

FRANCES P.,

Appellants,

v.

BALTIMORE COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-21

OPINION

INTRODUCTION

Frances P. (“Appellant”) filed an appeal of the decision made by the Baltimore County Board of Education (“local board”) to uphold the Superintendent Designee’s denial of compensatory services for an alleged failure to provide educational services to her son, ■■■. The local board filed a response to the appeal. Appellant responded and the local board replied

FACTUAL BACKGROUND

■■■ is a former student of Baltimore County Public School (“BCPS”). On February 22, 2019, ■■■ was detained at the Baltimore County Detention Center (“BCDC”), an adult correctional facility operated by the Baltimore County Department of Corrections. At the time of his entry to BCDC, ■■■ was 17 years old and had earned 11 credits towards his high school diploma.¹ (Reply, Record Extract 4, pp. 36-37, 64). Upon his detainment, ■■■ was enrolled in the education program at the facility, “Prevention and Intervention Program” (“PIP”). (Reply, Record Extract 4, p. 62).

BCPS operates the PIP, which employs a self-paced blended learning model, providing a curriculum that aligns with courses offered in BCPS. The PIP is subject to BCDC’s regulations, including access to instructional space, hours of operation, access to students, and grouping of students for instruction. During the 2018-2019 school year, BCDC provided four classrooms to the PIP for two-hour blocks twice a day and for a three-hour block once a day. (Appeal, Ex. 6).

BCDC also places restrictions on how students may be grouped together for class, such as the separation of adults and juveniles, males and females, and students in protective custody. While enrollment changes on a daily basis, BCPS typically services between 35-50 students at one time. This provides classroom space challenges, which impacts access to educational services. Therefore, juvenile and adult students with disabilities receive first priority, and then general education juveniles. Access is further complicated by the fact that BCDC retains discretion over whether students are escorted to class, class is cancelled, or the facility is placed

¹ Prior to entering BCDC, ■■■ was detained at the Charles H. Hickey, Jr. juvenile detention facility, where he was attending school. (Reply, Record Extract 4, pp. 36-37).

on lockdown. Taken together, this means students of the PIP receive less daily instruction time than a student enrolled in a public school in the community. (Appeal, Ex. 6).

█ remained enrolled in the PIP during his detention at BCDC, which extended five months until July 31, 2019. During his detention, █ was enrolled in World History, Health, Biology, Algebra II, and English II. He received incompletes for all of his courses, and did not earn any credits. However, █ passed the statewide assessments in English, Government, and Science. (Appeal, Ex. 6).

On March 8, 2019, Appellant filed a Complaint, via e-mail, to Interim Superintendent Verletta White on behalf of █ and similarly situated students enrolled in the PIP at BCDC, alleging students were not receiving appropriate educational services under Maryland law.² Appellant requested that the Superintendent make a determination that the educational services provided at BCDC were in violation of Board policies and statutory mandates, and order corrective action, including compensatory educational services to all students affected. (Appeal, Ex. 1).

The Interim Superintendent assigned Appellant's complaint to the Superintendent's Designee, Allyson Huey, for investigation. Appellant submitted to Ms. Huey for consideration a copy of a January 31, 2019 Letter of Findings (LOF #19-086) issued by the Maryland State Department of Education, Division of Early Intervention and Special Education Services ("MSDE, DEI/SES"). LOF #19-086 concerned a state complaint filed by another enrolled student about violations of special education law by the PIP at BCDC.³ The MSDE, DEI/SES completed an investigation and issued LOF #19-086, wherein it set forth findings of fact and sustained violations of special education law. The MSDE, DEI/SES required student-specific and system-based corrective action to address these violations. (Appeal, Ex. 2).

On May 14, 2019, Ms. Huey issued a letter to Appellant wherein she acknowledged that she had reviewed LOF #19-086 and determined that MSDE DEI/SES had already investigated and issued findings about the status of educational services at BCDC, which BCPS was bound to follow. Furthermore, Ms. Huey found that MSDE, DEI/SES had issued corrective action, which BCPS was attempting to comply with; however, since MSDE, DEI/SES did not issue compensatory services for general education students, Ms. Huey declined to do so in Appellant's case. (Appeal, Ex. 3).

On June 10, 2019, Appellant's counsel appealed Ms. Huey's decision denying compensatory services to the Appellant as arbitrary, illegal, and unreasonable to the local board. (Appeal, Ex.4).

On September 12, 2019, Hearing Examiner Roger Thomas conducted a hearing. Leeann Schubert, Director of the Office of Educational Options, testified on behalf of BCPS. As part of her job duties, Ms. Schubert oversees the PIP. She testified to the limitations of the PIP due to the BCDC restrictions. She also confirmed that █ likely only received 2-3 hours of instruction per day, but that he may avail himself of the BCPS's credit recovery program if he re-enrolls in BCPS. She further testified that it was her understanding that he would not have been eligible

² Appellant alleged violations under COMAR 13A.03.02.01, .04, .06, .07, and .12.

³ DEI/SES investigated alleged violations under 34 CFR §§300.2, .17, .101, .320, Md. Code Ann., Educ. §7-103, and COMAR 13A.05.01.09.

for compensatory services as she believed compensatory services are only available to special education students. (Response to Appeal, Record Extract 4).

