

A.G. AND S.E.,
Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,
Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 23-07

OPINION

INTRODUCTION

Appellants appeal the decision of the Howard County Board of Education (“local board”) denying their request for a change of school assignment for their children. The local board filed a response to the appeal. The Appellants did not file a reply to the local board’s response.

FACTUAL BACKGROUND

Appellants are the parents of Student X and Student Y. On April 4, 2022, Appellants initiated requests to have Student X and Student Y transferred from Donloggin Middle School (“DMS”) to Burleigh Manor Middle School (“BMMS”) for the 2022-2023 school year. (R. 54-60). At the time the school system received the request, Student Y attended DMS and Student X was still in elementary school, but was slated to attend DMS the following year.

Appellants requested that Student Y be reassigned based on bullying affecting the student’s mental health and well-being, safety concerns, lack of support, and failure to accommodate or acknowledge religious beliefs. (R. 55). They explained that Student Y had been exposed to fights and bullying in the hallways at DMS, with little to no teacher intervention, which has affected his mental health and contributed to setbacks with his grades. Even though Student X had not yet attended DMS, Appellants requested that Student X be reassigned based on “safety concerns with his brother attending school,” lack of accommodation or acknowledgement of religious beliefs, lack of support for educational needs as a gifted and talented student; and difficulty transporting the children to two different middle schools. (R. 57).

Because Appellants submitted the reassignment request in April and the Howard County Public School System (“HCPSS”) does not process such requests until July 1, the Student Reassignment Office (“SRO”) advised Appellants that if they had immediate concerns for the safety of their children they should utilize the “parent concern process” which would provide for a review of school-based concerns by the Principal and subsequently, central office personnel. (R. 70-71; 220). Appellants did not follow that process.” (R. 65).

Meanwhile, the SRO conducted an investigation of the Appellants’ reassignment request and the concerns raised therein. Some of the concerns raised by Appellants included claims that:

Student Y received a death threat from another student; during a 21st Century Class lesson, the teacher forced Student Y to pick from two choices that conflict with his faith; some students made fun of his height on a regular basis; a teacher commented that Student Y has a limited learning capacity and cannot improve; a student touched Student Y in an uncomfortable way; and Student Y was sent to the principal's office for his involvement in a fight when he was just an observer. (R. 59-60).

The record contains the following information in response to Appellants' claims:

- In October 2021, the parent reported an incident in which a student tripped Student Y, spilled water on him, and threw a note at him that mimicked something from a television show. The parent described this incident as a death threat and filed a Bullying, Cyberbullying, Harassment, or Intimidation ("BCHI") Reporting Form. HCPSS investigated and did not find the incident to be a death threat, but found that the other student violated the school policy. The other student received consequences for his behavior. There is no record of the parent filing any other BCHI forms;
- In October 2021, students were pushing in the hallway while trying to get to class. Student Y claimed that he pushed back when he was pushed;
- In March 2022, Student Y was involved in wrestling a student at recess, which was observed by the assistant principal. The assistant principal sent the students to the principal's office. The parent maintained that Student Y was merely a witness despite the observations of the assistant principal;
- A student called Student Y short during a school club meeting;
- The DMS assistant principal reported that she addressed any issues that were raised by the parent during the school year and was not aware of any inappropriate touching or any concerns regarding religious or cultural beliefs. Nor were any issues raised with the school psychologist;
- The teacher of the 21st Century class had no recollection of a lesson in which there was cultural or religious insensitivity and the parent did not bring anything to the teacher's attention at the time;
- Students X and Y are excused from school early on Friday afternoons for religious observance; and
- Both students are doing well academically. Student X made honor roll the first quarter of the 2022-2023 school year and Student Y was very close to making honor roll.

Id; R. 74-75; 125-126; 132.

On August 20, 2022, Melissa Grady, Pupil Personnel Worker for Student Reassignment and Residency, acting as the Superintendent's Designee, issued a decision denying the Appellants' reassignment request for lack of a documented unique hardship under Policy 9000

(IV.K.5). (R. 113-114). She encouraged the Appellants to reach out to the student services office and the principal at DMS to share their concerns and seek support for their children. *Id.*

On August 29, 2022, Appellants appealed Ms. Grady's decision to the local board alleging that DMS could not meet the educational needs of their children, that both children had suffered bullying, and that the school could not provide sufficient levels of support. (R. 116-117). Appellants further claimed that Students X and Y were required to wear badges all day stating that they overslept; that students at DMS get detention and/or suspension indiscriminately, such as when they throw trash in cafeteria; that there is name-calling by students at the school; that teachers mock student names; and that students fight due to neglect of teachers. (R. 231). Appellants also asserted that the children were eligible for reassignment because the mother is a school system employee. (R. 116-117).

