

P.G. and T.G.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-23

OPINION

INTRODUCTION

Appellants, parents of a student attending Montgomery County Public Schools (MCPS), appeal the decision of the Montgomery County Board of Education (local board) stemming from their “Complaint from the Public” in which they alleged that a male classmate coerced their son into engaging in sexual activities during school hours on several occasions while in the 3rd grade. The local board filed a response to the appeal maintaining that its decision should be upheld. The Appellants opposed the response and the local board replied.

FACTUAL BACKGROUND

The genesis of this case began during the 2017-2018 school year, when the Appellants’ son was in the 3rd grade. On June 5, 2018, the Appellants notified the school principal that a boy in their son’s class had inappropriately touched their son and that the two students had engaged in acts of a sexual nature in the boys’ bathroom on several occasions during the school year.

After learning of the allegations, the school principal completed a “Bullying, Harassment, or Intimidation Reporting Form” thereby initiating the investigative process set forth in Policy JHF-RA. Dr. Sarah E. Sirgo, Director of Learning, Achievement, and Administration, assumed responsibility for the investigation of the allegations and coordinated with the relevant outside agencies. This included communicating with the Montgomery County Special Victims Unit and Child Protective Services (CPS), as well as referring the Appellants and the family of the other student to Tree House Advocacy Center (Tree House) for forensic interviews and for therapeutic and counseling support services. Consistent with procedure, MCPS deferred its review of the matter while these outside, independent entities conducted their own investigations.

From June through September 2018, the school system had various communications with CPS, Tree House, the Appellants and the family of the other student regarding the investigation. Thereafter, by letter dated September 19, 2018, Dr. Sirgo reported the following results:

The results of the investigation revealed that the allegations concerning inappropriate touching of a sexual nature during the 2017-2018 school year were inconclusive with respect to

culpability. While [Appellants' son] and his peer both acknowledged the interactions occurred, we were unable to definitively identify the aggressor and the victim.

(Response to Appeal, Ex. 6). Dr. Sirgo noted that the other boy involved would be attending another elementary school outside of the cluster and feeder pattern to further reduce and eliminate the potential for interaction with the Appellants' son. *Id.*

On October 5, 2018, the Appellants submitted a "Complaint from the Public" (Complaint) maintaining that their son "was coerced into sexual activities by another student during school hours on multiple occasions while in the third grade" and that Appellants were "not satisfied with the handling of [their] son's case." (Response to Appeal, Ex. 3). They claim that the school did not sufficiently monitor the two students after learning of the incidents. Appellants allege that the other student bullied their son and threatened to kill him if he told anyone. They also claimed that the other student threatened to tell classmates about what happened if their son reported it to anyone, which the other student did once he learned of the disclosure to the Appellants and school officials. *Id.*

In their Complaint, the Appellants requested that MCPS identify the other student as the aggressor in the case. They also requested that MCPS enlist an independent outside entity to conduct a full investigation of the matter and the manner in which it was handled, including an investigation of the school principal, the school counselor, and teacher, to determine what they knew and when they knew it. The Appellants believe these individuals withheld information from them and provided inaccurate information about their son during the investigation. *Id.*

The Superintendent's designee referred the matter to hearing officer, Ms. Shari N. Perry, for review. (Response to Appeal, Ex. 8). Ms. Perry made the following findings and recommendations:

- In response to the Appellants' request that MCPS acknowledge the other child as the aggressor, Ms. Perry stated that "information regarding other students is confidential," but "it is evident that [Appellants' son] was the victim of inappropriate sexual activity, on school grounds by another student, during the school day."
- In response to Appellants' request that MCPS administrators not be responsible for investigations of this nature based on their view that the school principal mishandled the investigation, Ms. Perry explained that "there was involvement of and coordination with outside agencies, as well as extensive central office support throughout the investigation."
- In response to the Appellants' complaints about the manner in which school staff conducted themselves, Ms. Perry explained that she would provide the information from the Appellants to the Director of the Department of Compliance and Investigations to be dealt with as appropriate, but that personnel matters are confidential and are not be shared with parents. In addition, she stated that the school staff and Dr. Sirgo would be debriefing the case in order to "identify opportunities for enhancement." *Id.*

The Chief Operating Officer (COO), Andrew M. Zuckerman, concurred with Ms. Perry's findings and adopted her recommendation. (Response to Appeal, Ex. 9).

Appellants appealed Mr. Zuckerman's decision to the local board. (Response to Appeal, Ex. 10). In their appeal, Appellants provided more detail regarding the school's alleged mismanagement of the situation after her June 5th notification. Specifically, Appellants alleged that the other student would enter their son's classroom at least twice a day for no reason and that they were seated near each other during assembly. They also claimed that other classmates were asking their son about what happened between him and the other student. Appellants argued that, despite their complaints, the school principal took no action because he had preconceived notions about the two students. *Id.*

In a Decision and Order issued February 25, 2019, the local board affirmed the decision of the COO. This appeal to the State Board followed.

