

A.D. AND E.W.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 23-26

OPINION

INTRODUCTION

A.D. and E.W. (“Appellants”) filed an appeal of the decision of the Montgomery County Board of Education (“local board”) affirming the decision of the superintendent’s designee finding that school system staff appropriately investigated and addressed Appellants’ complaints concerning incidents of alleged bullying against their son during the 2022-2023 school year. The local board filed a response, maintaining that its decision was not arbitrary, unreasonable, or illegal. The Appellants did not submit a substantive reply to the response.

FACTUAL BACKGROUND

Appellants are the parents of Student X who attends the second grade at [REDACTED] Elementary School (“[REDACTED]ES”). On or about March 30, 2023, Appellants filed a *Complaint from the Public* (“Complaint”) with the [REDACTED]ES principal, Dr. [REDACTED] claiming dissatisfaction with the handling and investigation of the alleged bullying incidents they reported to the school involving Student X between January and March 2023. (Resp. Ex. 1 at 3-7). The Complaint described bullying incidents involving four students at various times, including at lunch and recess, and claimed that Student X was teased and mocked due to his disability, excluded from social interactions, and suffered physical injury during one of the incidents where he fell and hit his head on a drainpipe after being kicked by another student. *Id.* Appellants asked the Montgomery County Public Schools (“MCPS”) for the following remedies:

- Implementation of new 504 accommodations and a card to access a safe teacher;
- Reimbursement for medical bills incurred due to injury to Student X;
- Education and training for school staff and volunteers on how to properly respond to bullying allegations and student injury, and training regarding students with disabilities;
- Action to guarantee that the students involved in the incidents will no longer engage in such action;
- An explanation of the ways in which the before/after-school program at [REDACTED]ES, [REDACTED] [REDACTED] Before and Aftercare (“[REDACTED]”), is responsible for addressing bullying and harassment that occurs during their programming; and

- An increase in safety measures at ■■■ES, including, but not limited to, the assignment of additional staff members for the monitoring of unstructured time such as lunch and recess. *Id.* at 6-7.

Dr. ■■■■■ reviewed the Complaint and investigated each of the five alleged bullying and harassment incidents reported by the Appellants. *Id.* at 8-12. The school administration interviewed the students involved, witnesses to the alleged bullying acts, staff members from ■■■■■ school volunteers, classroom teachers, the school counselor, and the Appellants. *Id.* Dr. ■■■■■ determined that only one of the five bullying reports was substantiated. *Id.* In that incident, the named student admitted to the conduct. Although that incident occurred at ■■■■■ where school administration has no jurisdiction, school administration met with the ■■■■■ staff and the parents of students involved and actions were taken to address the situation. As to the other incidents, Dr. ■■■■■ determined that they amounted to conflicts between the students or other inappropriate behavior, but that the conduct did not rise to the level of bullying, harassment, or intimidation. On April 21, 2023, Dr. ■■■■■ issued a written response to Appellants on their Complaint advising them of her findings and conclusions. *Id.*

Concerning the incident in which Appellants allege injury to Student X during outdoor lunch, Dr. ■■■■■'s investigation was based on reports of Student X, Student Y (the alleged aggressor), the bullying complaint, and the parent volunteer at lunch. Dr. ■■■■■ reported that the children were playing a kicking game at the time Student X fell. When Dr. ■■■■■ spoke with the two students after the incident, they explained it was a “play fighting” game and Student X did not mention being specifically targeted. Dr. ■■■■■ reminded the students that “play fighting” was not allowed. She reported that they “ran happily (giggling amongst themselves) out of the office.” *Id.* at 10-11. Dr. ■■■■■ determined that Student X was running with Student Y, slipped on a hilly section of the school yard, and hit his head. Student X said he was fine and neither the volunteer nor Dr. ■■■■■ perceived a need to send him to the nurse after assessing the situation. Dr. ■■■■■ reported the incident to the Appellants that same day. Student X attended school for the following two days, March 2 and 3, without incident or complaint about injury. On March 6, Dr. ■■■■■ was advised that Student X was receiving medical attention for a concussion. Dr. ■■■■■ thereafter cancelled outdoor lunch for the remainder of the school year and determined that students are no longer allowed to have outdoor lunch supervised by parents. *Id.*

Dr. ■■■■■ also reported that school administration had communicated with Appellants either in person or in writing on several occasions between February 13 and March 6, with a conference on April 13, 2023. A Section 504 meeting was held to add accommodations to Student X's Section 504 plan. Further, Student X was given a flash pass and a bracelet to allow him unfettered access to one of the second-grade teachers that he has deemed a safe teacher.

