

PARENTS OF STUDENT A.,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-05

OPINION

INTRODUCTION

The parents of Student A, a six-year old first grader, appeal the decision of the Howard County Board of Education (local board) to transfer him to another school. The local board filed a Motion for Summary Affirmance to which the parents responded. The local board filed a Reply to the parents' response.

FACTUAL BACKGROUND

This case arose when Student A was a six-year old boy in first grade in St. John's Lane Elementary School. Sometime in October 2017, another six-year old boy in the same school, Student E, reported to his parents that Student A touched his penis and his bottom on many occasions when they were in the bathroom.

As the local board explained in its decision, Student E told his mother that this conduct had started in kindergarten and was repeated daily in first grade. Student E also told his mother that Student A said that if Student E did not let him touch his private parts, Student E would not be on Student A's "team." After the parents reported the conduct to Vicky Sarro, Principal, she conducted interviews of a number of first grade students, including Student A and Student E. Several students identified as being on Student A's "team" were also interviewed. One student reported that Student A gave orders to the students on the "team" and "we have to listen to him or he'll fire us...[Student A] is nice to everyone unless you disagree with his orders." (Motion, Ex. 1 at 2).

After investigating the circumstances, Ms. Sarro determined that Student A had violated County Board Policy 1020, Sexual Discrimination and she informed his parents of that determination by phone and by letter dated October 26, 2017 (received November 9, 2017). Student A's parents met with Ms. Sarro on November 14 and told her that their son had told his therapist that the touching was mutual between the boys. Ms. Sarro asked if they wanted to file a complaint against Student E, but they declined, not wanting to inflict further trauma on the boys. They believed, or hoped, that the information that the touching was mutual would eliminate the sexual discrimination reference or finding from their son's record.

Disciplinary Action

Ms. Sarro took the following actions:

- Student A was transferred to a different homeroom.
- The Guidance Counselor and School Psychologist were directed to follow-up with Student A within two, four, six, and eight week intervals to determine if there were any further concerns and needed actions.
- Communication with parents would follow the two, four, six, and eight week intervals.
- A *Bullying, Cyberbullying, Harassment, or Intimidation Report Form* was completed by staff.
- Notification was given to all necessary staff of the separation of Student A and Student E for all bathroom use and throughout the day.

Ms. Sarro also assigned Student A to a different math class to separate him from Student E as much as possible. She informed Student A's parents of this action on October 26, 2017.

Student A's parents appealed Ms. Sarro's decision to Mr. Ron Morris, Performance Director for Area 3. In mid-January 2018, while a decision on the disciplinary appeal was pending, the parents of Student E notified the school system that Student E was continuing to feel the traumatic effects of Student A's actions. The parents' attorney detailed the impacts on Student E in a letter dated January 12, 2018 to Ms. Anne Roy, the HCPSS Title IX Coordinator. At about the same time, the parents of Student E were contacting Mr. Morris directly, informing him of Student E's stress and anxiety because of these incidents.

Mr. Morris held an appeal conference with the Student A's parents on January 26, 2018, where they requested that the finding of sexual discrimination be removed from their son's record. They contended that characterizing the acts as sexual discrimination was inappropriate given the young age of Student A and Student E. The Appellants offered two articles which discussed the curiosity of young children and what child psychologists consider normal and not normal behavior.

On February 7, 2018, Mr. Morris informed Student A's parents that he had reviewed the school's investigation and was upholding the conclusion that Student A violated Howard County Public School System (HCPSS) Policy 1020 (Sexual Discrimination) for inappropriate conduct "of a sexual nature that interfered with a student's ability to learn, study, work, achieve or participate in school activities."

In late February, Mr. Morris met with Student E's parents to review their concerns about Student E's condition. The parents informed Mr. Morris that their son continued to be impacted by the events despite the school's actions to separate the two students during the day. Student E was seeing a psychologist weekly, he expressed a desire to kill or injure himself, he was expressing feelings of anger and aggression, and he was becoming less social. Student E's parents provided a letter dated February 23, 2018, from Student E's psychologist, Dr. Arlene Gerson, stating that Student E was displaying "behavioral and emotional symptoms consistent with a DSM V diagnosis of Post-Traumatic Stress Disorder. It is likely that the assault experiences are directly contributing to problems in adjustment, sleep disturbance, and mood dysregulation at home and school." (See Motion, Ex. 7).

Ms. Anne Roy, the HCPSS Title IX Coordinator, also reviewed the matter in response to the parents' concerns. On March 2, 2018, Ms. Roy wrote to Mr. Morris, detailing her assessment and recommending an administrative transfer of Student A from St. John's Lane Elementary. Ms. Roy stated in her letter that "symptoms associated with traumatic events have reportedly persisted and led to an associated clinical diagnosis, despite the school based interventions and outside therapy for the complainant." Ms. Roy noted in her letter that "[t]he school has taken reasonable precautions to ensure that no further instances occur," but that "[i]t is impossible to prevent all interactions between the students." Ms. Roy stated her opinion that Student A's presence at St. John's "limits the complainant's [Student E] ability to participate in or benefit from all of the school's programs and activities," and that Student E's ability to freely interact socially with peers and to participate in extracurricular activities was compromised. She also opined that the impact on Student E would become more severe as the students grow older because it becomes more difficult to ensure separate educational programming and curricular opportunities at the middle school and high school level. Ms. Roy also pointed out that Student E's parents did not make their request immediately after Student A's conduct was discovered. Rather, they trusted that the actions taken by the school to separate the boys would bring closure to this matter for Student E. In conclusion, Ms. Roy stated that in her opinion "continued enrollment at the same school is not in the best interest of either student" and that the request of the parents of Student E is "reasonable and in the best of interest of all involved." (*See Motion, Ex. 6*).

