

KRISTINA E.,

Appellant

v.

CHARLES COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-27

OPINION

INTRODUCTION

In this appeal, Appellant maintains that the school system failed to appropriately handle her complaint that her son was being bullied by another student. The local board filed a Motion to Dismiss the appeal. Appellant responded to the motion and the local board replied.

FACTUAL BACKGROUND

This case arose because of events at the beginning of the 2014-2015 school year. Appellant's 12-year old son was starting school at Benjamin Stoddard Middle School after the family moved to Charles County. According to the Appellant, her son told her he was being bullied by another student, particularly in the math class of Ms. Qawiyy. Appellant told her son to tell his teacher about it. On October 3, 2014, Appellant wrote a letter to Ms. Qawiyy about her son being bullied or taunted by another student in her class. She said this student was trying to get her son to fight. She explained that her son would "defend himself." (Exhibit to Appeal).

Everything came to a head on October 7 when Appellant's son threw his binder at the other student and fought with him. The binder struck a bystander student, however. The teacher apparently was also struck sometime during the fight. (Motion to Dismiss, Ex.3). Appellant's son was suspended for 10 days with an additional 45 days in alternative education. The Appellant did not condone her son's conduct but, on October 11, November 4, and November 13, she wrote to school officials complaining that school staff had not handled the bullying problem appropriately and failed to follow proper procedures. She asked for an investigation. She wrote to the local board on December 30, 2014 asking to file a complaint against the three school staff she believed had not acted appropriately. The local board sent that letter to the Superintendent for a response.

On January 21, 2015, the Superintendent replied explaining that the Appellant's concerns were investigated by the Assistant Superintendent and that she had determined that staff had handled the matter appropriately. The Superintendent provided no further information stating, "The school system will not share with you information about that student or any actions taken in dealing with that student's behavior." (Motion to Dismiss, Ex.1).

On January 26, 2015, Appellant wrote to the local board. She disagreed with the local Superintendent's response and stated that there was no explanation of the basis for the Assistant

Superintendent's determination that staff handled the bullying complaint appropriately. Appellant wanted to know how her concerns were being addressed. She indicated that she intended to pursue the matter at the State level. (Motion to Dismiss, Ex.5).

After receiving information from MSDE about the appeals process, on February 13, 2015, Appellant wrote to the local board requesting a hearing to discuss her concerns. (Motion to Dismiss, Ex.7). The appeals specialist for the local board sought additional information from Appellant. Appellant explained that she was not appealing her son's expulsion, but rather was seeking a hearing because she believed school staff handled her matter inappropriately and wanted them to be held accountable. On or about March 10, 2015, the appeals specialist advised Appellant that she could not appeal to the local board personnel action that may or may not have been taken against individual staff members. (Appeal, p.1; Motion to Dismiss, p.3).

Appellant filed this appeal with the State Board on March 24, 2015.

STANDARD OF REVIEW

In an appeal involving local board policy and procedures, the local board's decision is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless its decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

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.01.05.05E.

LEGAL ANALYSIS

Local Board's Motion to Dismiss

As a preliminary matter, we address the local board's Motion to Dismiss. The local board argues that the case should be dismissed because (1) Appellant lacks standing to appeal; (2) there is no local board decision for the State Board to review; and (3) the appeal to the State Board is untimely.

Standing to Appeal

The local board argues that the case should be dismissed because the Appellant lacks standing to request that personnel action be taken against school system employees.

Over the course of many years, this Board has ruled consistently that parents have no standing to appeal a personnel decision made at the local level. *See Thompson v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-43 (2012); *Rafael Y. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-40 (2007); *Schlamp v. Howard County Bd. of Educ.*, MSBE Op. No. 04-04 (2004); *Elder v. Prince George's County Bd. of Educ.*, 7 Op. MSBE 304 (1996). We base that conclusion on the fact that the employment relationship is between two parties, the local school system and the employee and on the law that establishes that personnel decisions are confidential. Md. Gen. Prov. Code Ann. §4-311. Under the law of standing, an individual "must show some direct interest or 'injury in fact, economic or otherwise.'" *Taylor v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-32 (2007), quoting *Adams, et al. v. Montgomery County*

Bd. of Educ. 3 Op. MSBE 142, 149 (1983). Thus, while a parent may have an interest in the decision whether or not to discipline a teacher or staff that interest is not the type of “direct interest” required for standing. Moreover, a parent may feel aggrieved by a personnel decision, but again, that is not the type of “injury in fact” that confers standing. Only the teacher or staff who is the subject of the personnel decision has the “direct interest” or suffers the “injury in fact.”

