

SCOTT AND A [REDACTED] G.

Appellant,

v.

HOWARD COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-12

OPINION

INTRODUCTION

A [REDACTED] G. (“A.G.”) and Scott G. (“Appellants”) appeal the decision of the Howard County Board of Education (“local board”) upholding a decision by the Superintendent’s Designee finding that the teacher did not violate local board policy in response to Appellants’ Bullying, Harassment and Intimidation (“BHI”) complaint. The local board filed a response to the appeal maintaining that its decision is not arbitrary, unreasonable or illegal. Appellants responded and the local board replied.

FACTUAL BACKGROUND

Appellants are the parents of a child (“the Student”) who is in the twelfth grade and attends [REDACTED] High School (“[REDACTED] HS”). During the 2017-2018 school year, the Student was enrolled in an Honors Spanish II course. In that course, the Student received a final grade of B. (Local Bd. Resp., Ex. p. 280). Appellants were dissatisfied with the Student’s grade throughout the school year, and A.G. contacted the teacher on numerous occasions about their concerns.

Through a series of emails, the teacher continued to communicate with A.G. regarding the Student’s behavior during class related to the Student’s use of a cell phone, repeatedly asking to switch seats, interrupting the teacher, disrupting other students, and leaving the classroom on a regular basis. (Local Board Response, Ex. pp. 91-118). The teacher notified Appellants about her concerns regarding the Student and her follow-up actions included warning the Student, contacting Appellants, contacting the counselor, contacting the Student’s other teachers to discuss strategies (two other teachers reported similar issues), confiscating the student’s cell phone until end of class, and confiscating the cell phone and turning it in to the front office. *Id.* After the teacher met with A.G. on February 15, 2018, the Student’s behavior improved for a time, however, it reemerged and the Student’s misbehavior continued in the classroom. *Id.*

Unhappy with the progress, on April 14, 2018, Appellants initiated the formal complaint process and contacted the Assistant Principal for a Level 1 Review. Appellants stated at the beginning of the review process that they planned to initiate a claim against the teacher if their

concerns regarding the Student were not properly addressed and a form was offered to Appellants to file a complaint. (*Id.* at Ex. pp. 118, 127-128).

On April 20, 2018, the teacher left notes for a substitute teacher with specific notes about the Student. The notes used the Student's full name and told the substitute that the Student was not to use her phone and was not allowed to change seats. (*Id.* at Ex. pp. 123-24). On April 27, 2018, a meeting was held with the Assistant Principal, A.G., the Student, the teacher, the school counselor, and the teacher's supervisor. (*Id.* at Ex. G & p. 129). In response to Appellants' concerns, school system staff reviewed the teacher's grading practices and the treatment of the Student, and the parties agreed that the teacher would not include the Student's behavior in grading and would not use the Student's middle name when addressing her in class. *Id.* In turn, Appellants and the Student agreed that the Student would not use her cell phone in class. *Id.* After that meeting, Appellants allege that the teacher began to grade the Student unfairly and her grades began to decline. (*Id.* at Ex. p. 33). At the end of the fourth quarter, the Student failed her final exam and earned a B as her final grade. (*Id.* at Ex. p. 280).¹

Dissatisfied with the Student's grade, on June 4, 2018, Appellants initiated a Level 2 review with the Principal of ██████████ HS. The Principal investigated and responded to Appellants' specific concerns. (*Id.* at Ex. pp. 263-264).

On August 23, 2018, Appellants initiated a Level 3 review with Patrick Saunderson, the Community Superintendent. Mr. Saunderson and A.G. collaborated with staff for several months to address the concerns brought forward in August 2018 and new concerns that arose during the process. (*Id.* at Ex. pp. 177-236). As part of the investigation, five students in Student's class were randomly selected and asked about the teacher's classroom environment. All five students reported that the teacher treated the students with respect, but several students reported some students would not follow the rules by using phones during class and talking back to the teacher. (*Id.* at Ex. pp. 223, 224, 265-70). Mr. Saunderson and Mr. ██████████ concluded there was non-compliance with HCPSS Policy 8020 – Middle and High School Grading and reviewed the participation grades for all of the teacher's students. (*Id.* at Ex. J). On October 15, 2018, Mr. Saunderson notified Appellants that the Student's participation grades were removed from each quarter and the Student's quarterly grade for the second quarter was changed from a B to an A, but the final grade remained a B. (*Id.* at Ex. pp. 219-21).

