

DAWN M.,

Appellant,

v.

CALVERT COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-33

OPINION

INTRODUCTION

Dawn M. (“Appellant”) filed an appeal of the decision by the Calvert County Board of Education (“local board”) to uphold the Superintendent’s decisions related to treatment of her sons, [REDACTED] and [REDACTED], by school staff over the course of the 2018-2019 school year, including the alleged bullying of her children and inappropriate use of school discipline. The local board filed a Memorandum in Response to the Appeal. Appellant filed a reply, and the local board responded.

FACTUAL BACKGROUND

During the 2018-2019 school year, Appellant had two children enrolled in Calvert County Public Schools (“CCPS”). [REDACTED] was a seventh grade student at [REDACTED] Middle School (“[REDACTED]MS”). [REDACTED] was a fourth grade student at [REDACTED] (“[REDACTED]”). (Local Bd., Ex. C). Throughout the school year, Appellant raised a number of concerns with CCPS staff’s responses to behavioral incidents involving her children, as well as issues regarding religious accommodations and attendance records – all of which Appellant views as a campaign against her family by CCPS.

[REDACTED]

While [REDACTED] was a student at [REDACTED]MS, the use of his cell phone became a problem with school personnel. [REDACTED] on multiple occasions used his cell phone in violation of the acceptable use policy. For example, in November 2018, he used the phone during an active shooter/lock down drill to record another student. In February 2019, he was twice asked to put his phone away after both listening to earbuds and allowing the phone to ring during a test. In May, [REDACTED] received a referral for having his cell phone and using it in school. As a response to the inappropriate use of the cell phone, [REDACTED]MS informed Appellant that the cell phone either must remain at home or be brought to the office each day. Appellant contended that her son required the phone to report bullying. [REDACTED]MS informed Appellant that her son could use the designated student telephone to call her if needed rather than his cell phone. (Local Bd., Ex. D).

████ also had numerous conflicts with other students during the school year. During one incident, Appellant filed a bullying form with the school alleging █████ was called “a retard” and made fun of by a group of students. Shortly thereafter, in a second incident, █████ and other students were at lunch when the students began calling one another the N-word. After speaking with █████ and Appellant about the situation, school administration gave █████ lunchtime detention after other students reported he instigated the matter. (Local Bd, Ex. E: 41-44).

In March 2019, Appellant reported that █████’s attendance records incorrectly marked him as absent on February 26, 2019 and March 4, 2019. (Local Bd, Ex. E: 50-53). Upon bringing it to the school’s attention, the record was corrected.

As required by his faith, █████ needed to pray at certain times of the day. Appellant requested accommodations for this, and the school set up a designated prayer room for █████ Twice █████ went to the room to find it occupied by students and a teacher. Appellant emailed the principal, Rebecca █████, about the situation, which she resolved. Principal █████ also proactively reached out to the parent to confirm changes in █████’s prayer time to ensure that a space was provided and █████ had appropriate supervision. (Local Bd., Ex. E: 54-58).

In April 2019, █████ received a disciplinary referral for retrieving his coat without permission, to which Appellant objected. (Local Bd., Ex. E: 84). This coincided with a day that Appellant was in the school building observing █████’s classes. Appellant told █████ to disregard his teacher’s directive and retrieve his coat. Appellant became involved in a back and forth discussion with █████MS staff in the hallway, wherein the Appellant used a curse word. Appellant was subsequently banned from observing further classes at █████MS. (Local Bd., Ex. E: 85-87, 113-114).

On May 21, 2019, █████ engaged in a physical altercation with another student who threw a paper ball at him on the school bus. █████ began punching the other student. The bus driver had to get involved and separate the two students. When questioned about the incident, █████ refused to provide his side of the story so █████MS used video and statements from other students and the bus driver to determine what happened. As a result of the incident, █████ received a three day suspension. The other student involved also received a suspension. (Local Bd., Ex. E: 140-141).

████

Appellant reported that her younger son, █████, was being harassed at █████ by another student. During the fall of 2018, █████ was reportedly left unsupervised in a classroom with another student. █████ and the other student became involved in a physical altercation. A second incident occurred in early 2019, where students on the playground began to play “keep-away” with █████’s shoe. As students began to laugh at the situation, █████ became upset and retaliated. Appellant complained to administration that she felt her son was being victimized and unfairly punished. █████ eventually decided to reassign █████ to another fourth grade teacher. (Local Bd., Ex. E: 22-27).

