

ESSAM I.,

Appellants

v.

HOWARD COUNTY BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-22

OPINION

INTRODUCTION

The father of Student M. appealed the denial of a transfer request for his daughter. The Howard County Board of Education (local board) has filed a Motion for Summary Affirmance. The Appellant has not responded.

FACTUAL BACKGROUND

The Appellant challenges the Howard County Board of Education decision not to transfer his 6th grade daughter, Student M, from Wilde Lake Middle School (Wilde Lake) to Burleigh Manor Middle School (Burleigh Manor). The Appellant requests his daughter's reassignment because of his concern about bullying and harassment at Wilde Lake. This concern is not exclusively related to occurrences surrounding Student M's experience, but arises from previous circumstances involving her older brother, Student O. To understand the present request, it is necessary to view the Appellant's request for reassignment in light of Student O's history at Wilde Lake.

In May 2010, the Appellant filed a request that his son be reassigned from Wilde Lake to Burleigh Manor. He claimed that his son was subjected to harassment and threats, including threats to the family, and physical abuse, all of which, he alleged, were founded on religious bigotry. (Local Board Motion, Exhibit 1). Among those instances were physical altercations and verbal bullying from one of Student O's fellow classmates during April and May of 2010. That student, Student K, hit him once in the hallway and later in a class, as well as made comments such as "Get your Egyptian Ass out of here!" (Local Board Motion, Exhibit 7, Other Relevant Information, Item 3, Memorandum from Pam Blackwell). The Appellant claims that his son had several bruises on his arm and right eye and he feared further harassment from Student K. (Local Board Motion, Exhibit 5). However, in these instances Student K also reported that Student O participated in the confrontation via name calling, using phrases like "Where's your green card?" and "Why did you jump over the border?" During the investigation of these episodes, Student K alleged that Student O was also "talking trash" about her and other students on his Facebook page. There was evidence that Student O had a Facebook page (a print-out of his profile page of the Facebook account), but Student O and the Appellant denied it.

(Local Board Motion, Exhibit 7, Timeline for Major Correspondence, Item 3, Memorandum from Pam Blackwell).

Also in April 2010, a confrontation occurred between Student O and Student Q, a fellow bus rider. Appellant alleged that Q and a group of friends used profanity and threatened to harm O and members of his family. Later that same day Q and O had a fight during recess. Both students were suspended for one day. (*Id.*).

A later incident involved Student O and Student T, who had thrown a "white board" at him causing injury to his lip. Student O was sent to the health assistant and an investigation began immediately. Student T admitted to tossing the white board onto the desks of several students, but the school found no evidence that Student T intended to injure O. Student T was disciplined for his actions. Student O reported during the investigation that Student T had spit on him during a math class a week earlier. Student O also stated that his teacher, Mr. Long, was aware of the incident and had interceded but, Mr. Long stated that he had no knowledge of the spitting incident and no such information was reported to him. (*Id.*).

Later, the school issued an Incident Report for Running/Horse Play/Disruption to Student O after another student fell on the floor. Apparently, Student O's foot was beneath the moved chair that caused the child to fall. Also, on Student O's report cards and behavioral evaluations, teachers consistently reported that Student O was disruptive and frequently failed to finish assignments. (*Id.*).

Incidents involving Student O and other students where bullying played a role was documented in the record. In most of these instances, however, Student O's role was not uniquely that of a victim of harassment; there was also evidence of Student O as a participant in disputes between him and other students. Thus, when the Superintendent's Designee, Pamela Blackwell, reviewed the Appellant's request to transfer his son to another school, she initially denied the request. In June 2010, the Appellant again requested the reassignment of his son, which Ms. Blackwell granted. Ms. Blackwell explained that she reversed her decision "based solely on what [she] consider[ed] to be in [Student O's] overall best interest, not on any finding of fault by the school staff at [Wilde Lake]." (Local Board Motion, Exhibit 7, Other Relevant Information, Item 4).

With this context in mind, we consider the Appellant's request for the transfer of his daughter. On July 10, 2010, the Appellant submitted a Student Reassignment form requesting that his daughter be reassigned from Wilde Lake to Burleigh Manor. After reviewing Student M's case, Ms. Blackwell denied the Appellant's request. Ms. Blackwell based her decision on the grounds that Student M's experience at Wilde Lake was untainted because she had not yet attended the school, and there was no documentation of Student M having harassment issues like Student O's. (Local Board Motion, Exhibit 4).

Following Ms. Blackwell's decision, the Appellant filed an appeal with the local board. On June 21, 2010, in his letter of appeal, the Appellant referenced his son's experience at Wilde Lake and stated he had lost complete faith in Wilde Lake staff and administration's ability to provide a safe environment for his daughter. (Local Board Motion, Exhibit 3). Ms. Blackwell

responded to the appeal on behalf of the Superintendent. She stated that the Appellant's reassignment request derived solely from Student O's experience, each incident of Student O's experience was investigated and found to not have been motivated by race or religion, and that in the course of the investigation Student O had some responsibility for the conflicts. On September 1, 2010, with two members dissenting, the local board upheld the denial of the reassignment request. (Local Board Motion, Decision Exhibit 1).

