

E.C. AND M.K.,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION
(II),

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 25-22

OPINION

INTRODUCTION

E.C. and M.K. (“Appellants”) appeal the decision of the Montgomery County Board of Education (“local board”) denying their *Complaint from the Public* and finding Montgomery County Public Schools (“MCPS”) did not violate local policies. The local board responded. Then, Appellant responded, and the local board replied.

FACTUAL BACKGROUND

Appellants are the parents of two children enrolled in Montgomery County Public Schools (“MCPS”). During the 2023-2024 school year, Child B was enrolled in the fifth grade at an MCPS elementary school. Child B has a disorder that affects one’s reactions to triggers and distressing situations. Due to this diagnosis, Child B has a Section 504 Plan¹ and behavior intervention plan. (R. 4-5).

On March 14, 2024, Child B was playing in a playground tunnel during recess. A group of students asked Child B to move, and when Child B refused, one student proceeded to hit or kick Child B. Child B and this student became involved in a physical altercation, wherein school staff separated the students. Child B continued the altercation by throwing a ball and hitting one of the students in the head, as well as using a pencil to make stabbing motions at the students. The school counselor emailed Appellants the same day to report the incident and explain what Child B and the other students shared with her. (R. 17, 44).

On March 15, 2024, the assistant principal, who was covering responsibilities while the principal was on leave, emailed Appellants to share that the students involved would be receiving consequences according to the MCPS Student Code of Conduct. When the students were ready, the school would facilitate an opportunity for all involved to apologize. (R. 17).

¹ Under Section 504 of the Rehabilitation Act of 1973, eligible students with disabilities are entitled to services, accommodations, and modifications to help them access the school program.

On March 18, 2024, Appellants filed a *Bullying, Harassment, or Intimidation Reporting Form* regarding the incident, which the school acknowledged. On March 22, 2024, the assistant principal called Appellants to share her findings that the bullying allegation was unsubstantiated. (R. 44-45). Following Spring Break, on April 2, 2024, Appellants emailed their concerns about the findings. (R. 15-16).

On April 5, 2024, the staff members in charge of safety patrol informed Child B that Child B's safety patrol privileges were to be suspended for four days as a result of the earlier altercation. (R. 15, 45). Appellants requested an in-person meeting to discuss this issue. While awaiting the meeting, the school counselor conducted individual sessions with Child B and each of the four students involved in the playground incident to share their feelings and apologize. The school counselor sent detailed notes to Appellants on April 8, 2024. (R. 23-25).

On April 11, 2024, the principal, who had returned from leave, held the meeting with Appellants wherein they discussed a number of concerns. The following day, the principal sent Appellants a summary of the meeting, including an account of what happened on March 14th and follow-up actions. (R. 13, 20-22). On April 18, 2024, she also sent an "expectations" email, where she described concerns about the "overwhelming" and "harassing" nature of Appellants' communications. She included a link to the school's *Six Tenets of Effective Communication* and the *MCPS Culture of Respect*. (R. 71).

On May 7, 2024, the principal sent a final letter regarding the bullying complaint, finding that the allegations were unfounded. The principal acknowledged that there was a physical conflict between the students, but she did not find it rose to the level of bullying. The principal reiterated that the students engaged in a restorative circle, they were directed to limit their contact with one another, and the school counselor would be available to provide additional support to continue fostering positive interactions. (Appeal, Ex. 11).

On May 21, 2024, Appellants filed a *Complaint from the Public* on behalf of Child B. In their complaint, they made nine allegations, including:

- 1) The school violated MCPS Policy JHF-RA, when they failed to contact Appellants within 24 hours of completing the bullying, harassment, or intimidation investigation;
- 2) The investigation findings were inadequate and inaccurate;
- 3) The restorative approaches were not done in a timely fashion;
- 4) The investigation and nature of the punishment did not take into consideration Child B's disability;
- 5) The school's delivery of the punishment triggered Child B's disability;
- 6) The punishment was not commensurate with the offense and was punitive;
- 7) Child B's 504 Plan and behavior intervention plan were not followed;
- 8) The punishment was issued and implemented prior to the completion of the investigation; and
- 9) The school failed to communicate, engage, and collaborate with Appellants throughout the process. (R. 1-12).

