

JERRY & JILLIAN KEENE,

Appellant

v.

WASHINGTON COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-02

OPINION

This is a consolidated appeal of the denial of twenty-three grievances concerning alleged racial and other forms of discrimination against Appellants' daughter at two schools in the Washington County Public School System ("WCPS"). Following an evidentiary hearing before the Washington County Board of Education, by unanimous decision the Board affirmed the denials of the grievances. The local board has submitted a Motion for Summary Affirmance or in the Alternative, Motion to Dismiss, maintaining that the local board's denials were not arbitrary, unreasonable, or illegal and that Appellants' appeal to the State Board did not include a statement of facts or charges. Although Appellants were granted an extension of time in which to file their reply, no reply was filed.

FACTUAL BACKGROUND

Appellants' daughter Bridgette attended Northern Middle School in Washington County from August 2001 until December 2001. As discussed more fully below, during her tenure at Northern Middle, Bridgette was referred to the principal's office and disciplined numerous times. Appellants grieved many of these disciplinary actions. Because Bridgette was having difficulties adjusting to Northern Middle and Appellants were unhappy with the school, school officials offered Bridgette a transfer to another WCPS middle school.

Beginning December 21, 2001, Appellants did not send Bridgette to any school. After District Court proceedings from which Appellants were required to pay fines for allowing Bridgette to be truant from school for 43 days, Appellants voluntarily enrolled Bridgette in Western Heights Middle School in Washington County. Bridgette then encountered problems at Western Heights Middle. Appellants once again grieved several occasions of referrals and discipline, as discussed more fully below.¹ Ultimately, Appellants withdrew Bridgette from public school.

¹While Appellants had sent multiple letters to the schools complaining of various matters, they did not file formal grievances until March, 2002. Some of the grievances were resolved in discussions with the school. Proceedings were delayed several times by Appellants. (Transcript of local hearing, p. 26). The remaining twenty-three were then set for hearing before the superintendent's designee.

The Superintendent's designee, Mr. Ralph Kline, heard the grievances on January 15, 2003. By consent of all parties, the grievances were consolidated for reasons of efficiency and judicial economy into like categories and by school. Sixteen (16) grievances concerned activities at Northern Middle School and seven (7) concerned activities at Western Heights Middle School. In each case, Appellants failed to present any evidence in support of their allegations. The school system offered credible evidence that the allegations were not true. Accordingly, Mr. Kline denied all twenty-three of the grievances. (Decision dated February 21, 2003).

The local board conducted a hearing on the consolidated grievances on May 13, 2003. Ms. Novak, who had been principal of Northern Middle when Bridgette attended there, and Mr. Myers, who had been principal of Western Heights when Bridgette attended there, both testified on behalf of the superintendent. Mr. and Mrs. Keene testified on their own behalf. Bridgette's testimony was stricken from the record because Appellants refused to permit her to be cross-examined. The superintendent submitted fifty-seven pages of documents into evidence. Appellants did not offer any documents into evidence.

Below are examples of Appellants' various grievances:²

Northern Middle Grievances

1. Appellants alleged that a teacher purposely misplaced Bridgette's homework assignments because she was black. The evidence demonstrated that Bridgette was given eight days to make up her work, allowed to attend the homework club, and even given an extension of time in which to finish her work. However, Bridgette failed to attend the homework club and did not turn in the assignments. (Tr. 19-20). Appellant's offered no evidence to support the allegation that homework was misplaced by the teacher.
2. Appellants alleged that Bridgette was placed in a low achieving class based upon her race. The evidence demonstrated that Bridgette, like all new students, was placed in an average achieving class pending receipt of her records from her previous school. She was then placed in a high achieving class based upon her records. (Tr. 26-8, 87). Race played no part in that decision. Appellants offered no evidence in support of their allegation.
3. Appellants alleged that Principal Valerie Novak growled at Bridgette and that a teacher, Ms. Iannaci, gossiped with another student about Bridgette having sex with another student. Principal Novak denied growling at Bridgette (Tr. 28, 92), and Ms. Iannaci denied having any such conversation about Bridgette. (Tr. 56). Appellants offered no evidence in support of their allegations.