On September 28, 2010, the Appellant appealed the decision of the local board to the State Board. In the appeal letter, the Appellant alleges that one month after his daughter began attending Wilde Lake he received a call from Ms. Berla, the Guidance Counselor, who informed the Appellant that M had come to her with a formal complaint. Student M said that while she walked to her locker, Student R, was led up to her and inappropriately slapped her on the rear. The Appellant contends that his daughter, aware and fearful of the incidents surrounding her brother's experience, responded angrily. The Appellant states that Student R claimed the incident to be part of a "game." An investigation followed after Students M and R were questioned about the episode and video surveillance was reviewed. Student M was informed that Principal Saunders was aware of the matter and then instructed to return to class. The Appellant contends that his daughter's complaint was not taken seriously and that the incident exhibited Student M's lack of safety at Wilde Lake. (Letter of Appeal from Appellant to Dr. Nancy Grasmick (September 28, 2010)).

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision is considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board in this case unless the decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

The local school system will transfer students for the following reasons:

1. Disciplinary Action
2. Safety
3. Student Relocation
4. Children of School-Based Employees
5. Special Programs
6. English for Speakers of Other Languages
7. Special Education Services
8. Title I
9. Open School Designation
10. Special Circumstances

Section IV.1.10 states:

10. Special Circumstances

In rare circumstances, the Superintendent/designee may grant parent requests for individual exceptions to the student reassignment standards based on documented needs. Such exceptions will not be granted for issues common to large numbers of families, such as the need for a particular schedule, class/program, sibling, enrollment, redistricting, or day care issues. Decisions will be made by the Superintendent/designee. Eligibility for extracurricular activities, including interscholastic athletics, and provision of transportation for students reassigned under this standard will be determined by the Superintendent/designee.

(Motion at 7).

In this case, either the safety exception or the special circumstances exception are brought to issue. At the time the local board issued its decision concerning Student M, there was no safety issue directly related to her. There were no special circumstances to consider. Appellant's daughter had just begun attending Wilde Lake. The local board declined to predict the future for Student M at Wilde Lake based on the circumstances of her brother's experience. (Motion, Ex. 1). In our view, it was not arbitrary or unreasonable to do so.

Thereafter, however, one incident occurred - - the slap on her rear end. While we would, in the usual circumstances, decline to consider evidence that was not presented to the local board, *Jenai B. v. Prince George's County Board of Education*, MSBE Op. No. 8-22 (2008), it is obvious that the evidence of events of September 28, 2010 could not have been considered by the local board when it made its decision on September 1, 2010. In this type of case, this Board may receive the additional evidence. COMAR 13A.01.05.04C.

The local board in its Motion for Summary Affirmance, explains the slap this way:

[Student M's] Principal reports that she has had a safe and successful experience, except for one incident where she was smacked on her bottom by a student, as were many other students, on a day of student initiated misbehavior they called "butt slapping Tuesday." The students who engaged in this practice were disciplined, and the "butt slap" had nothing to do with religion or national origin.


(Motion at 9).


The Appellant has not responded to or countered that description of events. It is our view that the incident was not a form of bullying and would not form the basis for a safety or special circumstance exception as a ground for a transfer.


CONCLUSION

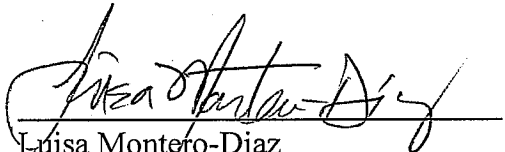
For all these reasons, we affirm the decision of the local board.


James H. DeGraffenreidt, Jr.
President

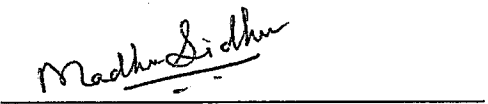

Charlene M. Dukes
Vice President

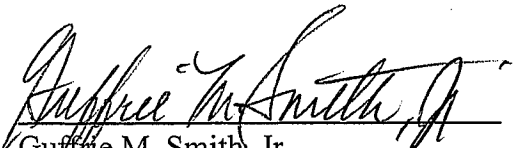

Mary Kay Finan

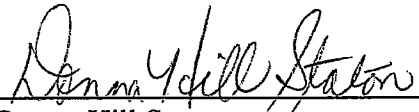

S. James Gates, Jr.


Luisa Montero-Diaz



Sayed M. Naved


Madhu Sidhu

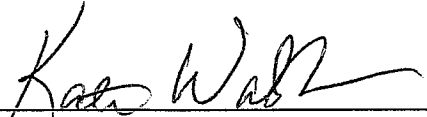

Guffie M. Smith, Jr.



Donna Hill Staton



Ivan C.A. Walks



Kate Walsh

April 26, 2011