On November 10, 2022, the school principal submitted information explaining that the students' mother is a substitute teacher and not a permanent employee of HCPSS. Thus, her children were not eligible for reassignment pursuant to HCPSS Policy 9000.V.B. (R. 236). The principal also reported as follows:

- Neither student was involved in any fight at DMS during the 2022-2023 school year. However, Student X was involved in an incident, observed by the principal, in which Student X smacked another student (who he is friends with outside of school) in the back of the neck. Both Student X and the other student received a two-day lunch detention. *Id.*
- Students X and Y were late to school on October 28, 2022, and had to report to class with a late pass. The students were supposed to give the late pass to the teacher once they arrived in class and were not required to wear the late pass all day.
- Students who throw food, trash, or other items during lunch are removed from their seats and placed at the front of the cafeteria. They may also lose recess privileges. If there are further problems, they are reassigned to a new seat. There were no reports of students being suspended for throwing trash.
- The school administration did not receive any reports of name calling occurring during the 2022-2023 school year from Appellants or their children.
- A teacher at DMS directed a student in her class not to wear his sweatshirt hood up and made a comment to the effect that "only criminals wear their hoods up." The parent of the involved student communicated with the principal who addressed the issue with the teacher. The administration received no reports of any teachers mocking student names.

(R. 237-238).

The Superintendent's Designee responded to the appeal. (R. 30-42). Appellants thereafter submitted supplemental material for the local board's consideration. The local board

considered the supplemental material and allowed the Superintendent's Designee to respond. (R. 43-44).

On December 9, 2022, the local board issued its decision upholding the decision of the Superintendent's Designee denying the reassignment request. (Record Extract B). The local board stated the following:

[T]he incident of bullying referenced was investigated utilizing the Bullying, Cyberbullying, Harassment and Intimidation (BCHI) process, in which the matter was addressed by the administration. There was only one complaint filed and all other issues brought to the administration's attention have been reviewed and not determined to be bullying. . . . [B]oth Students were doing well academically, and neither Student has been brought up on academic concerns that would necessitate academic supports. . . . [T]he mental health effects of bullying on the Students was not properly documented. Student reassignment received no supporting documentation from a medical provider and without documentation to support that the students were currently in therapy, had a specific diagnosis, a treatment plan or what the expected outcomes would be, there was insufficient information to support reassignment. . . . Appellants have not sought any supports at [DMS] for the Students. . . . [The] Students have been permitted to leave early for religious purposes when requested by Appellants.

(Local Bd. Decision at 3-4). The local board further noted that the school administration received no allegations from Appellants or other students regarding alleged incidents of emotional abuse, that all applicable disciplinary actions had conformed to HCPSS disciplinary procedures, and that Appellants concerns regarding specific incidents at recess were addressed by the administration at the time they were reported. *Id.* at 4. The local board found that, based on the evidence presented, Appellants failed to demonstrate a unique hardship pursuant to Policy 9000 to justify a transfer from DMS to BMMS. The local board also urged Appellants to report any future incidents to the school administration at the time they occur to be handled directly, and to speak with the administration to determine if any supports for their children are appropriate. *Id.* at 6-7.

This appeal followed. Appellants assert that DMS is a toxic school environment that is negatively affecting their learning experience and that there have been several instances of bullying which have gone unaddressed. (State Board Appeal).

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. A decision may be arbitrary or unreasonable if it is contrary to sound educational policy, or if a reasoning mind could not have reasonably

reached the conclusion of the local board. COMAR 13A.01.05.06B. The Appellants have the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

LEGAL ANALYSIS

It is well established that absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination, there is no right of privilege to attend a particular school. *See Bernstein v. Bd. of Educ. of Prince George's County*, 245 Md. 464, 472 (1967); *Carolyn B. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 15-20 (2015).