On January 3, 2019, Mr. Saunderson met with the teacher and her union representative to address concerns raised by Appellants. (*Id.* at Ex. pp. 285-86). On June 6, 2019, Mr. Saunderson met with Appellants to discuss their continued concerns. He offered to include the Student in the meeting, but she did not attend. (*Id.* at Ex. E). Mr. Saunderson and the Coordinator of World Languages thoroughly reviewed the additional assignments and assessments provided by Appellants. (*Id.* at Ex. pp. 180-187, 219, 271-284). The result was a recalculation of the Student's grades to comport with Policy 8020, and new quarterly grade reports and a new report card were issued in October of 2019, but the final grade remained a B. *Id.*

¹ The Student also failed her final exam in US History – GT and she earned a D on the final exam in English 9 Honors.

On October 11, 2019, the Student spoke to the National Honor Society (“NHS”) Advisor regarding the Student’s admission into NHS because she thought the teacher had raised a character issue that would affect her application. The Advisor explained the issue raised was unrelated to the teacher and concerned some alleged bullying by the Student towards another student. The Student was admitted into the NHS. (*Id.* at Ex. p. 287).

As part of the ongoing investigation, on November 13, 2019, Mr. Saunderson and Ms. Dennis, the Chief School Management and Instructional Leadership Officer and Superintendent’s Designee, met with Appellants. Although invited, the Student did not attend. (*Id.* at Ex. E). On December 5, 2019, Ms. Dennis issued a letter to Appellants regarding the results of her investigation. She noted that she recognized some issues with the teacher regarding instructional practices, assessment and grading protocols, and consistency in behavior expectations, however, even with all the grading adjustments made during the investigation the Student’s grade would remain a B. (*Id.* at Ex. G & H).

On February 21, 2020, in response to the school system’s decision on the final grade, Appellants filed a BHI complaint regarding the teacher’s treatment of the Student during the 2017-18 school year and their belief that the teacher attempted to interfere in Student’s application for membership in the NHS during the 2019-20 school year. A.G. states in the BHI complaint, “the mistreatment of [Student] has not been investigated and I learned late in the process that a formal bullying report is required to assess the impact on [the Student’s] ability to succeed in this class...I am not trying to punish [the teacher]. My intent has always been to ensure [the Student] receives a fair grade she deserved for this class.” (*Id.* at Ex. p. 29).

The investigation was delayed due to COVID-19 related closures. Ms. Dennis assigned two central office administrators, including Mr. Saunderson, to complete the investigation of the BHI complaint. (*Id.* at Ex. I, J & K). As part of the investigation, Mr. Saunderson surveyed a group of 10 substitute teachers and all the teachers responded that they had received lesson plans with student-specific notes. (*Id.* at Ex. pp. 288-297). Mr. Saunderson also discussed the allegation of NHS interference with ██████████ Principal and the NHS Advisor, and confirmed that the Advisor never received any information regarding the Student from the teacher. (*Id.* at Ex. p. 287). On August 7, 2020, Ms. Dennis issued a written statement finding that there was no evidence to conclusively determine that the reported incidents constituted a violation of HCPSS Policy 1060 - Bullying, Cyberbullying, Harassment, or Intimidation. (*Id.* at Ex. I, J & K).

On August 10, 2020, Appellants filed another Formal Concern Form with the new Principal of ██████████ HS regarding the alleged interference by the Teacher with the Student’s NHS application. (*Id.* at Ex. pp. 47-49). The Principal met with Appellants on August 13, 28 and September 2, 2020 and with Appellants and the Student on August 14, 2020. The Principal concluded that the conversation between the Student and the NHS advisor on October 11, 2019 concerned an incident for which there was no disciplinary referral. *Id.*

On October 6, 2020, Appellants filed an appeal to the local board. Appellants and the local school system submitted appeal documents, including rebuttal documents submitted by the Appellants documenting the Student’s medical care from February 23 through June 19, 2018.