On or about May 2, 2023, the Appellants appealed Dr. ■■■■■'s written response to their Complaint to Dana Edwards, Chief of District Operations. *Id.* at 13-19. Appellants disagreed with the investigation results and what they perceived to be a lack of action to address bullying at ■■■ES. They again requested compensation for medical bills they claim were a result of alleged incidents at school. *Id.* Ms. Edwards assigned the matter to a Hearing Officer, Heidi J. Balter, for review.

Hearing Officer Balter spoke with multiple individuals during her investigation of the case, including Student X's mother, the ██████ ES principal, the executive director of ██████ a ██████ ES counselor, and a ██████ ES teacher. *Id.* at 22-25. Ms. Balter also reviewed all the documents submitted in the case, and MCPS Policy JHF and Regulation JHF-RA - *Bullying, Harassment, or Intimidation*. She determined that the ██████ ES administration "implemented an adequate, reliable, and impartial investigation with additional supports for providing a safe and nurturing environment for students and staff in school." *Id.* at 25. Ms. Balter reported as follows:

- All staff and school volunteers have been trained on bullying, harassment, and intimidation protocols;
- School counselors have implemented weekly classroom lessons to reinforce anti-bullying strategies and ways to restore friendships. The lessons/units implemented include having a growth mindset, ways to resolve problems, recognizing emotions, calming strategies, and anti-bullying strategies; and
- Adequate supervision is provided at recess according to MCPS guidelines. Four monitors are scheduled to be on duty for the second-grade lunch period, one adult to 55 students.

Ms. Balter also advised the Appellants that their request for compensation of medical bills could not be resolved through the MCPS KLA-RA complaint process. Based on her findings, Ms. Balter recommended that the Appellants' Complaint be denied. *Id.* By letter dated May 23, 2023, Dana E. Edwards, the Chief of District Operations, acting as the superintendent's designee, agreed with Hearing Officer Balter and adopted her recommendation to deny the Appellants' Complaint. *Id.* at 21.

On or about June 18, 2023, the Appellants appealed Ms. Edwards' decision to the local board. *Id.* at 27-43. Appellants claimed that the school administration did not adequately investigate their complaint of bullying of Student X which included verbally making fun of his disability and intentionally excluding him from social interactions in the classroom, during lunch and recess, and at the after-school program. They further claimed that school officials failed to provide restorative practices to their child and the student who was confirmed to have engaged in bullying. *Id.* Further, Appellants requested that the local board provide information to them so that they could understand why their child allegedly suffered a reported concussion at school which they allege was the result of negligent supervision of their child on March 1, 2023. *Id.*

On July 12, 2023, the local superintendent responded to the appeal in a memorandum to the local board asking it to uphold Ms. Edwards' decision. *Id.* at 45-48. The superintendent argued as follows:

- Reported bullying incidents based on Student X's disability were addressed by ██████ ES staff and were fully and expeditiously investigated by Dr. ██████ in accordance with MCPS Regulation JHF-RA;
- ██████ ES staff held two separate Section 504 meetings in March 2023, to address required accommodations for Student X and to respond to Appellants' request for accommodations to address the prevention of future bullying incidents;
- ██████ ES staff took affirmative steps to address the Appellants' concerns about future bullying, which included weekly anti-bullying lessons to all grade two students,

initiation of school counselor lunch bunch sessions, termination of outdoor lunch, personal observations of the child at several recesses to ensure his safety, and meeting with [REDACTED] staff to ensure the child and the student aggressor would be separated during future [REDACTED] activities; and

- Appellants' claim for reimbursement of medical expenses must be made through MCPS Risk Management by contacting the Division of Financial Services, not through the complaint process.