²See Motion for Summary Affirmance or in the Alternative, to Dismiss, pp. 3-13, for a discussion of all twenty-three of the grievances.

4. Appellants alleged that Bridgette was forced to transfer to another school and that the Principal suggested that school because it had a black assistant principal. The evidence demonstrated that when students have disciplinary problems at one school, they are offered a “fresh start” at another school. (Tr. 30, 100). In a meeting, Ms. Keene stated that Bridgette was not having success at Northern Middle because of her race. (Tr. 101). Because of that comment, Principal Novak offered Bridgette a transfer to any other middle school and did state that Western Heights had a black principal. (Tr. 30, 100). However, Bridgette was not “forced” to transfer. (Tr. 103, 106). Appellants voluntarily transferred Bridgette to Western Heights. (Tr. 31). Appellants offered no evidence to support their allegations.
5. Appellants alleged that Bridgette was suspended for one day in December without due process. Principal Novak testified that a post-suspension meeting was held on December 12, 2003. (Tr. 38). However before the meeting started, the Keenes became involved in a marital dispute, shouting in front of students and staff. (Tr. 38-9). Despite Principal Novak’s attempts to get a statement from Bridgette, she and her parents left the school and never returned to Northern Middle. (Tr. 36-39, 48-53). Appellants offered no evidence to support their allegation.

Western Heights Middle School

1. Appellants alleged that a substitute teacher told two students that Bridgette was “bad news” and to stay away from her. When school officials investigated, they found that the substitute told students generally to be careful who they were around but did not state that Bridgette was “bad news”. (Tr. 128, 157). Appellants offered no evidence to support their allegation.
2. Appellants alleged that a teacher gave Bridgette “strange looks” and told a fellow student not to partner with Bridgette. School officials could not find any evidence that the teacher had given “strange looks”. (Tr. 161). The teacher did not want Bridgette to partner with one particular student because she believed that they would both be disruptive if they worked together. (Tr. 172). Appellants offered no evidence to support their allegation.
3. Appellants alleged that a staff member told students to take notes on Bridgette’s behavior. Mr. Davis told students that if they had a problem with another student, it was the school’s policy that the student write down the problem and give it to the teacher or the administrator. Bridgette was not singled out for this policy. (Tr. 165, 175-6). Appellants offered no evidence to support their allegation.
4. Appellants alleged that a teacher was rude to Bridgette on three occasions and told her that she should be on her best behavior because she was at the school on special permission. The evidence indicates that the teacher was merely

reinforcing that all students should follow the rules and particularly if a student is there on special permission. (Tr. 164-5). She did not intend to humiliate anyone by that statement. (Tr. 164). Appellants offered no evidence to support their allegation.

By unanimous vote, the local board upheld the denial of the grievances. (Opinion dated July 2, 2003). This appeal to the State Board followed in which Appellants allege that WCPS “continue[s] to racially discriminate against Bridgette Keene... .” However, the Keenes do not set forth the specific facts that they wish the State Board to consider in the appeal nor do they present any evidence to refute the local board’s findings.

ANALYSIS

Because this case involves a dispute regarding the rules and regulations of a local board, 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). *See, e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997). A decision may be arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the conclusion the county board reached. COMAR 13A.01.01.03E(1)(b).

Appellants have offered no evidence that the local board’s findings and decision were arbitrary, unreasonable, or illegal, and have offered almost no evidence whatsoever. While Mr. and Mrs. Keene testified, they refused to permit Bridgette to be cross-examined after she responded to one question. Consequently, her testimony was stricken from the record. Appellants testified that they were “saving” use of their counsel and their evidence for some unknown future proceeding.³ (Tr. 250, 271-2). Mr. Keene referred to a file that the Keenes had brought with them that allegedly contained evidence in support of their claim (Tr. 240, 244). However, he did not offer the documents as evidence and admitted that “we have to agree that we could have provided more concrete evidence than we have”. (Tr. 272).

