

DEBRA MCDANIEL,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-22

OPINION

In this appeal, Appellant contests the local board's decision not to provide transportation for Appellant's daughter as part of her transfer from her home school, Watkins Mill High School, to Damascus High School. The local board has submitted a Motion for Summary Affirmance maintaining that there is no basis in State law or regulation for granting Appellant's transportation request, and that it was neither arbitrary nor unreasonable for the local board to follow its own policy and regulations in granting the transfer request without granting transportation. Although requested to do so, Appellant did not submit a reply to the motion.

FACTUAL BACKGROUND

On November 19, 2002, Appellant's daughter, Cassandra, was found in a compromising position with a male student in the stairwell at Watkins Mill High School while skipping class.¹ School officials investigated the incident and notified Appellant. Appellant asked that no one talk to her daughter until she arrived at the school. Upon her arrival, a series of negative interactions occurred between Appellant and school staff which continued over the next several days, ultimately resulting in a number of formal complaints by the Appellant and the issuance of a no trespass letter by the school principal.² Among the various complaints, Appellant alleged that she was mistreated by school staff, including verbal and physical assaults on her by members of the school security staff. The principal of Watkins Mill conducted an investigation of

¹The precise nature of the encounter is not clear. Appellant maintains that her daughter and the male student were "making out." School officials have referred to the incident as a "sexual encounter." Nevertheless, the local board noted in its decision that despite "the precise nature of what occurred, it is indisputable that the students were cutting class to engage in inappropriate behavior." Local Board Decision at 1.

²The no trespass letter indicated that it was a result of Appellant's "inappropriate language in front of staff and students and for the aggressive behavior [Appellant] displayed toward staff on November 19 and November 21, 2002." The letter further stated that Appellant's "behavior has the effect of disrupting and/or disturbing the normal educational functions of [the] school."

Appellant's claims but found no evidence to support the allegations.³

Appellant submitted a Complaint from the Public requesting that her daughter be transferred from Watkins Mill High School to either Damascus High School or Richard Montgomery High School with transportation being provided by Montgomery County Public Schools ("MCPS"). Appellant based this request on her belief that her daughter's safety at Watkins Mill was in jeopardy given Appellant's alleged experiences with the school staff. Specifically, Appellant believed that it was only a matter of time before school security staff would physically attack her daughter.

Appellant spoke with Louis Martinez, the community superintendent, who offered to transfer Appellant's daughter to Damascus High School but advised Appellant that, consistent with board policy, transportation would not be provided by MCPS. Appellant also spoke with Wayne Fleeger, coordinator of hearing officers, who indicated that Cassandra's transfer would be approved, but also indicated that MCPS did not consider school security to be a danger to Cassandra and that transportation was not provided for parent-initiated transfer requests.

Thereafter, the matter was referred to hearing officer, Laurence Jeweler, for review. Mr. Jeweler recommended that the transfer request be approved but that transportation not be provided. In his report to Larry A. Bowers, Chief Operating Officer, Mr. Jeweler stated as follows:

Although Ms. McDaniel believes that school security at Watkins Mill High School poses a threat to her daughter, Montgomery County Public Schools' staff does not believe this to be the case. Indeed, the investigation conducted by the school concerning this matter was exhaustive and indicated that neither Ms. McDaniel nor her daughter was mistreated. However, understanding that Ms. McDaniel is very unhappy with Watkins Mill High School, both the community superintendent and this office have offered an immediate transfer to Damascus High School. Because this is a parent-initiated request over an alleged assault that was investigated and found to have no validity, I do not believe that the transfer policy should be over-ruled. The documentation of the school investigation of this incident is extremely comprehensive and shows no indication that either Ms. McDaniel or her daughter has been mistreated.

Hearing Officer Report and Recommendation at 2. Larry Bowers, acting as the superintendent's designee, adopted Mr. Jeweler's report and recommendation.

³Appellant believes that the investigation was flawed, claiming that the principal merely interviewed her staff members and accepted their version of the events as true.