In HCPSS, pursuant to Policy 9000, students are required to attend their assigned school unless they are granted a special exception to attend a school outside their geographic attendance area. (Policy 9000.IV.J). The exception applicable to this case is “[i]n rare circumstances, the Superintendent/Designee, in consultation with school-based administrators, may grant parent requests for individual exceptions to the student reassignment standards based on documented unique hardship situations.” (Policy 9000.IV.K.5). Under the unique hardship exception, the parents of the student bear the burden of presenting documented evidence of the unique hardship establishing the need for the reassignment. The Policy states that reassignment will not be granted based on the need for a particular schedule or class; for siblings to remain enrolled in the same school; to accommodate child care arrangements; and to address the impact of redistricting decisions. (Policy 9000.IV.K.6).

Here the Appellants point to some specific incidents that occurred at school. HCPSS investigated the allegations that Appellants raised in the request for change of school assignment and throughout the local board appeal. The record discloses that there was evidence of only one formal bullying report submitted on behalf of Student Y, which school administrators investigated and addressed with the student involved. Any of the additional incidents that Appellants brought to the attention of the school administration were handled. These incidents were few in number and were not found to rise to the level of bullying in violation of HCPSS policy. The Superintendent’s Designee and the local board determined that the safety concerns were appropriately addressed and that they were insufficient to establish a unique hardship to justify the reassignment. We do not find that determination to be arbitrary or unreasonable.

The Appellants assert that the ongoing incidents have affected the students’ mental health. The State Board has previously held that to justify a claim for a unique hardship based on a medical condition, including mental health concerns, an appellant must demonstrate a link between the student’s medical condition and the necessity for transfer to the requested school through documentation. *See Shervon D. v. Howard County Bd. of Educ.*, MSBE Op. No 17-10 (2017); *Philip and Deborah W. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 11-48 (2011). The documentation should include information about the diagnosis, treatment, and expected outcomes for the student. In addition, an appellant must show that health professionals at the assigned school cannot support the medical condition. *Shervon D., supra*. The Appellants have not presented any documentation to support a reassignment based on mental health concerns. Nor is there any evidence that they sought support from the school counselor or school psychologist.

As for their claims of lack of academic support, Appellants have not provided evidence that DMS failed to provide the students the necessary academic instruction or that academic interventions were needed. As noted by the Superintendent's Designee, classroom accommodations and the in-school supports are available at the current middle school, and the students are doing well academically. (R. 217-218). Neither student has been referred for academic concerns that warrant additional support. Appellants have simply failed to demonstrate that DMS cannot offer appropriate academic support. As previously held by this Board, the desire to attend a school that an appellant believes is academically better than the assigned school does not rise to the level of a unique hardship. *See, e.g. Dennis v. Bd. of Educ. of Montgomery County*, 7 Op. MSBE 953 (1998); *Marshall v. Bd. of Educ. of Howard County*, 7 Op. MSBE 56 (1997).

Although Appellants maintain that there has been a failure to accommodate religious or cultural differences, there is no evidence in the record that this is the case. Appellants have provided insufficient information to understand the alleged incident to support this claim and there is no evidence that Appellants reported the issue to the school at the time it occurred so that it could be handled by school administration. Moreover, the record discloses that Students X and Y are excused from school early on Fridays to accommodate the family's religious observance.

With regard to Appellants' request for reassignment based on employment with the school system, Policy 9000.IV.K.4 allows student reassignment to the school in which a parent is assigned if the parent is a .5 or greater full-time equivalent school based HCPSS employee. Students X and Y were not eligible for transfer under this provision because their parent is not a .5 or greater full time equivalent HCPSS employee.

CONCLUSION

For the foregoing reasons, we do not find the local board's decision to be arbitrary, unreasonable, or illegal and we affirm the local board's denial of Appellants' request for a change of school assignment.

Signatures on File:

Clarence C. Crawford
President

Susan J. Getty
Vice-President

Shawn D. Bartley

Gail H. Bates

Charles R. Dashiell, Jr.

Vermelle D. Greene

Jean Halle

Rachel McCusker

Lori Morrow

Warner I. Sumpter

Holly Wilcox

Absent:

Chuen-Chin Bianca Chang
Joan Mele-McCarthy

March 28, 2023