After considering that additional information, Mr. Morris informed Student A's parents at an in-person conference on March 12, 2018 that Student A was being administratively transferred to Northfield Elementary School, effective April 4, 2018. Moreover, Mr. Morris explained that after attending Northfield Elementary, Student A would attend Dunloggin Middle School and Centennial High School (both of which are out of the student's zone of residence), with transportation provided by the school system.

On March 27, 2018, the Appellants filed an appeal of Mr. Morris' decision to transfer Student A administratively. On June 28, 2018, the local board rendered its decision, with a vote of 5-0, to uphold the decision to transfer Student A. The Board concluded that Student A's parents had not met their burden of proving that the decision was arbitrary, unreasonable, or illegal. The Board stated, "The decision to direct an administrative transfer of Appellant's son did not violate educational policy for each of the two students now have the opportunity to develop their potential without further emotional stress." (*See Ex. 1, pp. 9-10*). The board agreed with Mr. Morris that this case involved a "heart wrenching" decision because "a child's life would be significantly impacted regardless of which decision was made," and noted that there is sufficient legal support for such difficult decisions. (*See Motion, Ex.1, p. 10*).

On July 26, 2018, the Appellants filed this appeal.

STANDARD OF REVIEW

This is an appeal of the decision to transfer Student A administratively. Because this appeal involves a decision of the local board involving a local policy, 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 was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

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.

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 unlawful procedure;
- (5) Is an abuse of discretionary powers; or
- (6) Is affected by any other error of law.

LEGAL ANALYSIS

The parents of Student A, strong advocates for their son, challenge the decision to transfer him to Northfield Elementary School which is a school that is out of the zone in which they live. The local board has directed that Student A must also attend a different middle school and high school than he would have attended if the transfer had not occurred. His parents assert that this transfer decision will effect Student A for his next eleven school years and “effectively remove him from his support network of his brother, trusted friends, teachers, and school staff.” (Appeal at 5).

Student A’s parents assert that the transfer decision is illegal because due process violations occurred throughout the disciplinary/transfer process. We have reviewed the facts and find that those arguments are unsupported. Specifically, due process in the student discipline context requires that there be notice of the charges and a meaningful opportunity to be heard. *Goss v. Lopez*, 419 U.S. 565, 581 (1975); *Parent H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-27 (2013). It is clear from the record that Student A and his parents were given notice and an opportunity to be heard during the pendency of their appeal in this case. Thus, their due process rights were not violated.

Student A’s parents also assert that the decision is illegal because it misconstrues Title IX. Procedurally, however, this case is not specifically governed by Title IX. Student E did not file a Title IX complaint against Student A. Nor did Student A allege Title IX violations against Student E.

They also assert that the transfer decision was illegal because it is an abuse of discretionary power. They focus on the fact that the transfer will impact which schools their son will go to, out of their neighborhood zone, for the next eleven years. We agree that that impact is significant in length and effect. In our view, it is a severe consequence for actions taken by a six-year old boy which he asserts were mutual.

Severe consequences do not necessarily equate to an illegal abuse of discretion, however. The abuse of discretion standard is a very high standard:

“Abuse of discretion”....has been said to occur “where no reasonable person would take the view adopted by the [trial] court,” or when the court acts “without reference to any guiding rules or

principles.” It has also been said to exist when the ruling under consideration “appears to have been made on untenable grounds,” when the ruling is “clearly against the logic and effect of facts and inferences before the court,” when the ruling is “clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result,” when the ruling is “violative of fact and logic,” or when it constitutes an “untenable judicial act that defies reason and works an injustice.”

King v. State, 407 Md. 682, 687 (2009). The Court of Special Appeals has explained that those general terms, when applied, mean that “[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.” *State v. WBAL-TV*, 187 Md. App. 135, 152-153 (2009).

Given all the facts, we conclude that the local board decision separating the boys during elementary school was clearly not an abuse of discretion. It was a decision made for the health and safety of Student E. There are facts to support that decision. We question whether separation years after elementary school will be necessary, however. Circumstances change, children change and grow. Although we cannot predict the future, it is our view that such changes might mitigate the need to continue the separation. All the parties involved here may want to consider revisiting the transfer decision at the end of elementary school. Yet, even given the length and possible severity of the transfer consequences, we cannot conclude that the local board’s decision represents an abuse of discretion or was so unreasonable that a reasoning mind could not reach such a conclusion.

CONCLUSION

For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Absent _____
Chester E. Finn, Jr.

Vermelle D. Greene

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

January 22, 2019