On June 10, 2024, Mr. Christophe Turk, Director of School Support and Well-Being, held a conference with Appellants and their educational advocate to discuss the complaint. On

June 20, 2024, Mr. Turk issued a letter to Appellants addressing their concerns, wherein he found:

- 1) The school communicated its initial findings by phone on March 22nd, and MCPS policy does not require a formal written follow-up;
- 2) The investigation findings were accurate given the varying accounts from the students involved;
- 3) The school had a reasonable explanation (i.e., staffing issues and Spring Break) for delaying the restorative approaches;
- 4) The school is only required to consider a student's disability when formally suspending the student;
- 5) Child B's behavior intervention plan was followed when Child B became upset about the punishment;
- 6) The school acted in accordance with the guidelines in the *MCPS Student Code of Conduct* when determining the punishment;
- 7) Concerns about the Section 504 Plan and its implementation should be addressed through a separate appeal process designated specifically for Section 504;
- 8) The school responded to the situation as quickly as possible to address the situation given the transitioning of staff; and
- 9) The school did delay in communicating the consequences of the event until April 11th, but they have subsequently changed their practices.

Ultimately, Mr. Turk denied all the requested remedies and provided Appellants with their appeal rights. (R. 36-42).

Appellants appealed the decision to the Division of Appeals, and the case was assigned to Hearing Officer Albert Mangiacapra.² Appellants reiterated their earlier claims, as well as alleged that the principal was retaliating against Appellants. As remedy for the alleged violations, Appellants requested that MCPS and the principal acknowledge the violations and the impact on the family, issue an apology, and that MCPS compensate Appellants for educational advocacy and therapeutic services. (R. 50). On July 12, 2024, Appellants were notified that the Division of Appeals would require additional time to process their complaints.³ (R. 52).

On September 23, 2024, Mr. Mangiacapra issued his findings, which aligned with those of Mr. Turk. He also found that there was no evidence that the principal retaliated against the family. Mr. Mangiacapra recommended denying the complaint, as well as the requested remedies. On the same date as the memo, Ms. Dana Edwards, Chief of District Operations, sent a letter to Appellants stating she reviewed Mr. Mangiacapra's report, concurred with the findings, and adopted the recommendation that the complaint for Child A be denied. (R. 43-50).

² While Appellants appealed Mr. Turk's decision, they also filed a separate appeal for the claims related to Section 504. After completing the investigation, MCPS offered to reimburse Appellants for up to \$2,712,21 for costs incurred for Child B's private therapy services to address the impact of the March and April events on Child B's social and emotional functioning. (R. 56).

³ The July 12, 2024, communication indicates that MCPS requires additional time to complete the investigation, and the Division of Appeals anticipated having a decision by September 17, 2024. (Appeal, Ex. 17).

On October 21, 2024, Appellants filed an appeal with the local board. In their appeal, Appellants expressed concern about the accuracy and completeness of Mr. Turk's and Mr. Mangiacapra's investigations, the length of time it took to receive a decision from the Division of Appeals, alleged retaliatory action against Appellants, and violation of a signed form denying permission to release photos of Child B. Appellants requested the local board find MCPS had not complied with policies, that the family was negatively impacted, and reiterated their request for reimbursement of therapeutic fees for Child B and one of Appellants. (R. 51-62).

On November 13, 2024, the local superintendent submitted a memorandum to the board, wherein he argued that MCPS followed procedures, that additional time was needed to complete the lengthy investigation, and that Appellants were offered reimbursement for Child B's private therapy services under the Section 504 review process. The superintendent requested the local board uphold Ms. Edwards' decision. (R. 77-82).

On November 20, 2024, Appellants submitted a letter to the local board in response to the superintendent's memo, which in part, took issue with MCPS' implications that the family is difficult or unreasonable and highlighted the numerous attachments submitted with the appeal. (R. 83-85).

On February 5, 2025, the local board issued its decision to uphold the denial of Appellants' complaint and requested remedies. The local board found that MCPS complied with all necessary policies and regulations, that the prior investigations were thorough and well-reasoned, that the disciplinary action was appropriate, and that the personnel issues are not subject to the public complaint procedures. (R. 76-80).

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.01.05.06A.

LEGAL ANALYSIS

In the appeal before us, Appellants seek to overturn the local board's decision and make nine arguments in support of their position:

- 1) MCPS violated Regulation JHF-RA when it failed to report findings from the completion of its bullying investigation in a timely fashion to Appellants;
- 2) MCPS's investigatory report into the March 14, 2024 incident was inadequate and inaccurate;
- 3) MCPS failed to complete restorative approaches in a timely fashion;
- 4) MCPS's delivery of the disciplinary response caused emotional trauma to Child B;
- 5) MCPS issued and implemented disciplinary consequences before the completion of the investigation;
- 6) MCPS failed to communicate, engage, and collaborate with Appellants;

- 7) The principal bullied, harassed, and retaliated against Appellants;
- 8) MCPS posted photos of Child B in contravention of Appellant's written denial of consent; and
- 9) MCPS violated the timelines of Policy KLA-RA when it allegedly failed to notify Appellants it required additional time to decide their appeal by the 30th workday.