When specifically questioned as to whether he had presented any evidence in support of their claims, Mr. Keene testified: “Well, admittedly, there’s not much except the promise of evidence”. (Tr. 256). Mr. Keene also testified that “There’s a mountain of evidence that at some time it [sic] will be assembled and submitted”(Tr. 257). And when asked about alleged witnesses and what substantiation they could provide in support of their allegations, Mr. Keene acknowledged that “I would have to say that the objective substantiation hasn’t been fully outlined here” (Tr. 258) and that “to this point in time you have not seen that information”. (Tr. 259).

³Mrs. Keene testified that “You will hear from Bridgette. Not now, not in this arena”. (Tr. 231).

The State Board has consistently held that an Appellant must support allegations of illegality with factual evidence. *See Ewing v. Cecil County Board of Education*, 6 Op. MSBE 818 (1995); *Stepper v. Board of Education of Anne Arundel County*, 7 Op. MSBE 324 (1996). As the State Board articulated in *Ewing*:

. . . In order to defeat a motion the opposing party must demonstrate that there is a genuine dispute as to a material fact ‘by producing factual assertions, under oath, based on personal knowledge.’ Unsupported statements or conclusions are insufficient. ‘It is never sufficient to defeat a motion for judgment that the opposing party allege in a general way that there is a dispute as to a material fact.’

Here, the Appellant has filed only a legal memorandum. She [Ewing] has not submitted any affidavit to oppose the sworn affidavits of the school officials. Because the unsupported assertions of the Appellant are insufficient to create a genuine dispute of material fact, we grant the Motion for Summary Affirmance filed by the local board. (Citations omitted).

6 Op. MSBE at 820. In this case, Appellants have filed a letter of appeal without any facts in support of their appeal, stating that they “are confident that the evidence of racial discrimination that we will bring will be compelling and convincing”. However, after requesting and being granted an extension of time in which to respond to the local board’s Motion, Appellants have failed to respond in any manner whatsoever. The bald assertion in their letter of appeal is insufficient to overturn the denial of the grievances. *See Hurl v. Howard County Board of Education*, 6 MSBE Op. 602 (1993) (mere allegation of discrimination without any supporting factual specifics is insufficient to sustain a claim).

The Keenes have also failed to present any evidence that the local board’s actions were arbitrary or unreasonable. They contend broadly and without factual support that their daughter was discriminated against because of her race.⁴ The local board addressed this blanket allegation:

In order to establish a claim of discrimination on the basis of race, Appellant must show that she is a member of a protected class, that the conduct was similar to that displayed by non-African-Americans, and that she was treated more harshly. If proven, the burden shifts to the superintendent to articulate non-discriminatory reasons for the decisions/actions. In sum, there is no evidence to

⁴As noted in the local board memorandum, Bridgette identifies herself as black; her mother identifies herself as black and her father, as white. *See* memo, p. 4.

support that the actions taken, whether disciplinary or not, were improper, illegal or based upon racial bias. There is no credible evidence that Bridgette was treated more harshly than white students charged with similar disciplinary infractions or that disciplinary action was not taken against white students engaged in similar behavior. The evidence supports numerous infractions of the disciplinary code which were addressed pursuant to standard procedure and Board policy.

CONCLUSION

Based on our review of the record, we find that Appellants have failed to present any evidence in support of their grievances. The local board, on the other hand, has presented extensive evidence that racial inequities played no part in the grievances under consideration. For these reasons, we believe that the local board did not act arbitrarily, unreasonably, or illegally in this matter and affirm the decision of the Board of Education of Washington County.

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January 28, 2004