Procedural History

On April 7, 2019, Appellant filed an “Appeal Information Form” to the local board. This appeal identified her concerns regarding (1) actions by Principal ██████ to prohibit ██████’s cell phone use; (2) failure of Principal ██████ to issue disciplinary decisions without hearing ██████’s side of the story; (3) the fraudulent alteration of ██████’s attendance records by Principal ██████; and (4) religious discrimination by Principal ██████. Appellant requested that all of her appeals be heard by the local board, referencing complaints she had sent to Superintendent Curry and his designee. (Local Bd., Ex. A).

On April 29, 2019, Superintendent Curry filed a Memorandum and Response in Opposition to the Appeal with attachments. In response to Appellant’s four claims, the Superintendent argued his decisions were not arbitrary, unreasonable, or illegal; and he requested an evidentiary hearing to address the “complexity of the allegations...and the factual disputes inherent in the issues presented[.]” (Local Bd., Ex. B).

On May 1, 2019, Superintendent Curry met with the Appellant at his office to discuss a second appeal filed by Appellant regarding: (1) the reassignment of teachers for ██████; (2) Principal ██████’s denial of further classroom visits by Appellant; and (3) the prohibition of ██████’s cell phone and access to the school phone. The Superintendent followed up in a letter dated May 7, 2019 denying her appeals and providing her with her appeal rights. (Local Bd., Ex. C).

On September 26, 2019, Hearing Examiner Gregory Szoka, Esq. held an evidentiary hearing. At the hearing, Appellant raised several issues, including: behavioral incidents and reassignment of ██████’s classroom teacher; ██████’s use of the cell phone; ██████’s attendance record; ██████’s prayer accommodations; due process provided to ██████ in disciplinary actions; discipline for the coat incident at ██████MS; discipline for the school bus incident; and other disciplinary action against ██████. Appellant alleged that the aforementioned were all examples of how CCPS staff targeted her children and unfairly penalized them – treating them as aggressors rather than victims of bullying. Appellant and the Superintendent both submitted exhibits, and each party was given an opportunity to testify and put on witnesses. (Local Bd., Ex. E).

On November 19, 2019, Mr. Szoka issued a Findings of Fact, Conclusions of Law and Recommendation. Mr. Szoka reviewed the evidence submitted by the parties, as well as the testimony from the hearing, and determined that on all issues raised regarding both children, Appellant failed to establish that the Superintendent’s decisions were arbitrary, unreasonable, or illegal. Mr. Szoka concluded that CCPS: followed their local discipline policies and practices; complied with due process requirements in questioning ██████ by allowing him an opportunity to tell his version of events when disciplining him; did not intentionally interfere with ██████’s ability to pray; and had the authority to transfer ██████’s classroom assignment. He recommended that the local board deny the Appellant’s appeals. (Local Bd., Ex. D).

On February 6, 2020, upon request of the Appellant, the local board heard oral argument from the parties. Appellant appeared *pro se*, and the Superintendent was represented by his attorney. Appellant argued that the Superintendent and school system had participated in bullying of her sons ██████ and ██████, allowed bullying of her sons by other students, and otherwise acted in a corrupt fashion. The Superintendent’s attorney argued that Appellant had

failed to meet her burden of proving the actions of CCPS during the school year were arbitrary, unreasonable, or illegal. (Local Bd., Ex. G).

On February 12, 2020, the local board issued an Opinion and Order. After reviewing the record and hearing oral arguments, the local board concluded the Findings and Conclusions of the Hearing Examiner were supported by the record before him. The local board adopted the Hearing Examiner's Findings and Conclusions, as well as his recommendation to deny Appellant's appeals for failure to establish that the decisions of the Superintendent were arbitrary, unreasonable, or illegal. (Local Bd., Ex. F).

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).