(*Id.* at Ex. E). The local board reviewed Appellants’ allegations and disagreed with Appellants’ assertion that Ms. Dennis erred in her decision finding no violation of Policy 1060.

This appeal followed.

STANDARD OF REVIEW

Because this is an appeal of a decision of the local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board, the local board’s decision is 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.01.05.06A.

LEGAL ANALYSIS

This appeal challenges a decision of the local board involving a local policy – HCPSS Policy 1060 - Bullying, Cyberbullying, Harassment or Intimidation. The initial BHI complaint addressed an incident that occurred in October of 2019 and numerous incidents that occurred over the 2017-2018 school year involving the Student’s experience in her freshman Spanish class. At the lower level, Appellants sought a grade change from a B to an A in the class. During each level of review the school system worked with the Appellants and the Student and made several adjustments to the Student’s grade. Ultimately, the decision makers at each level and the local board found no basis to increase the final grade to an A. Appellants are not challenging the final grade decision in the State Board appeal.

Appellants raised myriad issues with the school system regarding the Student’s experience with the teacher, including inequity in grading, exams, and class rules regarding seating arrangements and cell phone use; limited review materials; substitute notes specific to the Student; interference with the NHI application process; use of the Student’s full name in class; and grading on behavior. Despite the number of issues raised below, Appellants limit their State Board appeal to (1) the school system’s investigation was arbitrary and unreasonable and did not afford the Student due process, and (2) affirmation that grading on participation and repeated use of student’s full name in class constitute bullying.

Appellants allege the BHI investigation did not afford the Student due process because Ms. Dennis conducted an arbitrary and unreasonable investigation of the BHI complaint. The crux of their argument is that the filing of the BHI complaint should have triggered a new and separate investigation and that Ms. Dennis should have interviewed the Student after the BHI complaint was filed. Appellants argue the BHI submission is a “new and separate investigation from the Formal Concern” and object to local school system’s reliance upon the materials and information gathered during extensive meetings with Appellants and the Student and the investigations conducted prior to the filing of the BHI complaint on February 21, 2020. *See* Appeal at p. 1. However, Appellants rely on that very same information to assert their claims. The record reveals the two issues the Appellants allege constitute bullying in this appeal were the subject of discussion at the April 27, 2018 meeting with the Student, Appellants, the teacher and

other staff at the beginning of the formal review process. It would be unreasonable for the local school system not to rely on the facts established during the previous investigations.

The local board documented the thoroughness of its decision and the exhaustive nature of the investigations and concluded:

It is the Appellants' burden to prove that the administrative decision was arbitrary, unreasonable or illegal...and that other reasoning minds would not have reached the same reasonable result. The Board concludes that the HCPSS Administration followed their policies and grievance procedures and practices; provided a thorough investigation into the various allegations, conducted an exhaustive review and addressed any personnel issues related to this matter, and remediated any issues regarding the Student's grades...the Board is satisfied that the administration actively conducted a number of comprehensive investigations of the Teacher's procedures and that the review was consistent with HCPSS policies.

Local Board Decision at p. 6.

With regard to Appellants' arguments that the investigation was arbitrary because the Student was not afforded a meeting with Ms. Dennis, Appellants state they requested Ms. Dennis to meet with the Student "to assess psychological well-being for this new investigation separate from the Formal Concern." *See* Appeal at p. 2. The record demonstrates at the beginning of this dispute with the teacher, the Appellants received a BHI form from school personnel. Even though the issues on appeal occurred during the 2017-18 school year, the Appellants did not file a BHI complaint until they realized the Student's grade would not be changed. HCPSS Policy 1060 (III.C) mandates the use of a standard bullying form as developed by the Maryland State Department of Education. The BHI Form specifically asks if there was any psychological injury to the victim and did the victim seek psychological services. *See* Education Art. § 7-424 (c). The Appellants failed to include any information regarding the behavioral health counseling the Student received from February through June of 2018. The Appellants only submitted this evidence in their rebuttal appeal information before the local board which the board accepted and gave the weight the board thought appropriate.