We understand how the local board could view this appeal as one requesting that a personnel action be taken against school system employees. Appellant states in her letters to the State Board and local board that she seeks to hold school staff members accountable for their actions. Consistent with the above precedent, to the extent that Appellant is seeking to have personnel action taken against the school personnel involved, we find that she lacks standing.

In our view, however, there is another aspect of the appeal that the local board has overlooked – Appellant’s challenge to the manner in which school system personnel handled her bullying complaint. The Appellant maintains that the actions by school staff, or lack thereof, violated school system protocol on dealing with bullying complaints. She claims that the failure of school personnel to appropriately handle her complaint led to the escalation of events between her son and the other student, and ultimately to the October 7 incident. As to this issue, we find that the Appellant has standing to appeal.

In finding standing, we reject the local board’s argument that this case is like *Thompson v. Montgomery County Bd. of Educ.*, *supra*, which was dismissed by the State Board, in part, due to lack of standing of the parents to appeal a personnel matter concerning a school system employee. The focus in *Thompson* was on the removal of a bus driver whom the appellants complained was “bullying” their son by yelling at the children, not allowing siblings to sit together, and not allowing the children to play cards. *Thompson* at 1. The school system investigated and was unable to validate the appellants’ claims regarding the bus driver, finding instead that the driver “‘runs a tight ship’ for safety reasons and had the support of the vast majority of parents.” The bus driver remained in the position and appellants sought her removal by the State Board. The State Board dismissed the appeal based on appellant’s lack of standing to utilize the §4-205 appeal process to remove the bus driver.

In the case at hand, while Appellant requested action against school personnel, she also specifically alleged that the school system failed to follow its own policies and procedures regarding the handling of her bullying complaint. (12/30/14 letter). It is this second prong of the Appellant’s claim that differs from the *Thompson* case.

No Local Board Decision to Appeal

The local board also argues that the State Board should dismiss the case because there is no local board decision for the State Board to review. Pursuant to COMAR 13A.01.05.03(C)(1)(a), the State Board may dismiss an appeal if there is no final decision of the local board.

In this case, the lack of a local board decision is not a result of a lack on the Appellant’s part to seek such a decision. Within 30 days of the local Superintendent’s January 21, 2015 letter, the Appellant twice wrote to the local board about her concerns. Although Appellant’s

January 26 letter indicated an intent to go directly to the State about the matter, her February 13 letter made clear that Appellant sought an appeal to the local board. The local board did not issue a written decision, but instead had the appeals specialist orally advise the Appellant that she could not appeal. As a result of the local board's inaction, Appellant filed her appeal with the State Board.

We point out that in *Thompson*, discussed above, the State Board also dismissed the case because there was no local board decision. The Chief Operating Officer's executive assistant advised the parents that they could not appeal a personnel decision regarding a school system employee and the parents appealed directly to the State Board. *Thompson* at 2. The State Board explained that the reason that there was no local board decision for it to review was because the parents lacked standing to bring the case before the local board in the first instance. *Thompson* at 3. This case is different because the Appellant has standing here to raise the issue of the school system's failure to follow its procedures and she attempted several times to seek a decision from the local board. We therefore remand the case to the local board for its review and a decision consistent with the local board's policies and procedures and this opinion.

Untimeliness of State Board Appeal

The local board further argues that the State Board should dismiss the appeal because it was untimely filed. The local board maintains that any appeal to the State Board should have been filed by February 20, 2015, within 30 days of the date of the Superintendent's January 21, 2015 letter. *See* 4-205(c)(3). As we explained above, the Appellant filed her complaint to the local board on February 13, 2015. In it she attempted to appeal to the local board but the local board appeals specialist orally advised Appellant on or about March 10 that she could not appeal. The Appellant filed her appeal to the State Board less than 30 days from the date of that conversation. We decline to dismiss the appeal based on untimeliness.