At the hearing, Ms. Huey testified that she was bound by MSDE's findings and noted again that MSDE, DEI/SES's findings did not order compensatory services for general education students. She also testified that compensatory services were for special education students and ■ was not a special education student. Ms. Huey did state that she had the power to offer remediation – such as tutoring – but that she did not consider any remediation because the Appellant requested compensatory services. (Response to Appeal, Record Extract 4).

On October 31, 2019, Hearing Examiner Roger Thomas issued findings of fact, conclusions of law, and a recommendation to the local board that Ms. Huey's decision be upheld. Mr. Thomas found that Ms. Huey properly acknowledged that the issues presented in the appeal had already been decided by the MSDE, that BCPS was bound by those findings and were working to implement the corrective actions required, and that the Appellant failed to demonstrate that ■ was entitled to compensatory services as a general education student. (Appeal, Ex. 6).

On December 3, 2019, the local board issued an Opinion and Order adopting the Hearing Examiner's report and upholding the Superintendent's decision to deny the requested compensatory educational services. (Appeal, Ex. 6).

This appeal 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.01.05.06(A).

The State Board exercises its independent judgment on the record before it when interpreting or explaining Maryland's laws governing public education and State Board regulations. COMAR 13A.01.05.06E.

LEGAL ANALYSIS

Appellant appealed Ms. Huey's decision not to award compensatory services to the local board, and subsequently the State Board.⁴ Therefore, we will accept the local board's conclusion that there were deficiencies in the education provided by the PIP – namely in the number of instructional hours accessible to ■ – and address the limited question of whether the local board's decision not to grant compensatory services to ■. was arbitrary, unreasonable, or illegal.

Appellant argues that the local board's decision to deny compensatory services because the MSDE, DEI/SES LOF #19-086 did not require corrective action for general education

⁴ While Appellant filed the complaint on behalf of similarly situated students, the appeal before this Board is solely on behalf of ■. Our decision is confined to Appellant's son.

students misconstrues the law and is illegal. When Ms. Huey reviewed Appellant’s complaint, she heavily considered the findings and corrective action in the MSDE, DEI/SES LOF #19-086. In our view, Ms. Huey and the local board erred when they declined to offer compensatory services to ■■■ on the basis it was not a required corrective action in the letter of findings.

The MSDE, DEI/SES has authority under the Individuals with Disabilities Education Act (“IDEA”) and correlating State law to investigate complaints made by families regarding violations of special education law. Upon completing an investigation, the MSDE, DEI/SES issues a “letter of findings” wherein it determines whether a violation of special education law has occurred and orders appropriate student-specific and/or system-based corrective action.⁵ Given that the MSDE, DEI/SES’s power to investigate and order corrective action stems from special education law, the LOF #19-086 was appropriately limited to corrective action for special education students.

The local board also erred when it found that ■■■ was not entitled to compensatory services based on its belief that compensatory services are only available to special education students under the IDEA. Compensatory services are an equitable remedy offered to students who have suffered harm stemming from a violation of their educational rights. The mere fact that the term is most often used in the context of special education hearings does not bar its use as a remedy outside of the special education context. In responding to the failure of local school systems to provide comparable education services to students during their suspension/expulsion period, we have remanded cases back to local boards for consideration of compensatory services to address the harm to the student. *See K.B. v. Baltimore City Bd. of Sch. Comms’rs*, MSBE Op. No. 16-12 (2016) and *T.G. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 18-10 (2018). In case law, the U.S. Supreme Court has upheld the use of remedial or compensatory educational programs to remedy past acts of *de jure* segregation in school districts. *See Milliken v. Bradley*, 433 U.S. 267 (1977). Thus, it is clear to us that compensatory services are an equitable remedy that is applicable to contexts outside of special education law.

Furthermore, in reviewing the testimony of Ms. Huey during the local board hearing, as well as the Hearing Examiner’s decision, we note that BCPS believes that it has the power to grant remedial services to ■■■. It was reiterated in the hearing that ■■■ would be allowed to explore credit recovery opportunities in BCPS, if he re-enrolled. Ms. Huey also testified that she has the authority to issue remedial services, including tutoring. It appears that BCPS and the local board failed to consider specific remedial services for ■■■, solely because Appellant used the term “compensatory services” in her complaint. It is illogical to us that BCPS would find that ■■■ received a deficient educational program, but not consider a remedy for this violation because of unnecessary rigidity around language. Therefore, we find this decision unreasonable.

CONCLUSION

For the foregoing reasons, we find the local board’s decision to deny ■■■ compensatory services both illegal and unreasonable. Compensatory services are an equitable remedy available to address violations of law. The determination of what compensatory services may be required to remedy a violation of law is a fact intensive analysis specific to the circumstances of the student. As such, this Board is not in a position to determine what compensatory services the

⁵ *See* 34 C.F.R. § 300.151-53; COMAR 13A.05.01.15.

student may be entitled to, so we remand this case to the local board for further hearing to determine [REDACTED] need for compensatory services.

Signatures on File:

Warner I. Sumpter
President

Jean C. Halle
Vice-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

May 27, 2020