

LISA B.

Appellant,

v.

HARFORD COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-15

OPINION

INTRODUCTION

Lisa B. (“Appellant”) appeals the decision of the Harford County Board of Education (“local board”) upholding conditions for her son’s reentry to school after being placed in an alternative education program upon notification of reportable offenses. The local board filed a response to the appeal, arguing that its decision should be upheld because it is not arbitrary, unreasonable or illegal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

Appellant’s son, [REDACTED], is a Harford County Public Schools’ (“HCPS”) student who was attending the 8th grade at [REDACTED] Middle School (“[REDACTED]”) at the time of the reportable offense notification. He is currently attending [REDACTED] High School (“[REDACTED]”) subject to certain conditions that were put in place upon his return to school.

On or about February 15, 2019, the administration at [REDACTED] received notification from the sheriff’s office that [REDACTED] had been charged as a juvenile for sexual abuse of [REDACTED] -- second degree rape and fourth degree sexual assault. (Response, Ex. 9). On February 25, 2019, Buzz Williams, HCPS Supervisor of Pupil Personnel Workers, met with Appellant, [REDACTED] and their attorney to review [REDACTED]’s school placement in light of the reportable offense notice.¹ (Response, Ex. 6). Mr. Williams recommended that [REDACTED]’s placement be changed to an alternative education setting through graduation. *Id.* On February 28, 2019, the local superintendent, Sean W. Bulson, adopted Mr. Williams’ recommendation and changed [REDACTED]’s placement from [REDACTED], where one of the victims attended school, to the HCPS Alternative Education Program. (Response, Ex. 7). On April 18, 2019, the local board upheld the superintendent’s decision. (Response, Ex. 9). Appellant did not appeal that decision to the State Board.

The local superintendent’s decision to place [REDACTED] in alternative education included the opportunity for [REDACTED]’s reentry to a regular school if certain requirements were satisfied.

¹ Maryland’s reportable offense law allows for school officials to develop a plan that addresses appropriate educational programming and related services for the student alleged to have committed a reportable offense, and to take actions necessary to maintain a safe and secure school environment for students and staff. Education Art., §7-303(f); COMAR 13A.08.01.17B.

(Response, Ex. 6). The reentry requirements were: (1) documentation showing no legal restriction around children; (2) documentation from a licensed mental health provider documenting readiness to return to a regular school setting with low risk for sexual violence; and (3) performance of a risk assessment and establishment of a corresponding safety plan based on the results of the risk assessment, both to be provided by HCPS. *Id.*

Appellant submitted the necessary documentation. This included a psychosexual evaluation of ██████ conducted by a clinical licensed certified social worker. Through his evaluation, the social worker concluded that ██████ is not a threat to children in the general community. (Appeal, ██████ Evaluation Addendum). He also recommended that ██████ have no unsupervised internet access until he had successfully completed the sex offender treatment program and had the skills to manage exposure to pornography. *Id.*

On October 30, 2019, after reviewing ██████'s case and determining that the reentry requirements were met, Bernard Hennigan, Executive Director of Student Support Services, advised Appellant that he was approving ██████'s return to regular school at ██████ at the start of the second quarter of the 2019-2020 school year.² (Response, Ex. 2). ██████ like the other comprehensive high schools in HCPS has an on-site preschool program. *Id.* Given that fact and the circumstances of the reportable offense, Mr. Hennigan explained that ██████'s return to a regular school was contingent on the following conditions to extend through graduation:

- No access to specific areas of the building in proximity to preschool children;
- Access to one designated bathroom to reduce the risk of contact with preschool children in the general use bathrooms;
- No enrollment or participation in courses that include preschool children or proximity to preschool children;
- Permission to leave class only in an emergency and only with an adult escort called by the classroom teacher;
- Access to the school psychologist office only through the counseling office because of the close proximity of the psychologist office to the preschool classroom;
- ██████'s personally owned internet-capable devices, including his cell phone, must be checked into the office upon morning arrival at school and may be checked out upon exit during afternoon dismissal;
- No entry into or use of the media center;
- Classroom computer use is approved only with teacher permission during class with teacher supervision;
- ██████ is banned from all HCPS elementary school property;
- Field trips outside of school require the principal's approval and participation will be denied if proximity to young children is likely; and

² The school system had previously reviewed ██████'s eligibility for reentry to school but found that the reentry requirements were not met. The local board issued a decision on that matter, but the Appellant did not appeal that decision to the State Board. (Response, Ex. 12).

- █████ is not eligible to participate in extracurricular activities or sports that require off-campus participation.

Id.

Mr. Hennigan explained that the superintendent had to balance the safety of the young children who attend the preschool program at █████ against █████'s educational rights. He noted that while there was evidence during the review of reduced risk to the general community, the evidence showed continued risk to the preschool children attending █████. He further explained that the conditions were put in place to provide a safe and secure school environment for those preschool children. *Id.*

In an email dated November 6, 2019, addressed to Gregory A. Szoka, attorney for the local board, the Appellant appealed the imposition of conditions placed on █████'s return to school at █████ to the local board. (Response, Ex. 14).