LEGAL ANALYSIS

This case addresses a number of incidents that occurred over the 2018-2019 school year involving Appellant's sons. At lower levels of review, Appellant raised myriad issues, including inappropriate and illegal discipline, religious discrimination, inappropriate classroom transfer, and unresolved bullying. A clear theme emerges in reviewing the record. Appellant consistently alleges that CCPS staff have failed to address bullying by other students and inappropriately paints her children as instigators when it is her belief that her children are victims who are unfairly persecuted. Appellant bears the burden of proving these allegations, thus making the decision of the local board arbitrary, unreasonable, or illegal. Despite the number of issues raised below, Appellant limits her appeal to this Board to three arguments of why the local board's decision should be overturned: (1) intrinsic and extrinsic fraud and corruption by CCPS staff; (2) disability-based discrimination; and (3) negligence in addressing alleged bullying. We address these arguments below.

Fraud and Disability-Based Discrimination – New Issues

Appellant alleges that CCPS staff, in particular ■■■ MS Principal ■■■, engaged in fraudulent activity by “alter[ing] investigative reports” and “discredit[ing]” the Appellant and her family. She also alleges that CCPS discriminated against ■■■ based on his disability. A review of the record shows that neither of these allegations were raised before the local board.

It is the longstanding policy of this Board to consider arguments not previously raised to be waived on appeal. See *Murphy v. Prince George's County Bd. of Educ.*, MSBE Op. No. 16-19 (2016); *Lessie B. v. Caroline County Bd. of Educ.*, MSBE Op. No. 11-16 (2011) (citing *Etefia v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-03 (2003)); *Craven v. Bd. of Educ. of Montgomery County*, 7 Op. MSBE 870 (1997). This policy ensures that the local board has the opportunity to review the Appellant's arguments, weigh them, and respond accordingly. Appellant was provided with multiple opportunities to raise these issues below – in her written

appeals of the Superintendent's decisions, before the Hearing Examiner, and at oral argument before the local board. She failed to do so. Thus, we find that she has waived these arguments on appeal and decline to consider them.

Negligence in Addressing Bullying

Appellant also argues that CCPS was negligent in responding to reports of bullying of her sons. She alleges that the principals of the schools were deliberately indifferent to acts of harassment by other students. Appellant makes a number of claims about the actions of CCPS staff during the school year, but she fails to provide any evidence to support this allegation. It is the Appellant's burden to prove her claim "with factual assertions, under oath, based on personal knowledge." *Greenan v. Worcester County Bd. of Educ.*, MSBE Op. No. 10-51 (2010); *Etefia v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-03 (2003).

While the Appellant fails to point to any evidence supporting her allegations, the testimony of Principal [REDACTED] at the evidentiary hearing clearly indicates that her staff took the Appellant's concerns seriously and attempted to resolve them. The Hearing Examiner noted that Principal [REDACTED] had extensive communication with Appellant. (Local Bd., Ex. D). She testified at the hearing that she responded to every report that the Appellant made, including talking with [REDACTED] until he became uncooperative. The record shows [REDACTED] MS staff investigated a number of the incidents that Appellant complained of, and at times other students were issued disciplinary consequences based on those investigations. Principal [REDACTED] corrected the inaccurate attendance records and resolved the concern about [REDACTED]'s space to pray during the school day. The Principal [REDACTED] also assembled a Student Support Team to address issues [REDACTED] was experiencing in transitioning to MCMS. Based on these facts and the lack of contradicting evidence from the Appellant, we see no reason to overturn the local board's decision on this basis.

It is clear that relations between the Appellant and CCPS staff were strained during the 2018-2019 school year. While this was likely a distressing situation for all involved, we do not have any evidence before us to find that the local board acted in an arbitrary, unreasonable, or illegal manner.

CONCLUSION

For the forgoing reasons, we affirm the decision of the local board.

Signatures on File:

Clarence C. Crawford
President

Shawn D. Bartley

Gail H. Bates

Charles R. Dashiell, Jr.

Susan J. Getty

Vermelle D. Greene

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Dissent:

It is our view that this student was a victim of bullying. What we find missing from the record are details on counseling that the student received or instructions given to his peers regarding accepting differences in others. In keeping with our equity guidelines, we are looking for local school systems to lead in practices that remove barriers and allow all students to realize their potential. Thus, we find that the actions of the school system were not reasonable to resolve the bullying issues raised by Appellant.

Jean C. Halle, Vice-President

Holly Wilcox

Absent:
Rose Maria Li

August 25, 2020