Before we address these arguments, we address a preliminary evidence issue raised by the local board.

New Evidence

In their filings, Appellants seek to introduce certain documents that were not before the local board, such as communication with a Montgomery County official and a July 2024 letter sent to the local superintendent but not included in the local board appeal. The local board seeks to have these documents excluded.

Under COMAR 13A.01.05.04C, the State Board may receive additional evidence if “it is shown to the satisfaction of the State Board that the additional evidence is material and that there were good reasons for the failure to offer the evidence in the proceedings before the local board[.]” In the present case, Appellants failed to provide any good reason for the failure to offer the evidence, nor how it is material. Thus, we deny admission of the additional evidence.

Timeliness and Accuracy of the Bullying Investigation

Appellants take issue with both the timeliness of the bullying investigation, as well as the accuracy of those findings. Specifically, Appellants allege the principal violated the reporting timeline in MCPS Regulation JHF-RA when she did not send her findings from the March 14, 2024, incident until May 7, 2024. Furthermore, Appellants believe that the principal failed to acknowledge the other student's account of kicking their child.

MCPS Regulation JHF-RA(V)(D) states: “The school principal and/or designee will contact the parents/guardians of all students involved in the incident of bullying, harassment, or intimidation, as well as any other parties involved, within 24 hours of completing the investigation.” The local board argues that the school complied with the overall directive of Policy JHF, which “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.” (Response, p. 12).

After reviewing the totality of facts before us, we concur with the local board. While the principal did not send a final written response until May 7th, the full record demonstrates that the school timely responded to the bullying report form. The school counselor spoke with all students about the situation, and a restorative circle was eventually held. Appellants also received a phone call from the assistant principal, as well as an in-person meeting with the principal to address these issues. Regulation JHF-RA does not require an explicit finding of whether “bullying” occurred. The school counselor's email, the assistant principal's call, and the principal's later communications demonstrate that an investigation was completed and measures to address the situation were put in place.

Appellants also take issue with the May 7, 2024 letter, which does not specify that their child was kicked by another student. While the school counselor reported that the other student admitted to kicking Child B, later investigations provided varying accounts of what happened. Regardless, the school acknowledged that there was a physical altercation involving both Child B and the other student, which is captured in the letter. As such, we do not find anything arbitrary, unreasonable, or illegal about the school's response.

Restorative Approaches

Appellants also claim that the restorative approaches were not completed in a timely fashion. There is nothing in State law or MCPS policy that requires a specific timeline for utilizing restorative approaches. In the present case, MCPS acknowledged the delay in the investigation due to issues with staffing (i.e., the principal being on leave) and Spring Break. While the timing was not ideal, the school provided legitimate reasons for the delay. Furthermore, despite the timing, the students were active participants in the process according to the email from the school counselor. We do not find the timing of the restorative approaches to be arbitrary, unreasonable, or illegal in this case.

Delivery and Timing of Disciplinary Actions

Appellants also take issue with the delivery and timing of the disciplinary action against Child B (i.e., suspension of safety patrol duty). Appellants are concerned that the school waited so long to impose disciplinary action, it made it difficult for Child B to process the news. They are also concerned that the disciplinary action was delivered in a manner that led to Child B having an emotional outburst at school. The school counselor, Child B's trusted adult, was not onsite the day Child B was informed of the consequences, which exacerbated the situation.

It appears that Child B's response to the disciplinary actions are related to the student's disability, which fall squarely within MCPS's obligations under Section 504. We have long declined to extend our jurisdiction to resolve Section 504 and special education disputes because there are other existing forums available. *See Jon N. v. Charles Cnty. Bd. of Educ.*, MSBE Op. No. 17-19 (2017). The record indicates that MCPS made Appellant aware of these avenues, of which they availed themselves. The family pursued their grievances over the impact of the disciplinary events through the Section 504 process, and MCPS made an offer to reimburse for the cost of therapy services to address the emotional impact of the disciplinary consequences.

Appellants also argue that the disciplinary action was imposed before the investigation was finalized, which they claim ended with the April 8th restorative circles sessions. We do not concur. The restorative circles were not intended as a part of an investigation. They are a tool to repair harm to the students' relationships. The school counselor and assistant principal had already spoken with the students as a part of the investigation, and the findings were shared with Appellants both in writing and orally. We do not find the timing of the disciplinary consequences arbitrary, unreasonable, or illegal.