Appellant appealed the denial of transportation to the local board. In a unanimous decision, the local board affirmed the decision of the chief operating officer finding, pursuant to the local board's student transfer policy and regulation, no basis for granting Appellant's request that transportation be provided by MCPS as part of the transfer. In its decision, the local board also noted the following:

The Board recognizes the deeply-held feelings of Ms. McDaniel in regard to the manner in which school officials at Watkins Mill High School addressed this incident, assigned responsibility, and handled both Cassandra and her. Undoubtedly, the emotions experienced by Ms. McDaniel, and the barring notice served upon her that precluded her presence at Watkins Mill High School, have left a bitter taste that colors her views and her assertions. Suffice it to say, however, that nothing in this appeal demonstrates that Cassandra was compelled to seek a transfer to another school or that her personal safety was ever compromised, had she remained at Watkins Mill.

Still, once the request for a transfer was made, the school system responded positively, knowing that the trust and bond between school and home had been broken. Rather than opposing the transfer as not being warranted, the transfer was approved, albeit without transportation.

Local Board Decision at 2.

ANALYSIS

Preliminary Matters

As a preliminary matter, although Appellant asserts that her appeal before the local board level should have been addressed during the local board's open session, she has cited nothing to support this contention. We note in this regard that the Open Meetings Act does not apply to a public body when it is carrying out an executive function. Md. Code Ann., State Gov't §10-503(a)(1). Thus there is no State law that would require the appeal to be reviewed publicly during the open session of a local board meeting.

As another preliminary matter, Appellant makes reference to additional Complaints from the Public which she submitted to the school system that have not yet been addressed. These complaints were not a part of this appeal when it was before the local board and are therefore not an appropriate matter for consideration before the State Board. The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge

suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver on appeal). Thus, by failing to raise these issues below, Appellant has waived her right to raise them before the State Board.

Substance of the Appeal

Because this is a controversy over a decision of a local board involving a local policy, the standard of review is that the decision 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.01.01.03E(1).

The local board's policy and regulations on student transfers provide that parents accepting a parent-initiated transfer assume the responsibility for transportation to the school. See JEE(C.4) and JEE-RA(III.D.2.e). Appellant disputes that the transfer was at her behest. Rather she claims that she was compelled to request the transfer to protect her daughter due to the allegedly inappropriate and illegal actions taken by school staff against Appellant. The local board maintains that the transfer was parent-initiated and therefore the Appellant, not the school system, is responsible for student transportation.

Based on the record in this case, we concur with the local board. Appellant requested her daughter's transfer to Damascus in a Complaint from the Public dated November 25, 2002. While Appellant claims that she was forced to request the transfer based on concerns about her daughter's safety, the school system found Appellant's allegations concerning the events that transpired to be completely unsubstantiated and never found any evidence suggesting that Appellant's daughter would be endangered if she remained at Watkins Mill. Despite these findings, the school system granted the transfer request because of Appellant's adverse feelings about school staff and what had allegedly taken place.

Moreover, even if one were to accept all of Appellant's allegations as true, Appellant has presented no evidence that the safety of Appellant's daughter was in jeopardy.⁴ In fact, prior to the transfer to Damascus, Appellant's daughter remained at Watkins Mill for several weeks after the alleged incident between Appellant and school staff and no harm ever came to her.⁵

⁴Given these facts, it is unnecessary for the State Board to initiate an investigation into the incidents between Appellant and school staff at Watkins Mill as requested by Appellant.

⁵Appellant has also requested reimbursement of transportation costs and expenses in the amount of \$5,521.11. The State Board has no authority to grant requests for compensatory damages. However, even if the Board had such authority, the request would be denied on grounds consistent with the local board policy and regulations on transportation and parent-initiated transfers.

Because we find that the transfer request was parent initiated, we believe that the local board's decision is consistent with its own policy and regulations on student transfers and is not arbitrary, unreasonable, or illegal.

CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Montgomery County.

Marilyn D. Maultsby
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JoAnn T. Bell
Vice President

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Walter S. Levin, Esquire

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Edward L. Root

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John L. Wisthoff

June 25, 2003