On November 8, 2019, Mr. Williams responded to the appeal requesting that the local board uphold the reentry conditions. (Response, Ex. 15). He stated that the reentry conditions were "thoughtfully developed by a multi-disciplinary team of experts in their fields with the goal of reducing risk of sexual offenses against preschool children and the general student body, as well as against misuse of electronics, computers, and the HCPS network." *Id.* He also stated that "[█████'s] conditions resulted from an individual analysis of risk of sexual misconduct at school." *Id.* He explained the reasoning for the various restrictions and attached the opinions of the following professional experts, all of whom supported the conditions: █████, principal of █████; Rob Limpert, supervisor of HCPS preschool programs; Katie Ridgway, HCPS Risk Manager; Deborah Basler, supervisor of high school physical education, health and athletics; and Pam Smith, a pupil personnel worker and trained sex offender therapist. *Id.*

In addition to the information provided with Mr. Williams' response, the local board also had a copy of the Risk Assessment Report ("Report") completed by the HCPS Department of Psychological Services. (Response, Exs. 1 (Report) and 14). Mr. Williams clarified in his letter that the Report documented low to no risk for sexual offenses against age-appropriate peers but did not address risk to preschool age children. (Response, Ex. 15).

In a decision issued on November 14, 2019, the local board affirmed the superintendent's decision imposing the conditions. (Response, Ex. 1). The local board found the reentry conditions to be reasonable restrictions on █████'s entry to █████, striking a balance between █████'s admission to █████ and the responsibilities of HCPS to all of its students, including its younger students. *Id.*

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

Imposition of Reentry Conditions

The issue in this appeal is whether the local board's decision upholding the imposition of conditions for ██████'s reentry to school is arbitrary, unreasonable or illegal. Appellant disagrees with the conditions and seeks to have them removed, in particular the condition relating to ██████'s inability to participate in extracurricular activities or sports that take place off of ██████'s school campus.

The record in this case, however, contains ample evidence to support the local board's decision that the reentry conditions were necessary given the facts and circumstances of the reportable offense. The evidence further supports the conclusion that the conditions were reasonably related to protecting the safety of preschool children and other students at ██████, and limiting ██████'s access to internet-based devices that may be the source of pornographic or other similar material. (Response, Ex. 15). The detailed explanations for this reasoning are set forth in Mr. Williams' submission to the local board, which also contains the opinions of the professional experts relied upon by the local board. A main focus of this evidence concerns eliminating ██████'s access to young children at ██████ and at off campus activities and sports, as well as eliminating opportunity for unsupervised internet access. In response to the Appellant's desire to have the condition related to off campus activities and sports lifted, the evidence specifically addresses risk to young children and the difficulty in monitoring individual student behavior at extracurricular activities and off campus athletic events where high school students must often independently manage their behavior at locations where younger children may be present. *Id.*

Evaluation and Risk Assessment Evidence

Appellant argues that the local board ignored the evaluation of the social worker and the risk assessment by HCPS, which she maintains demonstrate that ██████ is a "low risk." (Appeal). This is not the case. The local board considered the information that was submitted in the appeal, including the documentation from Mr. Williams which explained the weight given to the evaluation and the risk assessment.

As Mr. Williams indicated, the evaluation was based on two sessions with ██████ and inferred a low risk of offending against peers. Mr. Williams pointed out that there was no consideration of ██████ attending a school in close proximity to preschool children, attending athletic events with young children, or carrying out internet-capable cell phone operations. (Response, Ex. 15). Similarly, Mr. Williams explained that the risk assessment conducted by HCPS also documented low to no risk for sexual offenses against age appropriate peers with the understanding that the administration would reduce risk associated with preschool children through appropriate conditions. *Id.* The risk assessment did not consider the risk of access to pornography, sexting, inappropriate use of the school's computer network, or participation in extracurricular activities. *Id.*

The multi-disciplinary team relied more heavily on the expert opinion of Ms. Smith, a pupil personnel worker and trained sex offender therapist, who considered the offenses and ██████'s proximity to young children and concurred with the conditions imposed. She explained

the need to have direct specific conditions and supervision during and after the completion of treatment of an individual who commits a sex offense in to minimize the opportunity for reoffending. *Id.* This includes imposing conditions that provide appropriate supervision both on and off school premises. *Id.* Appellant’s disagreement with the weight the local board accorded this evidence does not mean that the local board’s decision was arbitrary or unreasonable.

Circuit Court Order

Appellant also argues that the reentry conditions should be lifted because the Circuit Court of Harford County, sitting as a Juvenile Court, determined that ██████ could return to school without stipulations. However, the Court’s order does not include any language regarding the imposition of conditions relative to ██████’s return to school. Rather, it simply states that one of the conditions of ██████’s probation is “Mandatory school attendance or GED.” (Appeal, Court Order). It was within the discretion of the local board to impose reentry conditions.

CONCLUSION

For the reasons stated above, we find that the local board’s decision was not arbitrary, unreasonable or illegal. We therefore affirm the local board’s decision upholding the reentry conditions.

Signatures on File:

Warner I. Sumpter
President

Gail H. Bates

Clarence C. Crawford

Charles R. Dashiell, Jr.

Vermelle D. Greene

Justin M. Hartings

Rose Maria Li

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Michael Phillips

David Steiner

Dissent:

I dissent because I find the information regarding the student's threat to children in the general community at off-campus extracurricular activities or sports events to be ambiguous and therefore cannot determine if this provision is reasonable.

Signature on File:

Jean C. Halle
Vice-President

April 28, 2020