Communication with Appellants

Appellants allege that MCPS violated the *MCPS Student Code of Conduct* when Child B was informed of the disciplinary consequence before Appellants. While MCPS policies require that parents are notified of disciplinary consequences, these policies do not require that parents be notified *before* students. Mr. Turk's investigation and letter identified that the school did not inform Appellants of the specifics of the disciplinary action until April 11, 2024. All parties agreed the communication should have occurred sooner; however, the school provided ample opportunities to discuss the March 14th event and subsequent actions. We agree that the timing of the communication could be improved, but any associated procedural defect was cured through the multiple emails and in-person meeting held between the school and Appellants.

Retaliation

Appellants argue that the principal retaliated against them by making allegations that Appellants were bullying and harassing school staff. Appellants allege that the April 11th meeting was used to "[air] personal grievances against [Child B's mother]". (Appeal, p. 10). Appellants also point to the April 12, 2024 email wherein the principal reminded them of the school's communication expectations. While this may have been upsetting to Appellants, there is no evidence that the principal took adverse or retaliatory action against Appellants. They were provided with multiple opportunities to engage with school staff and leadership, their child continued to receive services, and Appellants were provided with full appeal rights. It is unfortunate that the parties did not have a better working relationship, but there is no evidence that the principal retaliated against Appellants.

Violation of FERPA

Appellants also claim that the school principal violated their privacy rights under the Family Educational Rights and Privacy Act ("FERPA"). Specifically, the principal posted photos of Child B on social media; however, Appellants had explicitly denied permission to use their child's photo through the *MCPS Annual Notice for Directory Information and Student Privacy*. FERPA protects the privacy of a student's education records. *See generally* 20 U.S.C. §1232g; 34 C.F.R. Part 99.

We have previously declined to consider FERPA violations because federal law provides a separate forum to address those grievances – the Family Policy Compliance Office of the United States Department of Education. *See* 34 C.F.R. 99.63; *Philip P. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 14-39 (2014). In our view, the issue raised by Appellants is within the authority of the U.S. Department of Education. Accordingly, we decline to consider this claim.

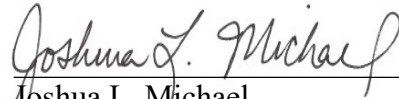
Regulation KLA-RA

Appellants argue that MCPS violated Regulation KLA-RA by failing to comply with timelines for completing an investigation. Specifically, KLA-RA(D)(3) requires the Division of Appeals to make a determination on an appeal and notify the complainant within 45 work days, unless additional time is needed. The Division of Appeals must notify the complainant within 30 work days of receipt of the complaint if an extension of time is required.

In the present case, Appellants filed their appeal on June 28, 2024. On July 12, 2024, the Division of Appeals notified Appellants it would require additional time to complete the investigation. It anticipated a decision by September 17, 2024. According to Appellants' own filing, Mr. Mangiacapra notified Appellants on September 10, 2024, that his Division would need until October 1, 2024, to make a final decision. (Appeal, p. 12). We find MCPS complied with the procedures under Regulation KLA-RA.

CONCLUSION

For the foregoing reasons, we decline to overturn the local board's decision to deny the Appellants' *Complaint from the Public*.



Joshua L. Michael
President



Monica Goldson
Vice-President



Chuen-Chin Bianca Chang



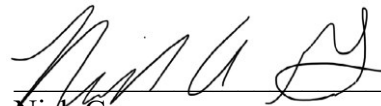
Chet Chesterfield



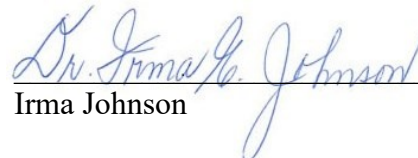
Kenny Clash



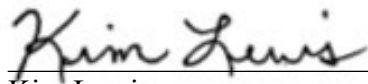
Clarence Crawford



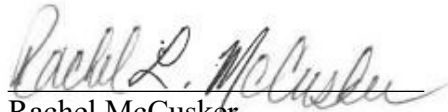
Nick Greer



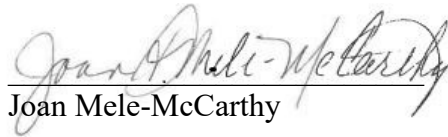
Irma Johnson



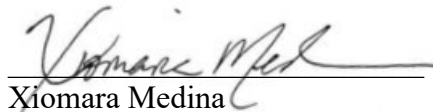
Kim Lewis



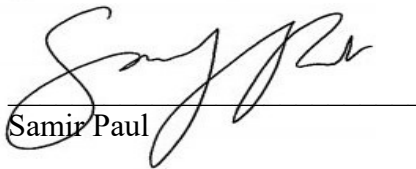
Rachel McCusker



Joan Mele-McCarthy



Xiomara Medina



Samir Paul

May 29, 2025