thirty (30) days of the date of this decision.

6/10/15  
Date

James L. Doolan  
James L. Doolan, President

Jennifer A. Seidel  
Jennifer A. Seidel, Vice President

Virginia R. Harrison  
Virginia R. Harrison

Devon M. Rothschild  
Devon M. Rothschild

Robert E. Lord  
Robert E. Lord