Appellants also allege this failure to meet with the Student violates HCPSS Policy 1060-IP - Implementation Procedures Bullying, Cyberbullying or Intimidation, section IV.A.5 which provides, "if a student wishes to discuss the incident of bullying, cyberbullying, harassment, or intimidation with an employee, the employee will make an effort to provide the student with a practical, safe, private, and age-appropriate way of doing so." The alleged bullying occurred during the 2017-2018 school year and the school system provided the Student with numerous opportunities to meet with multiple school personnel, including the school counselor, to share all her concerns. In addition, the Student chose not to attend the last two meetings with Ms. Dennis and Mr. Saunderson during which the teacher's treatment of the Student was discussed with Appellants.

Appellants' arguments are not supported by the record which illustrates the extensive nature of the school systems' response to every concern the Student and Appellants raised. The Appellants argue State Board decision, *Kristina E. v. Charles County Bd. of Educ.*, MSBE Op. No. 15-27 (2015), supports their argument that the Student's due process rights were violated by the local school system. *Kristina E.* involved a student who was expelled for fighting and the local school system notified the appellant that her complaint regarding bullying of her son by another student had been investigated and handled appropriately with no further information. The appellant was further advised by the appeals specialist that she could not appeal to the local board and there was no local board decision for the State Board to review. *Id.* The record in this case is completely different as there were multiple investigations and full collaboration with the Appellants at every review level with a full record that was reviewed by the local board before the local board issued its decision.

The State Board has rejected arguments that the local school system violated a student's due process rights because the investigations were not conducted as the Appellants would have liked. See *Mr. and Mrs. Roger B. v. Bd. of Educ. of St. Mary's County*, MSBE Op. No. 08-53 (2008). In *Roger B.*, a case similar to this appeal, the parents challenged the teaching and grading practices of their child's teacher and requested a grade change and subsequently filed a bullying complaint against the teacher. The school system investigated the complaints and responded to the concerns and took steps to address some of the parents' concerns including adjusting some of the child's grades and concluded there was no bullying. The State Board noted, "Appellants primarily disagree with the way school system personnel conducted the investigations and the conclusions reached by the local board." *Id.* at p. 7; see also *Sherrie H. v. Carroll County Bd. of Educ.*, MSBE Op. No. 17-35 (2017) (rejecting argument that student's due process rights were violated because Appellant did not receive the grading rubric from the reevaluation and because neither the local board nor Dr. Pfaf "gave any credence to or investigated [appellant's] complaints."). We agree with the local board's sound conclusion in the case at hand that the investigations were comprehensive and not lacking in any due process.

The Appellants also challenge the local board's finding that the teacher's conduct did not rise to the level of bullying within the meaning of Policy 1060. The Appellants argue that the teacher's grading on participation and repeated use of student's full name in class constitute bullying. The local board concluded that Ms. Dennis "found that Teacher's non-compliance regarding grading were corrected and the grades were recalculated to reflect the change." Local Board Decision at p. 6. The local board also stated the investigation showed that the teacher's use of the Student's full name "was not intimidation since other students in the Spanish II class were similarly addressed." *Id.* These conclusions are fully supported by the record in this case.

New Evidence

On appeal, Appellants seek to introduce new evidence in the form of statements submitted by three students from the Spanish class. These students state that the teacher did not use other students' full names when those students were also misbehaving and being addressed by the teacher. These statements are not dated and were first submitted on February 16, 2021. COMAR 13A.01.05.04C permits the State Board to consider the additional evidence if it is

material and there is a good reason for the failure to offer the evidence in the proceedings before the local board.