On July 14, 2023, after being given the opportunity to respond to the superintendent's memorandum, the Appellants submitted copies of some of Student X's medical records. *Id.* at 50-58.

In a decision issued August 24, 2023, the local board denied the Appellants' Complaint. (Response, Ex. 4). The local board determined that MCPS properly investigated Appellants' allegations and utilized age-appropriate interventions to address the situations reported by the Appellants. The local board noted that the [REDACTED] ES administration met with the Appellants to discuss the results of the investigation and the denial of the Complaint. The local board also concluded that the KLA-RA complaint process was not the appropriate avenue to seek reimbursement of medical expenses resulting from the alleged neglect of school professionals and/or volunteers. *Id.*

Appellants thereafter filed this appeal to the State Board.

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.

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.06E.

LEGAL ANALYSIS

The Appellants disagree with the way MCPS staff handled and investigated the bullying incidents, and they argue generally that MCPS did not follow Maryland's Model Policy to Address Bullying, Harassment, or Intimidation ("Model Policy") in addressing the bullying.

As we have previously noted, the harassment, bullying, and intimidation of students is a serious issue. *See David & Linda S. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 10-40 (2010). State law defines bullying, harassment and intimidation as intentional conduct occurring on school grounds that "[c]reates a hostile educational environment by substantially interfering with a student's educational benefits, opportunities, or performance, or with a student's physical or psychological well-being," and is "[m]otivated by an actual or a perceived personal characteristic including ... physical or mental ability or disability" or is "threatening or seriously intimidating." Md. Code Ann., Educ. §7-424. In accordance with State law, MSDE has

developed the Model Policy. *See* Md. Code Ann., Educ. §7-424.1. The Model Policy is comprehensive and, among other things, includes model procedures for prompt investigations of reports of bullying; standard consequences and remedial actions for individuals committing bullying; and information about the types of support services available to the student bully, victim, and any bystanders. *Id.* Each local school system is required to have a policy prohibiting bullying, harassment, or intimidation at school that is based on the Model Policy. *Id.* In accordance with these requirements, MCPS has established Policy JHF and Regulation JHF-RA on Bullying, Harassment, or Intimidation. Policy JHF and Regulation JHF-RA are also comprehensive and include the components of the Model Policy.

Consistent with the Model Policy, Policy JHF requires the principal to conduct an adequate, reliable, and impartial investigation, to implement supportive measures and consequences as appropriate, and to take steps to prevent the recurrence of incidents. Policy JHF(D)(6). The record demonstrates that Dr. ██████ did just that in response to the bullying complaints. Appellants do not find the manner of investigation, the conclusions, and the measures taken sufficient. They would have addressed the circumstances differently than MCPS. However, they have not met their burden to show that the local board's decision upholding the steps taken was arbitrary, unreasonable, or illegal.

As for the conclusions reached by Dr. ██████ and Hearing Officer Balter, in a case such as this, the initial fact finders must make credibility determinations about conflicting evidence to reach a decision on the merits. When evaluating facts, fact-finders are not required to give equal weight to all of the evidence and their failure to agree with an appellant's point of view of the evidence does not mean that their decisions are arbitrary, unreasonable, or illegal. *See Karp v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15-39 (2015). Both the superintendent's designee and the local board reviewed the decisions and affirmed.

We do not find sufficient reason to reject the findings and conclusions made below. Dr. ██████ and Hearing Officer Balter gathered information during their investigations, including speaking with witnesses to the alleged bullying acts, staff members from ██████ school volunteers, classroom teachers, the school counselor, and the Appellants. They reviewed all of the information from the investigations before making determinations on the totality of the evidence before them. To the extent the Appellants' version of the events differed from that information, Dr. ██████ and Hearing Officer Balter made their own credibility determinations based on the investigations and reached a decision on the merits.