Bullying Complaint

The Appellant argues that the school system failed to follow the appropriate protocol for responding to complaints of bullying. We are remanding the case to the local board for review of this claim. Our expectation is that the local board will address the claim in terms of the existing laws, policies and procedures. We explain below.

Charles County Board of Education Policy 5117 prohibits bullying, harassment or intimidation of any person on school property or at school-sponsored functions. Superintendent's Rule 5117 sets forth the procedures to implement that policy and requires that the administrative response to a bullying, harassment or intimidation complaint include the following:

- Immediate steps to stop any wrongful behavior;
- Investigation into the bullying complaint;
- Protection of the victim by taking action designed to prevent further bullying and any retaliation;
- Parental notification of the victim and wrongdoer subsequent to the investigation, typically no later than the end of the same school day of the incident/complaint if the investigation is ongoing; and

- Notification of legal authorities and the Department of Student Services, when appropriate.

Rule 5117(A). The procedures also require follow-up conferences with the victim and offender to determine whether the bullying, harassment or intimidation has continued and whether additional consequences need to be implemented. Rule 5117(D)(7).

In addition, as mandated by §7-424(b) of the Education Article, each Maryland public school is required to report incidents of bullying, harassment and intimidation against its students to MSDE. There is an MSDE-created standard Bullying, Harassment or Intimidation Reporting Form (“Reporting Form”) that is used by school systems to track such reports. *See* §7-424(c). The form may be filled out by a student, parent, guardian, close adult relative of a student, or a school staff member. §7-424(b).

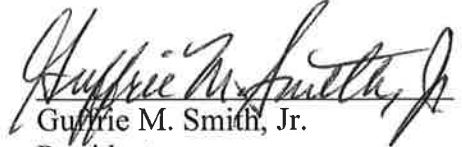
Superintendent’s Rule 5117 indicates that the Reporting Form is available at the school’s main office or counselor’s office and on the school system’s website, and can be filled out by those individuals designated above. The school system “encourages the use” of the form and requires the school administration to fill out a Bullying, Harassment, or Intimidation Incident Investigation Form for every Reporting Form that is submitted. Rule 5117(D). The procedures also state that staff members “shall assist with the completion of the form when necessary or upon request from the complainant.” Rule 5117(C).


We acknowledge in this case that the Superintendent communicated to the Appellant that the Assistant Superintendent had conducted an investigation and determined that staff handled the matter appropriately. However, no further information about the process or investigation was disclosed. In remanding this case, it is our view that the local board elaborate on how the Assistant Superintendent’s decision was reached in light of the school system’s policy and procedures for handling bullying complaints. It is not axiomatic that divulging additional information about the handling of Appellant’s complaint would result in the disclosure of confidential personnel or student record information.

Our concern about the handling of bullying complaints is driven by our recognition that bullying is a toxic behavior among students that can have long lasting harmful effects. Students who are bullied and those who bully others are at risk of experiencing a wide range of health, safety, and educational risks. Bullying awareness, prevention and early intervention all help to create a safe and supportive school climate. To this end, school systems must be vigilant in following through and responding to complaints of bullying in school. It is critical that school systems be transparent and accountable to parents and students in those responses.

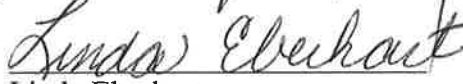
CONCLUSION

For the reasons stated above, we remand the case to the local board for review and a decision consistent with this Opinion. The local board's decision should address the manner in which the school system applied the laws and policies on bullying as described herein. If the Appellant is dissatisfied with the local board's decision, she may appeal it to the State Board.


Guffie M. Smith, Jr.
President


S. James Gates, Jr.
Vice-President


James H. DeGraffenreidt, Jr.


Linda Eberhart

Absent

Chester E. Finn, Jr.


Larry Giammo



Michele Guyton

Absent

Luisa Montero-Diaz

Absent

Sayed M. Naved


Madhu Sidhu


Andrew B. Smarick

July 28, 2015