Appellants claim they were not aware of the “inadequacies” of the investigation necessitating rebuttal evidence until November 5, 2020 when the local school system submitted the response to the appeal. We do not find this reason to be sufficient as the record reflects that on September 28, 2018, Mr. Saunderson explicitly told A.G. he had gathered witness statements from the class involved and he did not find any evidence “to identify any pattern that singled out the Student from her peers other than the participation grades that had already been addressed.” Local Board Response, Ex. pp. 61-62. Furthermore, Ms. Dennis noted in her letter sent to the Appellants dated August 7, 2020, that:

[Teacher] and several students enrolled in her classes were interviewed as part of the investigation. While we would prefer that a staff member not use a student’s full name after being asked not to do so, this behavior does not appear to be targeted only towards [Student] as our investigation revealed that [Teacher] has called other students by their full names also. A discussion on best practices regarding how teachers should refer to students as they prefer to be called... was held with [Teacher].

(Local Board Response, Ex. B). Accordingly, we find there was not good cause for Appellants to fail to include the additional evidence in the local board proceedings and we decline to consider it as part of the appeal. *See Towle v. Carroll County Bd. of Educ.*, MSBE Op. No. 17-31 (2017) (declining to consider new evidence that could have, but was not, presented to the local board). We also find the statements from these three students are not material as discussed *infra* because we find that even if the Teacher used only the Student’s full name such classroom practice does not rise to the level of bullying within the meaning of the Policy 1060.

The record demonstrates the teacher was attempting to enforce classroom rules and it is undisputed the Student was challenging those rules. The local board concluded that the “review of this record does not provide evidence of intentional conduct creating a hostile educational environment or substantially interfering with a student’s educational opportunities or performance or their well-being in a threatening or intimidating manner.” *See* Local Board Decision at p. 6. The State Board addressed very similar issues in *Roger B.*, *supra*, in which it rejected challenges to teacher’s classroom management practices under a local school system’s bullying policy. In *Roger B.*, the State Board upheld the local board’s finding that nine of the allegations were related to classroom practices and grading and did not constitute bullying, and that the remaining two allegations that the teacher regularly ridiculed the student in the presence of her class and made an inappropriate sexual innuendo during class were either unsubstantiated or insufficient to rise to the level of bullying, harassment or intimidation. *Id.* at p. 4. *See also S.K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 19-1, pg. 2 (2019) (The school system investigated parent’s complaint and determined that the actions by the coach which were alleged to cause the student mental stress did not rise to the level of bullying and the school took action to ensure that coach’s future interactions would align with “professional expectations”). We find the evidence is lacking in this record to sustain a BHI complaint under Policy 1060.

Declaratory Ruling

In Appellants' Response to this appeal, they also ask the State Board to provide a declaratory ruling "to explain the true meaning and intent of Education Article 7-424 for bullying by a teacher directed to a student." Appellants' Response, p. 11. "Declaratory rulings are designed to resolve existing specific controversies that emanate from a dispute over the meaning of a State public school law or SBE regulation." *Turning Point Foundation, Inc. v. Prince George's County Bd. of Ed.*, MSBE Op. No. 21-09 (2021), citing *Baltimore City Bd. of Sch. Comrs. v. City Neighbors Charter School*, 400 Md. 324, 345 (2007). Education Art. §7-424 sets forth reporting requirements for local school systems concerning incidents of bullying, intimidation, and harassment against students. The record is devoid of any such dispute or controversy under §7-424. Rather, Appellants disagree with the local school system's application of Policy 1060 to the teacher's behavior directed at the Student.

We agree with the local board's conclusion that HCPSS Administration followed their policies and grievance procedures and practices; provided a thorough investigation into the various allegations, conducted an exhaustive review and addressed any personnel issues related to this matter, and remediated any issues regarding the Student's grades. Appellants' concerns regarding use of full name and grading were addressed by various members of HCPSS staff and administration and do not rise to the level of bullying as defined by Policy 1060.

CONCLUSION

For all these reasons, we find that the local board's decision is not arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's decision upholding the determination of the Superintendent's Designee that the teacher did not engage in bullying, harassment or intimidation in violation of HCPSS Policy 1060.

Signatures on File:

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Absent:
Vermelle Greene
Holly C. Wilcox

April 27, 2021