We also find that the measures taken by the school in response to the bullying allegations and results of the investigations were reasonable. There are a wide range of intervention and prevention strategies and activities and consequences that are within the discretion of school officials to implement in response to bullying. Schools are encouraged to choose rehabilitative interventions that seek to restore relationships and are designed so students have an opportunity to learn from their mistakes, but there is no one specific strategy or practice that is mandated. *See* Model Policy at 5.

The record discloses that ██████ ES staff provided weekly anti-bullying lessons to all Grade 2 students, provided training to all school staff and volunteers, initiated school counselor lunch bunch sessions, and outdoor lunches were cancelled. In addition, Dr. ██████ was periodically

observing Student X at recess and was regularly checking in with Student X and the reported aggressors. Student X also received a flash pass and bracelet to allow him access to a second-grade teacher he deemed safe. School staff applied interventions and supports based on State law and MCPS policies and procedures. Appellants' disagreement with the measures implemented by the school system do not make them arbitrary, unreasonable, or illegal, even if there may have been additional or different actions that could have been taken.¹

Nevertheless, we urge MCPS to continue to monitor the situation with Student X and to proactively work with the students to ensure a safe, productive, and inclusive school environment. We also urge MCPS to work with the family to identify a process for Student X to comfortably raise any future bullying incidents with school staff, and to scrutinize such reports in light of the history of the students and Student X's disability.

Section 504 and Americans with Disabilities Act Claims

To the extent that the appeal raises claims under Section 504 or the Americans with Disabilities Act ("ADA"), the State Board has declined to exercise jurisdiction where a separate administrative forum exists to address grievances under federal law. *See Ashley J. v. Montgomery County Bd. of Educ.*, MSBE Order No. OR21-07; *Phil N. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 18-42 (2018). Accordingly, we decline to address issues regarding Section 504 and the ADA as part of this appeal.

As noted in MCPS Regulation ACG-RB(V)(D), if the Appellants want to contest any aspect of MCPS's development or implementation of Student X's Section 504 plan, they can engage in four different dispute resolution steps: (1) contact the MCPS 504 coordinator to seek review by the MCPS Department of Student Services; (2) access mediation through the Maryland Office of Administrative Hearings ("OAH"); (3) request a Section 504 hearing through OAH; or (4) file a complaint with the United States Department of Education, Office of Civil Rights ("OCR"). *Id.* Appellants appear to have availed themselves of the last option as this issue is currently the subject of an OCR complaint.²

Medical Expense Reimbursement

Appellants ask that we direct the local board to reimburse Appellants for the cost of Student X's medical expenses related to alleged "negligent supervision" by MCPS staff and volunteers at ■■■ES. At each local level of review, Appellants were advised that the appeal process was not the appropriate mechanism to seek monetary damages. The State Board has routinely declined to award monetary judgments through the administrative appeals process. *See S.K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 19-14 (2019) (declining to award private school tuition and therapy costs); *J.B. v. Harford County Bd. of Educ.*, MSBE Op. No. 17-01 (2017) (declining to award attorney's fees). Accordingly, we decline to require the local

¹ Although Appellants seek to know what consequences, if any, were applied to the student who admitted to the bullying incident, federal and State confidentiality laws preclude the school system from disclosing such information from a student's educational record without consent.

² On May 3, 2023, Appellants filed a complaint against MCPS with OCR alleging that MCPS discriminated against Student X on the basis of his disability by failing to appropriately respond to disability-based harassment of Student X that was reported during the 2022-2023 school year. (Response, Ex. 3).

board to pay the cost of Student X’s medical expenses. We suggest that Appellants initiate a claim with MCPS Risk Management by contacting the Division of Financial Services as per the local superintendent’s instruction.

CONCLUSION

For all of these reasons, we find that the decision of the local board was not arbitrary, unreasonable, or illegal, and we affirm.

Signatures on File:

Clarence C. Crawford
President

Joshua L. Michael
Vice-President

Shawn D. Bartley

Chuen-Chin Bianca Chang

Susan J. Getty

Monica Goldson

Nick Greer

Irma E. Johnson

Rachel McCusker

Samir Paul

Abstained:
Joan Mele-McCarthy
Holly Wilcox

December 5, 2023