STANDARD OF REVIEW

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. COMAR 13A.01.05.06A.

LEGAL ANALYSIS

Appellants ask the State Board to grant the following relief in this case: (1) articulate that the other child was the aggressor; (2) have an outside agency conduct a full investigation of the case, including investigating the actions taken by the principal, school counselor and teacher; (3) conduct an audit of any sexual misconduct allegations in MCPS to determine if there is a pattern of mismanaging cases and inappropriate conduct by school employees. We address each request in turn.

Request to Label Other Student as "Aggressor"

Appellants seek to have the other student involved in this matter labeled as the "aggressor" in order "to ensure that it is enshrined in the record that the other child is a violent, sexual predator." (Response to Appeal, Ex. 10, p. 4). Laws regarding the confidentiality of student record information prevent MCPS from divulging information about the other student. *See* Family Educational Rights and Privacy Act (FERPA) and Enabling Regulations, 20 U.S.C. §1232g; 34 C.F.R. Part 99. The Appellants, therefore, may never actually know what was stated about the other student in that student's record.

Part of the Appellants' frustration with this matter relates to the fact that the school system disclosed very little factual information to them. This is because the case involved reports of child abuse made to CPS and a CPS investigation, all of which are also confidential records. *See* Md. Code, Human Services Art. §1-202. The local board relied on the CPS investigation, to some degree, in reaching its conclusions and this type of record is not open for public disclosure.

Despite all of this, Ms. Perry stated in her report that the Appellants' son was a "victim of inappropriate sexual activity, on school grounds by another student, during the school day." Furthermore, the other student now attends a different elementary school that is outside of the cluster and feeder pattern of Appellants' son's school, which will help eliminate any potential interaction for the two students. In our view, the local board acted appropriately in attempting to address Appellants' Complaint while maintaining the confidentiality of State-mandated CPS records. With that said, we believe that this set of events can have repercussions beyond the school walls. Therefore, it is incumbent on MCPS to be more vigilant in preventing such situations from occurring. In addition, we direct MCPS to monitor both students to help ensure their adjustment and success in school.

Request for Outside Entity Investigations

The Appellants also request that the State Board require an outside entity to conduct a full investigation of the case and scrutinize the actions taken by the principal, school counselor and teacher. First, as explained by the local board, school personnel initiated an investigation into the claims as soon as it received the complaint from the Appellants. Because of the nature of the claims, however, the investigation required communication between MCPS and the Montgomery County Special Victims Unit, CPS, and Treehouse. All of these entities are independent of MCPS, and their coordination took some time and ultimately resulted in an independent decision by CPS prior to MCPS making its decision. Thus, an outside agency has already reviewed this matter as the Appellants request.

To the extent that the Appellants seek to have an outside entity review the conduct of school personnel during the handling of this matter so that MCPS will take personnel action against them, the Appellants have no standing to request such relief. Any personnel decisions regarding MCPS teachers and staff are confidential matters between the local school system and the employee. *See* Md. Code, Gen. Prov. §4-311. Thus, MCPS is prevented from disclosing what actions, if any, it has taken against the individuals noted by the Appellants. Ms. Perry explained this to the Appellants when she advised them that she would provide the information from the Appellants to the Director of the Department of Compliance and Investigations to be dealt with as appropriate, but that personnel matters are confidential and are not be shared with parents. Furthermore, for many years this Board has held consistently that parents have no standing to appeal a personnel decision made at the local level. *See Kristina E. v. Charles County Bd. of Educ.*, MSBE Op. No. 15-27 (2015)(and cases cited therein).

Audit Request

The Appellants also request that the State Board conduct an audit to determine if there is a pattern of mismanagement of sexual misconduct cases in MCPS because the Appellants cannot imagine any other reason why it would be possible for two 3rd graders to engage in sexual touching in the boys' bathroom at school. There is no basis here to grant the Appellants' request for an audit, because, in our view MCPS did not mismanage this case.

CONCLUSION

For the reasons stated above, we find that the local board's denial of the Appellants' Complaint from the Public, was not arbitrary, unreasonable or illegal. We, therefore, affirm the local board's decision.

Signatures on File:

Justin M. Hartings
President

Gail H. Bates

Clarence C. Crawford

Jean C. Halle

Rose Maria Li

Michael Phillips

Warner I. Sumpter

Abstain:
Stephanie R. Iszard
Vice-President

Absent:
Vermelle D. Greene
Joan Mele-McCarthy
David Steiner

June 25, 2019